Consolidated Text of the Spanish Securities Market Law

Securities Market Law 24/1988, 28 July (Amended by Laws 37/1998, 16 November; 14/2000, 29 December; 24/2001, 27 December; 44/2002, 22 November; 53/2002, 30 December; 22/2003, 9 July; 26/2003, 17 July, Royal-Decree-Law 5/2005 11 March; 5/2005, 22 April; 19/2005, 14 November, 25/2005, 24 November; 12/2006, 16 May; 6/2007 12 April) and **Law 47/2007, of 19 December,**

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PREAMBLE TO ACT 24/1988 OF 28 JULY ON THE SECURITIES MARKET

The need for an overall reform of the securities market has been repeatedly demonstrated over recent years. As early as 1978, the report by the Commission entrusted with the study of the securities market pointed out this market's various problems and deficiencies.

Although certain reforms were undertaken during the years following the publication of that report, they were of a partial and limited nature; most of the problems described in the report persisted, and further problems arose from the ongoing development of the financial systems both in Spain and in other countries.

The intention of this Act is to address numerous and varied problems associated with the current regulation of Spain's securities markets. It also aims to lend internal coherence to the securities market regulation, which is lacking at present. The strong interconnection between the various elements of the Act derives from an overall vision of the regulation of the securities markets and, although experience will show whether this vision is valid, it will undoubtedly ensure consistency.

Another basic aim of this Act is to strengthen the Spanish securities market in view of the prospect, in 1992, of a European capital market and the positions being adopted in this connection by various member states of the European Economic Community. The final aim is to ensure that Spain's securities market is appropriately placed when this European market comes into being.

The Act contains too many new elements for them to be described briefly, but the following principles or essential features are worth noting:

1. From a merely formal standpoint, the Act makes copious references to future detailed rule-making. This approach is the result of coordinating two opposing requirements: a) the need to avoid fixing within the framework of a Act many operational aspects of the securities markets which may be affected by the major changes currently taking place in the national and international financial system, which will doubtless continue in the immediate future; and b) the need to give the necessary legal support to many potential actions by the Administration which lack or could prove to lack this vital coverage within the current legal framework. The Securities Market Act may thus be seen to some extent as a framework to which further definition may be given according to the needs and problems arising at any given time. This approach, which could be seen as a disadvantage by those desiring a Act that establishes concrete solutions to certain very specific problems, is in fact extremely advantageous if, as is the case, the Act is intended to have a reasonable lifespan.

2. The Act is based on the concept of "securities" (*valores*) or, more specifically, of "transferable securities" (*valores negociables*), a concept which is not easy to define briefly in a legal text, but which is no less real for that. This means, above all, the abandonment of the biunivocal relationship between the securities market and notes (*títulos valores*) that prevailed to date. To this effect, one significant new feature of the

Act is that securities may be represented by book entries (*anotaciones en cuenta*), thereby appreciably reducing the importance of the traditional notes. The separation of the concept of transferable securities from a particular form of legal document is also clear from the fact, in certain cases, that the Act includes instruments such as bills of exchange, promissory notes and any other document meeting the other requirements contemplated in this Act. The additional features defining the "securities" to which the Act is applicable are marketability and grouping in issues; the Act makes no attempt to define these features precisely, due to the impossibility of dealing with such matters in detail without including technical information that is inappropriate in a law. As far as marketability is concerned, suffice it to say that this expression is intended to convey a meaning somewhat wider than mere transferability (basic to nearly all rights) and is defined in terms of a market that, though small, is characterized by the predominance of the economic terms of the transfer as opposed to the individual qualities of the parties to the agreement. With regard to grouping in issues, the concept of securities being issued "in series" (*en serie*) has been abandoned, due both to the difficulty of defining this concept in law and to the fact that there is no reason why instruments with very different financial characteristics (e.g. maturity or interest rate) should not be considered to be grouped in an "issue" (*emisión*), in accordance with the practices of numerous financial markets, when otherwise they might fall completely outside the provisions of this Act.

3. A cornerstone of the reform is the creation of a National Securities Market Commission (*Comisión Nacional del Mercado de Valores*) as a public agency with independent legal status. The Commission is entrusted with the surveillance and supervision of the securities market, and it may also participate in market regulation and in the implementation of reforms. The Commission is governed by a Board (*Consejo de Administración*), one feature of which is that representatives of brokers subject to surveillance by an Advisory Committee (*Comité Consultivo*) created for this purpose are excluded from the most important decisions taken by the National Securities Market Commission. The Board of the Commission is designed to promote professional competence, dedication and independence among its members and to encourage them to act as a body. The Commission has varied responsibilities, including ensuring transparency of the various markets, the correct formation of prices in the markets, and the protection of investors, by promoting disclosure of information needed by them; controlling the development of primary markets; listing, exclusion and suspension of securities on official secondary markets; surveillance of compliance with the codes of conduct by all participants in the securities market; advising the Government and the Ministry of Economy and Finance on securities market matters; and enforcement of such obligations and requirements as may be laid down by the Act, including exercise of the power to sanction.

4. The Act lays down the general principle of freedom to issue securities without the need for prior approval, save in certain exceptional circumstances. It also declares that issuers are free to adopt any system for placing their securities, the only requirement being that the selected system by fully defined and disclosed prior to launching the issue. Issuers are also free to choose the time parameters of issues. However, in order to defend investor interests, proposed issues must be notified to the Commission and made public,

a prospectus for the issue must be registered at the Commission, and the issuer's financial statements must be previously audited. The Act does, however, contemplate possible exceptions to these requirements in certain cases.

5. Although the basic regulations governing securities markets are unified, the Act differentiates between three categories of official secondary markets: a) the Stock Exchanges existing at any given time; b) the Public Debt Market represented by book entries (*Mercado de Deuda Pública representada mediante anotaciones en cuenta*) and c) other official secondary markets that may be designated as such by the Government. Essential reasons for adopting this approach are the existence of a Public Debt Market represented by book entries that is independent from the Stock Exchanges and the advisability of leaving open the possibility of creating other specialized markets. A normal train of events should foreseeably lead to the progressive integration of all segments of the securities markets, an eventuality which this Act does not oppose. However, at the initial stage it seemed advisable not to exclude any possibilities, in the expectation that the development of the markets themselves would establish the feasibility of any one particular system. Nevertheless, the principle is introduced of reserving, to the Stock Exchanges, the official trading of shares and equivalent securities, and of all securities represented by notes.

6. The Act contains certain general provisions on the operational system of the official secondary markets, entailing a new conception of the legal framework within which the trading of securities takes place. Except in certain marginal cases, the participation of notaries in the subscription for and trading of securities has been eliminated, although this evidently does not entail the disappearance of voluntary recourse to a notary. In its place, purchases and sales of securities listed on an official secondary market must obligatorily be processed through or brokered by at least one member of the official secondary market in question; on this basis, the various categories of transactions considered to be transactions on an official secondary market are specified, depending on the type of mediation or participation. Such mediation, which, except in certain circumstances, will be carried out under a system of free establishment of commissions, is primarily intended to guarantee that all transactions take place within the market and also to guarantee the adequate surveillance of the system and the provision of the necessary information for tax purposes. This also serves to explain why transactions are declared to be null and void when that brokerage requirement is not met. The sole requirement for transfers of securities other than by means of purchase or sale is that they be notified to the governing bodies of the relevant markets. The Act also provides a new system of irrevocability of transactions for securities carried out in good faith.

7. Within the same field of general provisions relating to official secondary markets, the Act creates the appropriate framework for their adequate operation with a view both to ensuring their efficiency and to the need for their surveillance and for investor protection. The Act is deliberately not very specific in this respect, in view of the many aspects to be taken into consideration for effective regulation; it does, however, confer broad powers upon the Government to develop regulations to this effect. Nevertheless, there are important principles which the Act defines, such as the application of market prices to agreed transactions. In addition to this principle, mediators are obliged to fulfil the terms agreed upon with the contracting parties, they must disclose any potential

conflict between their interests and those of their clients, they are liable for transactions which they perform for the account of third parties, and they must disclose all the basic data of every trade in the secondary market. Within the more restricted field of the Stock Exchanges, an important principle of disclosure is established for transactions which lead to one person increasing or reducing his interest in the capital of a company to, respectively, above or below the percentages to be established by regulation.

8. Basic to the organization of Stock Exchanges is the principle that only qualified Broker-dealers (*Sociedades de Valores*) or Brokers (*Agencias de Valores*) may be members of Stock Exchanges and the decision that the Stock Exchanges will be governed by corporations whose capital may only be owned by said Broker-dealers and Brokers. Certain special features are introduced, in particular: the rules providing for changes in capital or obligatory transfers of shares in the Stock Exchange Governing Companies (*Sociedades Rectoras de las Bolsas de Valores*) in order to allow for members joining or leaving them; the fact that the Bylaws (*estatutos*) of such Stock Exchange Governing Companies are subject to official approval; the provision that these Articles of Association will require special majorities for the adoption of certain resolutions; the minimum composition of their boards of directors; and the requirement of prior official approval for the appointment of the members of such boards. The Act provides for the creation of a Stock Exchange Interconnection System (*Sistema de Interconexión Bursátil*) comprising a computer network and governed by a Stock Exchange Company (*Sociedad de Bolsas*) made up of the Stock Exchange Governing Companies. The purpose of said system will be to trade only the securities which are included in the system. Finally, the basic principles are provided for the new Securities Clearing and Settlement Service (*Servicio de Compensación y Liquidación de Valores*) which will take the form of a corporation owned by those firms directly involved in clearing and settlement processes connected with the securities market.

9. The regulation of official secondary securities markets and of the Stock Exchanges, as referred to above, has a special relationship with the authority exercised over securities trading venues by those Autonomous Regional Governments (*Comunidades Autónomas*) vested with such authority under their Statutes of Autonomy (*Estatutos de Autonomía*).

The Act is based on the inviolable principle of the unity of financial order and of the national financial system, of which the securities market is an essential part. The Act is a response to the need to organize it as a single market, which is an essential pre-requisite to enable it to function efficiently and to compete internationally. Any solution leading towards a fragmented territorial model would prove inadequate, especially bearing in mind the European context in which the Spanish economy operates.

For this reason, the Stock Exchanges are conceived as parts of a single, integrated securities market. This principle is reflected, naturally, in the Stock Exchange Interconnection System envisaged here and also—to an even greater extent, if possible—in the unified regulations for intermediaries in the market (which will be able to carry on their activities throughout Spanish territory and will be entitled to become members of any of the Stock Exchanges) and in the uniform structure imposed on the organization of the various Stock Exchanges.

All of the above considerations, combined with the fact that numerous provisions of the Act must be classified as rules of commercial law, justify the provisions relating to the Autonomous Regional Governments.

10. The Public Debt Market represented by book entries is included within the scope of the Act and is thus endowed with sufficient legal endorsement in place of the extremely provisional support it currently enjoys; this market shall be governed by the specific regulations laid down for it, based on the existence of a Central Book Entry Office (*Central de Anotaciones*) and of Registered Dealers (*Entidades Gestoras del Mercado*) which may trade on their own behalf, if they hold accounts at the Central Book Entry Office, or otherwise solely on behalf of third parties. Several already existing principles underlying the Public Debt Market represented by Book Entries are included in the Act, as general rules common to all securities markets or as rules applicable to Broker-dealers and Brokers; an attempt has been made to apply the same system to Registered Dealers. The Act has sought a balance between the basic powers vested in the National Securities Market Commission as the body supervising all securities markets, and the managerial authority vested in the Bank of Spain (*Banco de España*) under the system currently in force; for this purpose a hybrid Advisory Commission (*Comisión Asesora*) is set up, consisting of representatives from both institutions and from the Ministry of Economy and Finance (*Ministerio de Economía y Hacienda*).

11. The Act lays down the general framework for takeover bids for the purchase of securities, with the intention of overcoming the limitations of the existing regulations. It also introduces the concept of public offerings for the sale of securities, subject to requirements similar to those for the issue of new securities, in order to cover a series of events (particularly the sale in Spain of foreign securities) which should be subject to certain provisions of the Act and would otherwise fall outside its scope.

12. In keeping with normal practice in all advanced securities markets abroad, and seeking to ensure the financial solvency of those whose activities entail appreciable potential risks, the Act replaces individual intermediaries with specialist financial institutions: Broker-dealers and Brokers, which are contemplated in the Act as companies whose corporate purpose is restricted to the activities attributed to them by the Act. Broker-dealers are authorized to trade on their own behalf and on behalf of third parties, while Brokers may only trade on behalf of third parties. The Act provides the requirements to be met by these companies and the procedure for obtaining approval to operate as such; this approval is not discretionary since, under the Act, it may only be withheld due to failure to comply with the requirements provided in the Act and its secondary legislation. The Act does not contemplate the existence of a "numerus clausus" of such companies, nor, except for certain evident incompatibilities, does it impose any restrictions on their shareholders, although the maximum interest of any one shareholder is restricted to one-half of the capital. All Broker-dealers and Brokers can potentially be members of Stock Exchanges, and, on acquiring membership of any one Stock Exchange, they will become shareholders of the Governing Company of that Exchange; there is nothing to prevent any company from being a member of two or more Stock Exchanges. The Act, however, distinguishes between Broker-dealers and Brokers that are members of one or more Stock Exchanges, to which the trading of securities on such Stock Exchanges is reserved, with the importance attributed by the

Act to the validity of such transfers, and other Broker-dealers and Brokers, which may only carry on the additional activities, also open to Stock Exchange member firms, which are laid down in Article 71 of the Act. This differentiation is due to the restrictions imposed by the Act for an interim period on Stock Exchange members, which restrictions are not justified in the case of non-members. Naturally, upon expiration of the interim period, the distinction between the two groups of firms will tend to diminish in importance. Finally, the Act vests the Government with sufficient powers to regulated the financial aspects of the activities of Broker-dealers and Brokers and, for the purpose of safeguarding the satisfactory outcome of transactions carried out by members of Stock Exchanges on behalf of third parties, a collective deposit is created, to consist of an initial contribution and annual contributions to be made by such members.

13. In order to protect investor interests, it is established that market trading and the habitual performance of other activities related to the securities markets, enumerated in article 71 of this Act, will be the sole preserve of Broker-dealers and Brokers. However, to avoid a break with the traditional practices of the Spanish financial system, official credit institutions, banks, savings institutions, Credit Cooperatives (*Cooperativas de Crédito*) and Money Market Intermediaries (*Sociedades Mediadoras del Mercado de Dinero*) may continue to conduct certain activities, as described in each case, but they may not trade on a Stock Exchange. Some of these activities may also be carried on by Licensed Commercial Brokers (*Corredores de Comercio Colegiados*) and Portfolio Management Companies (*Sociedades Gestoras de Cartera*). However, in all these cases the Government is empowered to impose restrictions upon those institutions' direct activities in the securities market, in order to encourage them, if deemed necessary, to incorporate Broker-dealers and Brokers in which their activity on the securities markets would be concentrated. The Act considers that it is premature to impose compulsory specialization by financial institutions in securities market activities; however it does not preclude this possibility, which will depend upon the future development of the Broker-dealers and Brokers.

14. An important new feature of the Act is that it contains minimum conduct of business rules,inspired by European Economic Community Recommendations and proposed Directives, for those operating in securities markets, with the aim of defending the absolute priority of investors' interests over those of the institutions referred to in the preceding section 13 and to ensure market transparency. The Act prohibits the use of inside information and establishes the obligation to publicize immediately all facts or decisions that may affect the price of an issuer's securities.

15. The Act contemplates a system of sanctions, similar to that provided in the Control and Intervention of Credit Institutions Act (*Ley de Disciplina e Intervención de Entidades de Crédito*), and these two systems together achieve the aim of subjecting all financial institutions to similar consistent rules in this area. The regime of surveillance, supervision and sanctions, which, except in special circumstances, is the responsibility of the National Securities Market Commission, is hereby made applicable not only to Broker-dealers and Brokers but also to individuals and legal entities carrying on the activities listed in Article 71 of the Act, issuers of securities, and other persons or firms carrying on activities governed by the Act itself or related to the securities market. Supervision of the securities market will be carried out directly by the National

Commission and infringements, which are defined and classified as minor, serious and very serious, will be sanctioned in accordance with the provisions contained in this Act, adapted to the procedure for penalization provided in the Control and Intervention of Credit Institutions Act. In view of the importance to this market of institutions subject to control by the Bank of Spain, a coordinated system for their surveillance and supervision by the Bank of Spain and the National Securities Market Commission is provided for. Furthermore, although the Act places great emphasis on the adequate surveillance of the markets, this surveillance is achieved not only by means of the said institutional apparatus, but also by relying fundamentally on disclosure. The Act contains many provisions providing for or permitting the existence of very different systems for collecting and disseminating information (on issuers, securities issued, parties operating in the market, the trading process, each of the operations carried out on the market, etc.) This will have the effect of allowing market participants themselves, investors, market observers and the mass media to carry out effective surveillance, without which the best efforts of the National Securities Market Commission supervise the markets would be to no avail.

16. To comply with the proposed European Economic Community Directive relating to indirect taxes on securities transactions, the exemption from Value Added Tax (*Impuesto sobre el Valor Añadido*) provided for transactions liable for such tax is extended to the Transfer & Stamp Tax (*Impuesto sobre Transmisiones Patrimoniales y Actos Jurídicos Documentados*). An attempt has also been made, in accordance with the aforementioned proposed Directive, to establish measures to prevent evasion of Transfer & Stamp Tax in transfers of real estate through the interposition of companies. To sum up, the obligation to report issues, subscriptions and transfers to the Tax Authorities is regulated; this obligation was previously laid down through other channels but is now subject to the principles of this Act; and the tax regime applicable under current legislation to the Bank of Spain is now also made applicable to the National Securities Market Commission.

17. In additional provisions, the Act grants the status of Stock Exchanges to the existing Official Commercial Exchanges (*Bolsas Oficiales de Comercio*) of Madrid, Barcelona, Bilbao and Valencia and provides for the dissolution of the Official Public Stockbrokers' Associations (*Colegios Oficiales de Agentes de Cambio y Bolsa*), the full integration of their members in the Body of Licensed Commercial Brokers (*Cuerpo de Corredores de Comercio Colegiados*) and the creation, in Madrid, Barcelona, Bilbao and Valencia, of Commercial Brokers' Associations (*Colegios de Corredores de Comercio*).

18. The additional provisions also contemplate the transfer to the National Securities Market Commission of certain powers over Collective Investment Schemes (*Instituciones de Inversión Colectiva*) currently attributed to the Ministry of Economy and Finance, while at the same time amending the regulations governing those institutions in order to adapt them to the principles and contents of this Act. The Act also contemplates a new system for the diversification of investments by those institutions which is stricter than the system existing at present, in particular restricting investments in companies of the same group and obliging institutions belonging to a single group to consolidate their investments. At the same time, Asset Management Companies (*Sociedades Gestoras de Patrimonios*) are reoriented by providing that all

those institutions engaging in portfolio management that are not subject to special regulations authorizing them to carry on this activity must be entered in the appropriate Registry, which registration was previously voluntary. Their corporate purpose is restricted to said activity and their current name is changed to "Portfolio Management Companies" (*Sociedades Gestoras de Carteras*).

19. Finally, those articles of the Commercial Code (*Código de Comercio*) and the Public Limited Companies Act (*Ley de Sociedades Anónimas*) whose adaptation to the new characteristics introduced in this Act is deemed essential have been amended, also by means of additional provisions.

20. The interim system provides that those Public Stockbrokers (*Agentes de Cambio y Bolsa*) who do not join a Broker-dealer or Broker which is a member of a Stock Exchange may become members individually or, alternatively, choose to practice as Commercial Brokers (*Corredor de Comercio Colegiado*), for which purpose they are granted a preferential right to the seats that may be offered for Commercial Brokers' Associations at Madrid, Barcelona, Bilbao and Valencia. Companies of Brokers (*Sociedades Instrumentales de Agentes Mediadores*) that are already incorporated and registered at the Official Registries are authorized to convert into Broker-dealers or Brokers and those that do not so convert shall be dissolved. Finally, an interim system of restrictions is imposed on the ownership by third parties who were not previously Public Stockbrokers of interests in the capital of Broker-dealers or Brokers which are members of a Stock Exchange. This system will begin in 1989 with a maximum interest not exceeding 30 per cent and will end in 1992 with complete liberalization.

PREAMBLE TO ACT 37/1998 OF 16 NOVEMBER, AMENDING ACT 24/1988 ON THE SECURITIES MARKET

More than ten years after the enactment of Act 24/1988, of 28 July, on Securities Markets, that Act, which represents one of the most important reforms to the Spanish securities markets, it must be amended to transpose into Spanish law Directive 93/22/EC, dated 10 May 1993, on investment services in the securities field, which was subsequently amended by Directive 95/26/ EC, of the European Parliament and the Council, dated 29 June 1995. The amended Act also incorporates Directive 97/9/EC of the European Parliament and Council, on investor compensation schemes, into Spanish law.

The Investment Services Directive as well as Directive 93/6/EC, of 15 March 1993 on the capital adequacy of investment services firms and credit institutions and the Second Council Directive of 15 December 1989 on the coordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of credit institutions, represent a keystone in the construction of the Single Financial Market and, in particular, of the "Single Securities Market".

In order to achieve this aim, the Investment Services Directive, like the Second Banking Coordination Directive, introduces the principle of "community passport" or "single license". Accordingly, an "investment services firm", within the scope of authorization granted by the State where it has its corporate domicile, may offer investment services and ancillary services in the rest of the European Union, both by establishing branches in other member states and by offering its services in those states.

The demand for a single license arises from the harmonisation of the conditions of authorisation and pursuit of business, control of which are entrusted to the firms' home government (home country principle). However, the business conduct rules to which firms' transactions are subject are still the responsibility of the state in which the transactions take place (host country principle).

Accordingly, any investment services firm is entitled to enter any market as a member, and it may also become a member of any clearing and settlement system.

As regards regulations governing the operation of the markets, the Investment Services Directive distinguishes between regulated and non-regulated markets. Regulated markets, in addition to possessing this status through express recognition by a member state, are those which fulfil requirements of organisation, operation, admission of financial instruments, disclosure and transparency which give them a structure based on the minimum requirements provided for in the Community acquis.

The Directive also imposes significant obligations with regard to transparency and reporting.

The transparency obligations arise from the markets as information regarding the transactions made within them, knowledge of which by investors is vital to ensuring proper investor protection. Reporting obligations were established to ensure appropriate supervision of the parties operating in the markets.

A description of the reform would not be complete without mentioning the fact that it incorporates all regulatory decisions which enable Spanish markets to compete more efficiently in view of the important new challenge represented by the Economic and Monetary Union from 1 January 1999.

This provision is in response to the pronouncement by the Constitutional Court with regard to Act 24/1988 and includes necessary amendments to the Act in order to adapt to the distribution of power between the Spanish government and the Autonomous Regional Governments to the content of the ruling of 16 July 1997.

The initial article of the Reform Act introduces several changes to Title One of Act 24/1988. Firstly, as a result of the wide range of financial instruments included under the scope of the new market regulations, which go beyond the category of transferable securities, all financial instruments are now subject to the discipline applicable to transferable securities, in order to adapt the new financial reality (e.g. swaps, FRAs, options, futures, etc.) in Spain's markets.

Another significant aspect of article one is the abolition of the monopoly on keeping book entry records for transferable securities not traded in official secondary markets, which was previously held by Broker-dealers and Brokers.

Article two includes two new elements regarding the regime of the National Securities Market Commission Advisory Committee (*Comité Consultivo*). Firstly, its composition has been amended to enable the admission of representatives of all of Spain's official secondary markets. Secondly, the Committee's powers have been accommodated to the new provisions of the law regarding market subjects and the markets themselves.

In article three, requirements for issues of securities similar to those already traded in secondary markets have been made more flexible with the aim of avoiding unnecessary issuing costs, particularly where there is sufficient information about the issuer in the market or in cases where the securities are aimed at institutional or professional investors. The Act also regulates the procedure for approving the participation by companies which administer the Spanish secondary markets in companies which manage foreign secondary markets, and the participation by the latter in Spanish markets.

Article four introduces important new features in the regulation of the official secondary securities markets.

In addition to incorporating the provisions of the Investment Services Directive into Spanish law, it also incorporates market regulations into Title Four of Act 24/1988, such as those concerning derivatives, which had not been implemented within the Spanish financial system in 1988.

Secondly, in accordance with the distinction made in the Investment Services Directive between regulated and non-regulated markets, a key element in designing the operation of the Single Securities Market, the official secondary markets existing in Spain today are declared to be regulated and the distinction introduced in 1990 between official and unofficial organised markets is eliminated, in order to include the only unofficial organised market authorised to date.

Additionally, in line with the pronouncement of the Constitutional Court, the distribution of powers between the Spanish government and the Autonomous Regional Governments is also addressed, based on the criteria for distinguishing between national and regional markets.

In view of the need to address the inter-relation between markets in an international economic context, a solution is provided to enable reciprocal relations between national and foreign markets.

The reform also introduces amendments to the admission and exclusion of listed securities. In particular, the questionable pre-existing equivalence of requirements for issuing and listing has been eliminated; this equivalence generated undesirable effects when there was a slight delay between issuing and listing and the law now seeks immediate listing of securities so that they can begin trading as soon as possible. The law regulates cases of delisting in the event of breach of market reporting obligations by the issuer of listed securities. In both cases, regional governments are granted powers in this matter.

The classification of market transactions in accordance with the decentralising principles which guide the regulation within the Investment Services Division is particularly noteworthy. This has resulted in a basic distinction between market transactions and non-market transactions.

Market transactions are those which result in a transfer, by purchase and sale or otherwise for a consideration, within the market. A distinction is also made between ordinary and extraordinary market transactions. Ordinary market transactions are subject to the basic market functioning rules (in particular, participation of members and the routing of transactions via ordinary trading systems). Extraordinary market transactions are those which do not comply with one or more of the basic regulations and they can only occur in three cases: when the buyer and seller are normally resident or are established outside the national territory; when the transaction does not take place in Spain; and with the express authorisation of the buyer and seller.

Within market transactions, it was considered appropriate to establish regulation regarding certain types of loans on securities traded in secondary markets so that, as the market deepens and becomes more efficient, a framework is created to provide a tax regime to encourage such loans.

In any case, and regardless of whether or not they are market transactions, in the interests of market integrity and investor protection, investment services firms are obliged to report all transactions to the market governing bodies.

Another fundamental aspect of the reform, which was made necessary by the Investment Services Directive, is that both Spanish investment services firms and those authorised in other European Union countries qualify to become members of official secondary markets, with the capacity to trade. This is the transposition of the community passport concept, which is reflected in Title V, Chapter IV. Among other developments, this will allow credit institutions direct access to markets. However, in accordance with the wording of the Investment Services Directive regarding the special situation of Spain, this will not be applicable until 1 January 2000.

Focusing on market-specific regulations, in the stock markets, the execution of transactions in the stock exchanges and in the electronic market (SIBE) is made subject to current regulations; therefore, the free access envisaged in the Directive is achieved by acquiring membership of a stock exchange governing company. For this reason, some amendments have been made to the rules regarding the acquisition of holdings in these governing companies.

Several highly significant new elements have been introduced in the Public Debt Market represented by book entries. Firstly, securities listed in the Central Book-Entry Office can now be traded in parallel in any other official secondary market, thus offering a wider scope for trading and interrelation between markets.

Secondly, the fundamental market regulatory standard is now called the "Market Regulation"(*Reglamento del Mercado*). In addition, the existing Market Advisory Commission (*Comisión Asesora del Mercado*) will include representatives of market members and of the Autonomous Regional Governments.

The working of the market is structured in two distinct areas: registration, clearing and settlement; and trading. Therefore, this opens several categories depending on the vocation of each market subject.

Another significant new feature introduced in Title IV is that the derivatives market, already developed in the Spanish financial system, has been placed on a firm legal footing.

Lastly, the reform in Title IV redefined the concept of public offering of securities to include not only unlisted securities but also those which are already traded in a secondary market.

The new Title V, under article five, includes a new regulation regarding "Investment Services Firms", in accordance with the statutory equivalence of investment services firms and credit institutions as defined in the Investment Services Directive. Previously, investment services firms were defined by their financial institution status and by offering professional investment services to third parties.

In accordance with the Directive, the activity status of investment services firms is categorised with regard to the investment services and ancillary services offered in connection with financial instruments, which, in the final instance, determine their implementation under the community passport.

In compliance with the new objective and subjective regulation of financial market operators, the Act confers the status of investment services firm, in its strict sense, on Broker-dealers and Brokers, and on Portfolio Management Companies, which are currently included under the legislation on collective investment and which fit very appropriately under Act 24/1988.

The Act introduces a strict safeguard to reserve this area of activity for investment services firms, authorising the National Securities Market Commission to act as guarantor for the system.

Credit institutions are considered equivalent to investment services firms as regards their capacity to operate in markets, thus removing the limitations established in 1988, particularly regarding the stock market.

The Act also envisages the possibility of creating firms and enabling other persons or firms which do not have investment services firm status to carry out some of the latter's activities, albeit with certain restrictions.

Chapter II of the new Title V on "Conditions for gaining access to the activity" completes the administrative regime governing investment services firms regarding their authorisation, envisaging the necessary prior consultation with the other European Union authorities in the case of subsidiaries and including some features present in the Investment Services Directive (e.g. programme of activities, inception, transparency of the group structure, membership of Investor Compensation Scheme, etc.).

Chapter III contains separate regulations on "Conditions for pursuit" for authorising investment services firms. Qualifying holdings are also included within the administrative intervention regime. Such qualifying holdings are subject to exhaustive control by the National Securities Market Commission in order to ensure correct management of investment services firms.

Investment services firms' obligation to report details of their transactions to the National Securities Market Commission is particularly noteworthy. Additionally, the new regulation regarding operating restrictions eliminates the rigid structure governing the extent of investment services firms' activities.

In Chapter IV under the Title relating to "Cross-border activities", the reciprocal "community passport" concept for European Union companies in Spain and vice versa is placed on a firm legal footing.

Finally, the new Title V concludes with Chapter V, which: establishes the regulation regarding corporate transactions at investment services firms; provides for withdrawal of authorisation; and, most importantly, envisages the possibility of total or partial suspension of an investment services firms' activities as a precaution in exceptional cases.

Under article six, Title VI of Act 24/88 is rewritten to incorporate regulation of a new mechanism in the Spanish securities markets, the "Investor Compensation Scheme" (*Fondo de Garantía de Inversiones*). As stated above, this regulation transposes Directive 97/9/EC of 3 March 1997 into Spanish law.

The regulation of the Fund also responds to one of the requirements of the Investment Services Directive and, like Deposit protection schemes for credit institutions, it compensates investors in the event of insolvency or bankruptcy of investment services firms where the cash or securities entrusted by an investor are no longer available; however, in no way does the fund cover credit risks or any losses to the value of a market investment. In accordance with the amendments to Act 24/1988, article seven redefines both the scope of supervision under the National Securities Market Commission and the penalty system in the Act.

Article eight includes amendments to the additional provisions of Act 24/1988 following the amendments made to the original law.

Finally, a number of additional provisions covering a range of matters were incorporated.

Some aspects of Act 46/1984 of 26 December, which regulates collective investment schemes, were also amended. Firstly, in order to expedite the creation of collective investment schemes, the National Securities Market Commission's functions were increased. Secondly, new features have been added to the categories of institutional investment, namely "Funds of Funds" and "Master Funds" and "Feeder Funds", which are both specific types of investment within the category of investment companies and funds in transferable securities since they are a new subclass, characterised by investing in securities issued by other collective investment schemes.

Collective investment schemes which invest in unlisted securities and those which include only institutional or professional investors are also covered. These new categories of securities investment institutions represent another step towards matching supply and demand in institutional investment in order to channel savings more efficiently into productive investment.

Lastly, the rules governing investments in derivatives by collective investment schemes have been more clearly defined.

Collective investment scheme management companies are now authorised to market the securities they issue and certain provisions regarding intervention and supervision have been extended to them.

A further additional provision envisages the possibility of securitising impaired mortgage loans, subject to due legal certainty and transparency and under the appropriate supervision of the National Securities Market Commission.

In accordance with the new financial features incorporated in the Act, another additional provision defines the tax regime for Investor Compensation Schemes.

A further additional provision regulates guarantees in the securities markets by way of pledges on securities represented by book entries, giving a decided boost to the efficient use of securities in hedging the risks on market transactions.

The amendments made to the Public Limited Companies Act to improve corporate financing, particularly through the financial markets, are also noteworthy.

This reform also includes more comprehensive regulation on preference shares, particularly non-voting shares. The aim of the legislation is to enable financing via markets (taking into account the practical circumstances of corporate control) with sufficient guarantees to investors, using formulae to allow investment in capital without involvement (through voting rights) in the running of the company. The reform distinguishes between listed and unlisted companies, providing more flexibility to the former due to the greater transparency requirements imposed in the securities markets.

The reform also offers a solution within the Spanish regulations governing companies and the securities markets to allow the existence of securities which are intermediate

between fixed-income and equities, which are especially attractive assets since they strengthen the issuer's own funds while also constituting an efficient source of finance.

These aims are represented in the new regulation on redeemable shares (*acciones rescatables*).

With the aim of distinguishing between listed and unlisted companies, a shorter term—fifteen days—has been established for the exercise of pre-emptive subscription rights in listed companies. This amendment should expedite capital increases at listed companies without causing any loss of rights to pre-existing shareholders since disclosure to shareholders is amply guaranteed through market transparency mechanisms.

As regards the suppression of pre-emptive subscription rights, the amendments made (including different treatment for listed and unlisted companies) have made requirements for suppression more flexible to encourage capital increases as a means of corporate financing.

The amendment introduced to enable quicker listing of shares issued in a capital increase by public offering is also noteworthy.

It should be noted that the Spanish government has made a commitment to complete the aforementioned reforms and extend the reform to cover fixed-income securities by way of a legal initiative to modify the law regarding the issuance of debt securities.

The Act is issued in accordance with articles 149.1.6 and 149.1.11 of the Spanish Constitution.

PREAMBLE TO ACT 44/2002 OF 22 NOVEMBER ON MEASURES TO REFORM THE FINANCIAL SYSTEM

Within the current Spanish economy, the financial system is one of the sectors of greatest importance and international potential. It is also vital to Spain's economic development and its constant modernisation and revision are fundamental in the development of the real economy, the true driving force behind growth and job creation.

Since Spain's entry into the European Community in 1986, it is not possible to analyse the development of the Spanish financial industry without taking the process of Community integration into account. The European Economic and Monetary Union, of which Spain was a founder member, and the great progress made in integrating the Community's financial markets have led to a significant increase in the competition faced by our financial intermediaries.

In view of the variety and sophistication of the financial instruments used, the legal regulations governing financial intermediaries constitute a vitally important competitive factor. In fact, there is increasing competition between legislations as it is standard practice for large intermediaries to establish subsidiaries in countries where the laws are more flexible so as to base part of their operations there.

This situation only serves to highlight the fact that the competitiveness of a financial system in the European Economic and Monetary Union depends not only on the strength of a country's industries but also, to a great extent, on the country's legislation. A country whose legislation is excessively strict could find that financial business flees across its borders, which would have very serious consequences for: a) growth and job creation, since the majority of high added value activities would shift to other economies; b) public funds, for the same reasons; c) consumer protection, since national supervisory bodies would have difficulty ensuring that services offered to Spanish investors by other jurisdictions meet Spanish transparency and conduct of business regulations.

The competitive edge given by national legislation will become even more significant as the process of integrating the European Union's financial markets progresses, and this will force the liberalisation of the Spanish financial system, a process which has been progressing since Spain's entry into the European Community in 1986. The ultimate aim is to provide the system with regulations that are sufficiently flexible and competitive.

In short, the acceleration of the financial integration process, the need to improve the efficiency and competitiveness of the Spanish financial system in response to challenges from other countries, and the channelling of savings into the real economy, all without impairing the legal protection for customers of financial services, explain the majority of the objectives and content of this Act. From a material point of view, there are three basic objectives:

a) To ensure that the legislation does not impose unnecessary obstacles which might place financial institutions at a disadvantage compared to their EU counterparts. To fulfil this objective, measures have been adopted and instruments created to improve the efficiency and competitiveness of the Spanish financial industry.

b) To ensure that increased competitiveness and the use of new technologies do not impair the legal protection for customers of financial services. To this end, protection for users of financial services has been improved.

c) To encourage the use of savings to finance the real economy, the true driving force behind growth and job creation. To this end, financing conditions for small- and medium-sized companies have been improved on account of their importance within Spain's business structure.

From a formal point of view, the Act transposes various European Community Directives into Spanish finance legislation, such as: a) Directive 2000/26/EC of the European Parliament and of the Council of 16 May 2000 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles (Fourth Motor Insurance Directive); b) Directive 2000/64/EC of the European Parliament and of the Council of 7 November 2000 amending Council Directives 85/611/EEC, 92/49/EEC, 92/96/EEC and 93/22/EEC as regards exchange of information with third countries; c) Directive 2000/46/EC of the European Parliament and of the Council of 18 September 2000 on the taking up, pursuit of and prudential supervision of the business of electronic money institutions; and d) Directive 2000/28/EC of the European Parliament and of the Council of 20 March 2000 amending Directive 2000/12/EC relating to the taking up and pursuit of the business of credit institutions.

II

Chapter 1 establishes certain measures to improve the efficiency of the financial system, in the securities, credit and insurance markets.

Some of the most significant measures involve the integration of the securities clearing and settlement systems, which are a key factor in the correct functioning of securities markets. A great deal of the total cost and time spent completing securities trades can be attributed to these systems, and their regulation is vital to ensure legal certainty in trades.

In the Spanish market, the main clearing and settlement processes are carried out by the Central Book Entry Office (CADE) for public debt, and the Securities Clearing and Settlement Service (SCLV) for securities listed on the Stock Exchanges and on AIAF Mercado de Renta Fija, S.A. (an official secondary market in corporate fixed-income). Additionally, pursuant to article 54 of the Spanish Securities Market Act, the Autonomous Regional Governments with powers in this matter have created their own clearing and settlement services for securities listed in their respective stock markets.

This multiplicity of clearing and settlement systems in Spain has hindered the integration of Spain's securities markets with those of their European counterparts. The introduction of the euro brought a significant number of mergers and alliances between securities markets in the European Community, in both trading and clearing and settlement. Therefore, it is necessary to give Spanish systems the opportunity to trade from a single platform, and the resulting scale economies from the consolidation process

would enable them to offer better services at lower costs as well as improve access to operations from foreign markets.

In order to resolve this situation, the Act establishes the necessary amendments to the legislation in order to integrate the existing clearing and settlement systems. A flexible, open legal regime has been established for the creation of the *Sociedad de Gestión de los Sistemas de Registro, Compensación y Liquidación de Valores* (*Sociedad de Sistemas*) through the merger of SCLV and CADE. The Systems Company (*Sociedad de Sistemas*) can incorporate the other existing Spanish systems, such as the financial derivatives system and those managed by the Barcelona, Bilbao and Valencia stock exchanges, and it will be able to manage interconnections and alliances with systems in other countries.

Another new feature of the Act is the provision for the creation of one or more central counterparties. The aim of this category is to eliminate counterparty risk in transactions since the central counterparties will act as intermediaries between the contracting parties so that the parties are always assured that operations will be properly terminated.

To facilitate the integration process, the clearing and settlement systems are to be demutualised in parallel with the demutualisation of stock market governing companies under article 69 of Act 14/2000 of 29 December on Tax, Administrative and Labour Measures. The demutualisation involves enabling investors who do not participate in the markets to become shareholders of those companies.

The regulation controlling cross-holdings by companies which manage secondary markets in their counterparts in other countries has also been modified to establish a more flexible regime enabling the integration of cross-border markets while ensuring a certain level of control over the suitability of the shareholders of Spanish markets. Among the most significant integration operations being encouraged is that relating to the derivatives markets, where it is standard practice for the various stages of an operation (trading, clearing and settlement) to take place in different countries.

The Act transposes Directive 2000/64/EC, which amends a series of Directives regarding the exchange of information in the area of insurance, securities and collective investment schemes, into the securities market regulation with the aim of improving the exchange of information between supervisory bodies in the European Community and those in third countries, with due assurances of confidentiality. This measure has already been applied in the credit market by virtue of article 6 of Legislative Royal Decree 1298/1986 on the adaptation of current law governing credit institutions to that of the European Community. An extensive regulation concerning multilateral trading facilities has also been introduced, which refers, among other aspects, to the authorisation regime, the obligation to create governing companies in the form of public limited companies (*sociedad anónima*) and the supervision and sanction regime.

(.....)

It is envisaged that the State Treasury will be managed via repos of fixed-income securities, which will enable it to obtain a better yield on the available balance at the Bank of Spain.

The existing specific regulation regarding collateral provided to the Bank of Spain, the European Central Bank and other national central banks within the European Union has been systematised and completed to ensure compliance with obligations deriving from their monetary policy and intraday credit operations. Furthermore, it is envisaged that this collateral can be used temporarily for cash management by the Public Treasury.

(.....)

III

Chapter II creates and regulates various financial instruments in order to enhance the competitiveness of the financial industry.

Among the most significant new instruments are territorial covered bonds(*cédulas territoriales*). This new security, similar to a covered bond (*cédula hipotecaria*), provides Spanish credit institutions with a means of refinancing loans to Public administrations, similar to that available in other European Community countries. They are fixed-income securities issued by credit institutions and they are specially secured by loans and credits granted to the public sector, mainly local and regional public administrations. These securities are governed by the same tax and financial regulations applicable to covered bonds .

The scope of operations of collective investment schemes has been extended and they can now carry out lending transactions using securities in their portfolios, both on the market and over the counter (OTC). The objective of these measures is to offer greater yields to investors without jeopardising the security of their investment.

The Act provides security to "contractual compensation agreements" in the event of possible bankruptcy of either party. It is standard practice for financial institutions to operate among themselves under framework contracts which establish guarantees to cover, on a daily basis, the net position resulting from all the financing operations, securities loans, financial derivatives, etc., undertaken by the parties. The Act extends the regime envisaged in the tenth additional provision of Act 37/1998 of 16 November, which amends Act 24/1988 of 28 July on the securities market, to these agreements and also makes it applicable to over-the-counter (OTC) operations. However, certain restrictions are maintained as regards the contracting parties (at least one party must be a credit institution or investment services firm) and the content of the contract (it must include the mechanism for calculating the net outstanding balance) to ensure that the collateral is only taken up when strictly necessary.

Chapter III seeks to improve financing conditions for small- and medium-sized companies. To this end, it enables small- and medium-sized companies to obtain financing through factoring, by allowing the transfer en bloc of accounts receivable from Public Administrations. It also enables firms (generally credit institutions) to increase the proportion of their mortgage portfolios which they can assign to asset securitisation funds under the heading of mortgage passthroughs " (*participación hipotecaria*) which, in this case, will be issued and marketed as a mortgage passthroughs certificate" (*certificado de participación hipotecaria*). This will improve financing conditions at

small- and medium-sized businesses which have to resort to mortgage collateral in order to obtain bank finance.

One of the most significant measures undertaken to improve financing at innovative small- and medium-sized enterprises is the reform of the regulation on venture capital firms, governed by Act 1/1999 of 5 January. Experience gained since this regulation was introduced suggests that the following amendments are advisable: Firstly, venture capital firms should be allowed to retain in their portfolio shares in companies which were unlisted when acquired but which have subsequently been listed on a stock exchange. This Act also allows venture capital firms to invest in companies within their group, as long as the transparency requirements are met. Thirdly, venture capital firms are given more flexibility in their operations by allowing capital contributions in kind to be made following their constitution. Finally, the Act ensures that corporate operations performed by venture capital firms or which give rise to such firms are subject to due control.

Chapter IV regulates the legal effects of electronic trading and transposes the Directives regarding electronic money into Spanish legislation. The purpose is to increase competition, efficacy and legal certainty within the financial field by promoting the use of electronic techniques. To this end and in order to legally clarify the equivalence of distance trading and on-site trading, the Economy Minister is authorised to regulate special exceptions to the general regulations regarding electronic trading.

IV

Chapter V establishes a series of measures to protect financial services clients.

Firstly, it establishes Commissioners for the Protection of Financial Services Clients (*Comisionados para la Defensa de los Clientes de Servicios Financieros*). These are bodies attached to the Bank of Spain, the National Securities Market Commission and the Spanish Insurance and Pension Fund Authority (*Dirección General de Seguros y Fondos de Pensiones*) with the express aim of protecting the rights of financial services clients in the respective areas.

Secondly, the Act establishes the obligation of all credit institutions, investment services firms and insurance firms to attend to and resolve any complaints and claims which their clients present in relation to their legally recognised interests and rights. To this end, financial institutions must have a client services department. Furthermore, these institutions may designate an Ombudsman (*Defensor del Cliente*), who must be an independent firm or professional, to attend to and resolve claims which fall within the scope of his established duties. The financial institution shall be bound by any decision by the Ombudsman in favour of a claim. The Act authorises the Economy Minister to establish the minimum requirements to be met by the client services department and by the Ombudsman.

The extended powers given to the supervisory bodies with a view to protecting financial services clients include the extension of sanctions to cover deficiencies in administration and internal control at credit institutions, investment services firms and insurance firms,

and greater discipline requirements for foreign exchange establishments open to the public (*casas de cambio*).

Investor protection has been increased in the capital markets by promoting transparency regulations and recognising the enormous value of information. Firstly, transparency regulations have been imposed on related-party transactions to prevent executives and directors from acting against shareholder interests. In practice, this will provide investors with information on all operations between the listed company, its executives and its core shareholders. The regulation concerning significant information and inside information has also been reinforced in order to avoid loss of market integrity and, in the final instance, to avoid an increase in the cost of corporate financing resulting from a lack of confidence among investors. The concept of inside information has been extended to instruments other than transferable securities while the concept of significant information, which must obligatorily be communicated to the markets simultaneously, without granting any priorities, has been expanded in detail. Furthermore, various preventative measures have been specified in the organisation of firms which offer services in the securities market to prevent leaks of information between departments within the firm or entities in the same group ("Chinese walls"). The existing transparency obligations have been extended to executives, directors and employees. These individuals are also prohibited from engaging in practices designed to distort free pricing in securities markets, i.e. price fixing. Lastly, to ensure effective compliance with these transparency obligations, the powers of the National Securities Market Commission have been extended in order to protect investors.

The Act also includes an amendment to the system of authorising collective investment schemes, by which it is the regulatory body that authorises the service provider (the operator), and the supervisory body which authorises the product (the collective investment scheme). Act 24/1988 of 28 July on the Securities Market has been amended to extend the general requirements relating to the good repute of directors, general managers and similar posts at investment services firms to include authorised signatories with general powers of representation. The Act also updates the regime of sanctions applicable to credit institutions, investment services firms and insurance firms, establishes the system for approval of the Internal Regulation (*Reglamento Interno*) of the National Securities Market Commission, and regulates the conditions under which the supervisory bodies may have access to the working papers of the auditors of firms under their control.

In brief, this is a comprehensive text which will place our financial industry in a competitive position while at the same time ensuring client protection.

PREAMBLE TO ACT 47/2007, OF 19 DECEMBER, AMENDING ACT 24/1988 ON THE SECURITIES MARKET.

I

This act is intended to amend Act 24/1988, of 28 July, on the Securities Market, so as to incorporate the following European Directives into Spanish law: Directive 2004/39/EC of

the European Parliament and of the Council of 21 April 2004 on markets in financial instruments, Directive 2006/73/EC, of 10 August 2006, implementing Directive 2004/39/EC of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive, and Directive 2006/49/EC of the European Parliament and the Council, of 14 June 2006, on the capital adequacy of investment firms and credit institutions.

The transposition of Directive 2004/39/EC entails significant amendments to the current wording of the Securities Market Act. In particular, this Act amends Title I "General Provisions", Title IV "Official Secondary Markets in Securities", Title V "Investment Firms", Title VII "Codes of Conduct", and Title VII "Rules for Surveillance, Supervision and Sanction". And a new Title XI is added: "Other trading systems: multilateral trading facilities and systematic internalisers".

Directive 2004/39/EC establishes a general regulatory framework for the European Union's financial markets, particularly the conditions for the provision of investment and ancillary services, the organisational requirements that providers of such investment services must meet, and those applicable to regulated markets, the reporting requirements with regard to trading in financial instruments in the European Union and the transparency requirements applicable to transactions in shares traded in regulated markets.

The Directive is implemented by two regulations issued by the European Commission: Commission Regulation 1287/2006 implementing Directive 2004/39/EC as regards record-keeping obligations for investment firms, transaction reporting, market transparency, admission of financial instruments to trading, and defined terms for the purposes of that Directive, and Commission Directive 2006/73/EC of 10 August 2006 implementing Directive 2004/39/EC of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive.

This Act transposes only certain very specific aspects regulated in Directive 2006/73/EC. The remainder of the Directive will be transposed in the secondary legislation that is issued under this Act.

Directive 2006/49/EC is partly transposed by this Act, in matters relating to investment firms and credit institutions that provide investment services. Specifically, their solvency regime is amended, through changes in very specific articles of Title V "Investment firms" and Title VIII "Rules for Surveillance, Supervision and Sanction".

Based on international initiatives to harmonise supervision (the Basel II Capital Accord of 2004), Directive 2006/49/EC seeks to narrow the gap between risk measurements conducted by supervisors to determine own funds requirements and the measurement mechanisms applied by firms themselves. It also seeks to stimulate the development of appropriate internal risk management procedures in investment firms and requires that the latter inform the market of any material information about their business profile, exposure and risk management methods.

II

This reform of the Securities Market Act is guided by four cardinal principles. They are the principles underpinning the new EU legislation being transposed by this Act.

The Act seeks to modernise Spain's securities markets to adapt them to the major changes that have occurred in recent years as financial markets have become more complex and investor profiles have changed notably (increasing professionalisation coupled with a sharp increase in the number of small investors entering the financial markets). Both the products and the market to which they are addressed have become much more complex and varied. To respond to new needs, the Act expands the range of investment services that firms can provide, extends the range of transferable financial instruments, and recognises different systems and methods of executing trades in financial instruments apart from the traditional official secondary markets and OTC markets.

Another priority of this Act is to strengthen the measures for investor protection. Precisely because of investment products' growing complexity and sophistication and the constant increase in the number of investors entering the market, investor protection is becoming an issue of capital importance and there is an evident need to distinguish between investor types on the basis of their knowledge. Therefore, the Act establishes a broad catalogue of rules to be followed by providers of investment services.

Thirdly, the organisational requirements imposed on providers of investment services have been modified to ensure that the organisation is appropriate to the complex range of services that are provided. As for financial requirements, firms must adapt to the new ways of managing solvency risk.

Lastly, the National Securities Market Commission's supervisory powers have been strengthened and its instruments and mechanisms for fostering cooperation between supervisors, on a domestic and international level, have been enhanced.

III

The Act comprises a single article divided into seventy-three sections setting out the amendments to the articles of the Securities Market Act that are required to transpose Directives 2004/39/EC, 2006/73/EC and 2006/49/EC. There is also an additional provision, two transitory provisions, one repealing provision and six final provisions.

The amendments to Title I of the Securities Market Act seek to adapt the Act's scope to the amendments, incorporate a new catalogue of transferable securities and financial instruments, and enhance the definition of group by specifically adopting that provided in article 42 of the Commercial Code.

Title IV of the Securities Market Act has been amended extensively since this is the section where Directive 2004/39/EC is transposed with regard to Spain's official secondary markets. The Directive did much to harmonise the legal system governing Europe's regulated markets by setting out the conditions for such markets to be authorised and operate, the rules governing significant stakes, the internal organisational requirements, the conditions for membership, etc.

With regard to Spain's regulated markets, it was considered advisable to retain the term "official secondary markets" coined by the current Securities Market Act as it is strongly rooted in Spanish legislation.

Chapter I of Title IV of the Securities Market Act has been expanded considerably as it now contains extensive regulation of the rules that are common to the official secondary markets. Accordingly, the provisions of this Chapter have an effect throughout Title IV since they apply to all official secondary markets.

The Act removes the Stock Exchanges' monopoly on trading in shares, in line with EU legislation, establishing the general principle that each regulated market can decide which financial instruments can be traded in it, provided that the legal requirements are met.

The power to authorise the creation of official secondary markets is vested in the Minister of Economy and Finance, rather than in the Cabinet, as at present. This change is due primarily to the highly technical nature of the authorisation and the need to expedite the procedure so as to enhance the Spanish markets' competitiveness vis-à-vis their European rivals.

The rules for official secondary markets established in the Securities Market Act and its secondary legislation are completed by each market's regulation, which must be approved by the Minister of Economy and Finance and is vital for ensuring that the market operates properly.

A new system had been introduced to govern the suspension and exclusion of financial instruments from trading. Accordingly, the National Securities Market Commission retains the power of decision in this area and the governing company of the official secondary market is also empowered to suspend or exclude a financial instrument from trading if it breaches the trading rules established in the market's regulation.

The Act regulates the new transparency rules for shares traded in official secondary markets so as to ensure that the market is sufficiently informed of the trades that are possible at any given time and the trades that have been performed. The goal, in short, is to establish a system of pre-trade and post-trade transparency with respect to shares in official secondary markets. This system of transparency for shares listed in official secondary markets is supplemented by the requirements of Title XI with regard to trading of such shares in multilateral trading facilities and by systematic internalisers. The goal is to promote competition between trading venues for execution services so as to increase investor choice, encourage innovation, lower transaction costs, and increase the efficiency of the price formation process on a pan-Community basis, and settlement of trades are intimately linked to trading in official secondary markets. This issue is regulated in Title IV, which focuses particularly on the Systems Company, the body currently entrusted with performing clearing and settlement functions for trades in Spain's Stock Exchanges and the Book-Entry Market in Government Debt. As a result of the transposition of Directive 2004/39/EC, regulated markets and multilateral trading facilities are now free to choose a clearing and settlement system anywhere in the European Union. The consequences in the Securities Market Act are two-fold: firstly, the corporate object of the Systems Company has been expanded to enable it to provide

clearing and settlement of trades performed in regulated markets and multilateral trading facilities in other Member States of the European Union. Secondly, Spanish official secondary markets and multilateral trading facilities are now allowed to enter into arrangements with firms in other European Union Member States for the clearing and settlement of trades concluded in those markets or systems. Such arrangements must be approved by the National Securities Market Commission, which may refuse if the arrangement may impair the orderly working of the Spanish market or system. And members of official secondary markets and multilateral trading facilities are now free to designate the system for settling the trades they conclude in such markets or facilities subject to a number of conditions and independently of the settlement system belonging to the official secondary market or multilateral trading facility.

A new Chapter IV bis is added to Title IV so as to regulate notifications by investment firms and credit institutions to the National Securities Market Commission of all the trades they conclude in financial instruments, regardless of the market, facility or mechanism used to execute the trade. The purpose of this obligation is to facilitate rapid and efficient compliance by the National Securities Market Commission with its duties of surveillance and supervision.

IV

Title V regulates the system for authorisation and operation of investment firms. Credit institutions are still allowed to provide investment services and, in accordance with the provisions of Act 35/2003, of 4 November, governing UCITS, operators of UCITS may also provide certain investment and ancillary services. Under the Act, both credit institutions and UCITS operators are subject to the provisions of the Securities Market Act when they provide investment services.

The catalogue of investment services has also been expanded, including two notable new features. Firstly, investment advice, understood as the provision of personalised recommendations to clients about financial instruments. Secondly, management of multilateral trading facilities is regulated in Title XI of the Act; they may be managed by investment firms or the governing companies of official secondary markets or by special-purpose vehicles established by one or more market governing companies whose sole object is to manage the facility and which must be owned 100% by one or more market governing companies. The inclusion of these activities under the heading of investment services means that they are reserved exclusively for firms duly authorised to provide investment services.

The marketing of investment services and financial instruments and client acquisition are also reserved for investment firms and their agents since those activities are intimately related to the provision of investment services.

The Act also establishes a new category of investment firm that is authorised solely to provide investment advice: "financial advisory firms". This service may be provided by legal or natural persons subject to the rules of authorisation and operation contained in the Act. The reservation of investment advice to investment firms is a major new feature of Directive 2004/39/EC and, therefore, of the Act.

The Act exhaustively sets out the internal organisation requirements that investment firms must fulfil. Since Directive 2004/39/EC gave the European passport to all Community investment firms, an appropriate level of harmonisation must be ensured so as to enable all such firms to compete on an equal footing.

V

This Act is also guided by the need to ensure appropriate investor protection. This principle is reflected particularly in the new Chapter I of Title VII, which sets out a major catalogue of conduct of business rules that must be complied with by all providers of investment services. The Act does not establish a single homogeneous level of protection; rather, it acknowledges the current reality in the financial markets, in which investor profiles have diversified considerably. Specifically, the Act distinguishes three possible categories of investor (retail, professional and eligible counterparties), and it guarantees the highest level of protection for retail investors or clients.

Title VIII of the Act has been amended into line with the new powers of the National Securities Market Commission in the area of surveillance and supervision and of cooperation and exchange of information with supervisors in other Member States as a result of the transposition of Directive 2004/39/EC, to reflect the new system of oversight over investment firms' solvency that is established in Directive 2006/49/EC, and to adapt the system of sanctions to the amendments made throughout the Act as well as to update them.

VI

A new Title XI has been added to regulated multilateral trading facilities and systematic internalisers. They, together with the official secondary markets regulated in Title IV, make up the systems for trading financial instruments that are recognised by the Act. This Title includes one of the fundamental changes made by Directive 2004/39/EC, i.e. fostering of competition between different forms of concluding trades in financial instruments, the goal being that such competition (as yet incipient) contributes to completing the single market in investment services while reducing the costs to end clients. Accordingly, investment firms and credit institutions that provide investment services can compete with stock exchanges and other official secondary markets in trading financial instruments.

Multilateral trading systems have been preceded in Spain by the unofficial organised markets or trading systems recognised in the previous Securities Market Act. This Act acknowledges this reality within Europe and establishes certain requirements with regard to organisation and pre- and post-trade transparency that are similar to those imposed on the official secondary markets. This makes it necessary to make a number of changes in the existing regulations of organised trading systems, particularly with regard to the nature of the operator and the inclusion of pre- and post-trade transparency requirements that are similar to those which apply to official secondary markets.

The Act also defines systematic internalisation as an investment service that is reserved for investment firms. In reality, this gives legal status to an alternative form of trading financial instruments that already existed in practice among investment firms, namely the execution for the proprietary account, internally and in an organised and systematic

manner, of client orders in connection with financial instruments that are listed in the official secondary markets. This practice is considered to be positive for enhancing competition in the financial markets, but it is also evident that it must be subject to certain rules. Therefore, to avoid unfair treatment of clients, reporting and transparency obligations are established with regard to the possibilities of executing orders in the service, measures are introduced to ensure non-discriminatory access to this service by clients, and rules are established governing the procedure for executing orders.

VII

The Act establishes transitional provisions by giving investment firms six months from the entry into force of the amendments to adapt their bylaws, programmes of activities and internal regulations of conduct of business. The current unofficial organised trading markets or systems are also given six months to convert into multilateral trading facilities. Otherwise, they must cease operating.

Finally, the scale of the changes made to the Securities Market Act by this Act, coupled with previous amendments, make it essential to consolidate the text of the Securities Market Act. To that end, the first final provision entrusts the Government with performing that task within one year from the entry into force of this Act.

Title I - General provisions

Chapter I - Scope of the law

Article 1[1]

The purpose of this Act is to regulate Spanish systems for trading in financial instruments by establishing to that end the principles for their organisation and functioning and the rules governing the financial instruments that are traded and the issuers of such instruments; the provision in Spain of investment services and the establishment of a system of supervision, inspection and discipline.

Article 2[2]

The scope of this Act includes the following financial instruments:

1.Transferable securities issued by public or private persons or entities and grouped in issues. A transferable security will be defined as any patrimonial right, regardless of its name, which, because of its own legal configuration and system of transfer, is susceptible to being traded in a generalised impersonal way in a financial market.

For the purposes of this Act, the following will be considered to be transferable securities:

a) Shares of companies and transferable securities equivalent to shares, and any other type of transferable security giving entitlement to acquire shares or securities equivalent to shares through conversion or exercise of the rights inherent to them.

b) Participation shares (*cuotas participativas*) of savings banks and the association participation shares (*cuotas participativas de asociación*) of the Confederación Española de Cajas de Ahorros.

c) bonds, debentures and similar securities representing part of a debt claim, including those which are convertible or exchangeable.

d) Mortgage covered bonds (cédulas hipotecarias), mortgage bonds (bonos hipotecarios) and mortgage passthroughs (participaciones hipotecarias).

e) Asset-backed securities

f) Units and shares in UCITS.

g) Money market instruments, i.e. categories of instruments which are normally dealt in on the money market, such as treasury bills, certificates of deposit and commercial paper, except those issued on a unique basis and excluding instruments of payment deriving from preceding commercial transactions that do not involve the capture of repayable funds.

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[1] Amended by Act 47/2007, of 19 December

[2] Amended by Act 47/2007, of 19 December

h) Preference shares.

i) Territorial covered bonds.

j) Warrants and any other derivative transferable security giving the right to acquire or sell any other transferable security or giving the right to a cash settlement determined by reference to transferable securities, currencies, interest rates or yields, commodities, credit risk or other indices or measures.

k) Any others which the law or regulations define as a transferable security.

2. Options, futures, swaps, forward rate agreements and any other derivative contract relating to securities, currencies, interest rates or yields, or other derivative financial instruments, financial indices or financial measures which may be settled physically or in cash.

3. Options, futures, swaps, forward rate agreements and any other derivative contracts relating to commodities that must be settled in cash or may be settled in cash at the option of one of the parties (otherwise than by reason of a default or other termination event).

4. Options, futures, swaps, and any other derivative contract relating to commodities that can be settled by physical delivery provided that they are traded on a regulated market and/or a multilateral trading facility (MTF).

5. Options, futures, swaps, forward rate agreements and any other derivative contracts relating to commodities that can be settled by physical delivery not otherwise mentioned in the preceding section of this article and not being for commercial purposes, which have the characteristics of other derivative financial instruments, having regard, inter alia, to whether they are cleared and settled through recognised clearing houses or are subject to regular margin calls.

6. Derivative instruments for the transfer of credit risk.

7. Financial contracts for differences.

8. Options, futures, swaps, forward rate agreements and any other derivative contracts relating to climatic variables, freight rates, emission allowances or inflation rates or other official economic statistics that must be settled in cash or may be settled in cash at the option of one of the parties (otherwise than by reason of a default or other termination event), as well as any other derivative contracts relating to assets, rights, obligations, indices and measures not otherwise mentioned in the preceding sections of this article, which have the characteristics of other derivative financial instruments, having regard, inter alia, to whether they are traded on a regulated market or an MTF, are cleared and settled through recognised clearing houses or are subject to regular margin calls.

Financial instruments other than transferable securities shall be subject to the regulations provided in this Act for transferable securities, mutatis mutandis.

Sections 5 and 6 of this article must be applied in accordance with the provisions of articles 38 and 39 of Commission Regulation 1287/2006 implementing Directive 2004/39/EC as regards record-keeping obligations for investment firms, transaction

reporting, market transparency, admission of financial instruments to trading, and defined terms for the purposes of that Directive.

Article 3

The provisions of this Act shall be applicable to all securities issued, traded or marketed in Spanish territory.

Article 4[3]

For the purposes of this Act, "group of companies" will be as defined in article 42 of the Commercial Code.

Chapter II - Securities represented by book entries

Article 5

Transferable securities may be represented by book entries or by notes.

. The chosen form of representation must apply to all the securities making up a single issue.

Representation of securities by book entry shall be irrevocable.

Representation by notes shall be revocable. Notwithstanding the provisions of the first paragraph, conversion to the book entry system may be carried out progressively, as and when the holders give their consent to the change.

The Government may provide, generally or for particular categories of securities, that representation by book entry is a necessary condition for listing of the securities on any official secondary securities market. The Government shall likewise determine the exceptional cases in which the provisions of the second paragraph are not applicable.

Article 6[4]

In order to represent securities by book entry the issuer will have to draw up a document, which may optionally be made public deed, containing the information required to identify the securities comprising the issue.

The issuer will have to deposit a copy of the document at the entity responsible for the book entry records and at the National Securities Market Commission. When the securities are to be admitted to trading on an official secondary market, the issuer will also have to submit a copy to its governing body.

The issuer and the firm responsible for the book entry records will have to keep a copy of the aforesaid document available at all times for the owners and the interested public in general.

The document referred to in the first paragraph will be replaced by:

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[3] Amended by Act 47/2007, of 19 December

[4] Article amended by Royal Decree - Act 5/2005, of 11 March

a) The prospectus, provided that the issuer is obliged to submit said prospectus for approval and registration by the National Securities Market Commission, pursuant to this Act.

b) Publication of the terms of the issue in the pertinent Official Gazette, for Government or Autonomous Regional Governments Debt issues, and in other situations where required by law.

Nor will said document need to be drawn up for financial instruments traded in official secondary futures and options markets, and in the other situations, and with the conditions stipulated by regulation."

Article 7

1. A single firm shall be designated to keep the book entry records for the securities of a single issue represented by book entry.

2. When the securities are not listed on official secondary markets, said firm may be freely designated by the issuer among the investment services firms and credit entities authorised to perform the activity provided for in article 63. 2. a). The designation shall be registered in the National Securities Market Commission Registry provided for in article 92 of this Act as a pre-requisite to keeping the book entry records. The Systems Company (*Sociedad de Sistemas*) referred to in article 44 bis may also adopt that function according to the requirements to be established in the Regulation referred to in article 44 bis, section 4.

3.[5] Without prejudice to the powers assumed by the Autonomous Regions regarding securities that are listed exclusively on a securities market in their territory, the records relating to securities listed in the Stock Markets or in the Market in Public Debt represented by Book Entries shall be kept by the Systems Company, as the central registry, and by the participating entities authorised for that purpose, or by the former alone if so established by regulation. Nevertheless, the keeping of said records may be entrusted, as appropriate, to the governing company of the Stock Exchange in question should this be decided pursuant to the provisions of section 2 of article 44 bis. This shall be construed without prejudice to the provisions of Article 44 quinquies of this Act.

Record-keeping relating to securities listed in other secondary markets shall be entrusted to the body or entity, including the Systems Company, that is determined by regulation or that is expressly designated by the governing bodies of the secondary markets or organised trading facilities.

4. In connection with both the various entities entrusted with keeping the book entry records and the various types of securities, the Government shall establish rules for the organisation and operation of the relevant registers, the guarantees and other requirements, the identification and control systems for securities represented by book entries, and the relationships of those entities with issuers and their participation in the administration of the securities. The aforementioned regulation shall be issued by the

[5] Amended by Act 47/2007, of 19 December

competent Autonomous Regional Government if it has made use of the powers provided for in section 2 of article 44 bis and in relation to the services envisaged therein.

5. Failure to make the pertinent entries, inaccuracies therein or delays and, in general, any infringement of the rules laid down for the keeping of records shall give rise to liability on the part of the firm in breach vis-à-vis the aggrieved party, unless the aggrieved party is solely to blame. Said liability must, as far as possible, be satisfied in kind.

6. The provisions of this article relating to the Systems Company shall be applicable to similar services created by the governing companies of the Stock Markets in accordance with section 2 of article 44 bis, when so authorised by the relevant Autonomous Regional Government, after first hearing the issuer and the service.

Article 8[6]

Securities represented by book entry shall be constituted as such by virtue of their registration in the pertinent book entry record, which, if applicable, shall be central, and from that time on shall be subject to the provisions of this chapter. The content of the recorded securities shall be determined by the provisions of the document referred to in article 6.

Subscribers for securities represented by book entry shall be entitled to have the relevant entries made in their favour free of charge.

The conditions enabling securities represented by book entry to function as fungibles for the purposes of clearing and settlement operations shall be laid down by regulation.

Article 9[7]

The transfer of securities represented by book entry shall be effected by accounting transfers. Registration of the transfer to the purchaser shall have the same effects as the delivery of notes.

The transfer may be enforced vis-à-vis in front of third parties from the time of its registration.

A third party purchasing securities represented by book entry from a person who was legitimately entitled to transfer such securities according to the book entry records shall not be liable for any claim for their recovery unless said third party acted in bad faith or with gross negligence at the time of purchase.

Against the purchaser in good faith of securities represented by book entry , the issuer shall only be entitled to oppose the exceptions which arise from registration in relation to the document stipulated in article 6, and those which it might have been entitled to report in the event that the securities had been represented by notes.

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[6] First paragraph of this Article amended by Royal Decree - Act 5/2005, of 11 March

[7] Fourth paragraph of this Article amended by Royal Decree - Act 5/2005, of 11 March

Article 10

The creation of limited rights *in rem* or liens of any other kind on securities represented by book entry shall be recorded on the relevant book. The recording of a pledge is equivalent to delivery of possession of the security.

The creation of the lien is valid vis-à-vis in front of third parties from the time the corresponding entry is recorded.

Article 11

Any person appearing as the legitimate owner according to the book entry records shall be presumed to be the legitimate owner and, as a result, may demand of the issuer any benefits to which the security represented by book entry gives entitlement.

Any issuer which, in good faith and without gross negligence, provides a benefit to such certified owner shall be held harmless even if said person is not the owner of the security.

In order to transfer and exercise any rights pertaining to the owner of the security, it must first be registered in the name of the holder.

Article 12

Entitlement to transfer and exercise the rights deriving from securities represented by book entry may be proved by showing certificates duly issued by the entities responsible for book entry records, in accordance with their entries.

Such certificates shall confer no rights other than those relating to said entitlement. Any dispositions made of such certificates shall be null and void.

No more than one certificate may be issued for the same securities for the exercise of the same rights.

Entities entrusted with keeping book entry records and members of securities markets may not process transfers or pledges nor make the relevant entries until the person making the disposition returns the certificates previously issued to him. The obligation to return the certificate lapses when the certificate has expired.

TITLE II - NATIONAL SECURITIES MARKET COMMISSION

Chapter I - Creation and duties

Article 13

The National Securities Market Commission is hereby established and is entrusted with the supervision and surveillance of the securities markets and of the trading activities of all individuals and legal persons in these markets, the exercise of the power to sanction them, and other duties attributed to it by this Act.

The National Securities Market Commission shall seek to ensure the transparency of the securities markets, the correct formation of the prices on these markets and the protection of investors by promoting disclosure of any information necessary in order to attain these ends.

The National Securities Market Commission shall advise the Government and the Ministry of Economy and Finance and, as appropriate, the equivalent bodies of the Autonomous Regional Governments on matters relating to securities markets, at the request of such bodies or on its own initiative. It may also propose to those entities such procedures or regulations relating to securities markets as it may deem necessary. It shall draw up and publish an annual report describing its activities and the general condition of the securities markets.

Each year, the National Securities Market Commission shall present a report on its activities and on the situation of the organised financial markets to the Parliamentary Committee on Economics, Trade and Finance. The President of the National Securities Market Commission shall appear before the aforementioned Parliamentary Committee to respond to questions on the report as often as the Parliament may require.

Article 14

1. The National Securities Market Commission is a public law entity with independent legal status and full public and private legal capacity, which shall be governed by the provisions of this Act and the regulations that complete or implement it.

2. In exercising its public functions, and absent provisions in this Act and the regulations that complete or implement it, the National Securities Market Commission shall act in accordance with the provisions of Act 30/1992, of 26 November, on the Legal Regime of the Public Administrations and the Common Administrative Procedure (*Ley 30/1992, de 26 de noviembre, de Régimen Jurídico de las Administraciones Públicas y del Procedimiento Administrativo Común*), and Act 6/1997, of 14 April, on the Organisation and Functioning of the State General Administration (*Ley 6/1997, de 14 de abril, de Organización y Funcionamiento de la Administración General del Estado*).

3. The contracts signed by the National Securities Market Commission shall conform to the provisions of the Consolidated Text of the Act governing Public Administration Contracts (*Texto Refundido de la Ley de Contratos de las Administraciones Públicas*), approved by Legislative Royal Decree 2/2000, of 16 June.

4. The Commission shall also be governed by the applicable provisions of the Consolidated Text of the General Budget Act (*Texto Refundido de la Ley General Presupuestaria*), approved by Legislative Royal Decree 1091/1998, of 23 September.

5. The assets acquired by the National Securities Market Commission shall, without exception, be subject to private law.

6. With regard to the National Securities Market Commission, the Government and the Ministry of Economy shall exercise the powers conferred upon them by this Act, with strict respect for its sphere of autonomy.

7. Personnel serving at the National Securities Market Commission shall be associated with the Commission by means of a relationship subject to the rules of labour law. Personnel of the National Securities Market Commission, with the exception of management personnel, shall be selected through public competition and in accordance with systems based on the principles of equality, merit and ability.

National Securities Market Commission personnel shall be subject to Act 53/1984, of 26 December, on the Incompatibilities of Personnel Serving the Public Administrations (*Ley 53/1984, de 26 de diciembre, de Incompatibilidades del Personal al Servicio de las Administraciones Públicas*). Said personnel shall also be obliged to disclose any operations they perform in the securities markets, either directly or through a third party, in accordance with the provisions of the Internal Regulation of the National Securities Market Commission (*Reglamento de Régimen Interior de la Comisión Nacional del Mercado de Valores*). This provision shall determine the limits to which said personnel shall be subject in relation to the acquisition, sale or availability of such securities.

8. The National Securities Market Commission shall prepare a draft budget on a yearly basis, the structure of which shall be laid down by the Ministry of Economy and Finance, and the Commission shall send this draft to said Ministry for approval by the government in order for it to be put before the Parliament within the General State Budget. Changes to the budget of the National Securities Market Commission that do not exceed 5 per cent of the budget must be authorized by the Minister of Economy and Finance; any other changes must be authorized by the Government.

9. Economic and financial supervision of the National Securities Market Commission shall be conducted exclusively by means of periodic verification or audit procedures, performed by the Comptroller General of the State Administration (*Intervención General de la Administración del Estado*), without prejudice to the functions of the Spanish Court of Auditors (*Tribunal de Cuentas*).

10. The Board of the National Securities Market Commission must approve an Internal Regulation, which shall establish the organic structure of the Commission; allocate powers among the various bodies; establish the internal procedures; establish the specific system applicable to personnel when they cease to provide services at the Commission, without prejudice in this case to the provisions of section 7, paragraph 2 of this article and article 21 of this Act, with regard to incompatibility systems; establish personnel hiring procedures, in accordance with the principles referred to in section 7 of

this article; and establish any questions relating to the functions and actions of the National Securities Market Commission that are required by the provisions of this Act.

Article 15

In order to fully exercise the powers conferred upon it by this Act, the National Securities Market Commission may issue any provisions required to implement and enforce the rules contained in the Royal Decrees approved by the Government or in Orders issued by the Ministry of Economy and Finance, provided that such statutory instruments expressly empower it to do so.

The provisions issued by the National Securities Market Commission referred to in the preceding paragraph shall be drafted by the Commission on the basis of the appropriate technical and legal reports from its competent departments. Such provisions shall be known as Circulars (*Circulares*). They shall be approved by the Board of the Commission and shall not take effect until their publication in the Official State Gazette (*Boletin Oficial del Estado*), and they shall enter into force in accordance with the provisions contained in article 2, paragraph 1 of the Civil Code (*Código Civil*).

Article 16

The provisions and resolutions issued by the National Securities Market Commission in the exercise of the administrative powers conferred upon it by this Act shall terminate the administrative phase and may be appealed before the contentious-administrative tribunals, with the following exceptions:

a) Resolutions dealing with sanctions shall be subject to the system envisaged in article 97.

b) Resolutions dealing with the intervention and replacement of administrators shall be subject to the system envisaged in article 107.

Chapter II - Organisation

Article 17

The National Securities Market Commission shall be governed by a Board which shall exercise all the powers attributed to it by this Act and by the Government or the Minister of Economy and Finance in implementation of this Act.

The Board shall consist of the following:

a) A President and a Vice-President, who shall be appointed by the Government from among persons of acknowledged competence in securities market matters, on the basis of proposals by the Ministry of Economy and Finance.

b) The Director General of the Treasury and Financial Policy and the Deputy Governor of the Bank of Spain; holders of those positions are automatically members of the Board.

c) Three Commissioners appointed by the Minister of Economy and Finance from among persons of acknowledged competence on securities market matters.

The Secretary, who shall not have a vote, shall be appointed by the Board of Directors from among the persons employed by the Commission.

Article 18

1. Within the framework of the functions assigned to the National Securities Market Commission by Article 13 of this Act, and in order to exercise the powers conferred on the Board by Article 17, the Board of the National Securities Market Commission shall have the powers to:

a) Approve the Circulars referred to in Article 15 of this Act.

b) Approve the Internal Regulation of the National Securities Market Commission referred to in Article 14 of this Act.

c) Approve the Commission's draft budgets.

d) Constitute the Executive Committee regulated by this Article.

e) Appoint executives of the National Securities Market Commission, at the proposal of the President.

f) Approve the annual reports referred to in Article 13 of this Act.

g) Approve or propose all matters that correspond to it according to law.

Within three months from the time when any member of the Board takes office, the Board, at an extraordinary meeting, shall expressly confirm, amend or revoke each and every one of the powers conferred on the President, Vice-President and Executive Committee.

2. The President of the National Securities Market Commission shall have the following duties:

a) Legally represent the Commission.

b) Convene the ordinary and extraordinary meetings of the National Securities Market Commission Board and Executive Committee.

c) Direct and coordinate the activities of all the management bodies of the National Securities Market Commission.

d) Allocate the Commission's costs and payments.

e) Sign contracts and agreements on behalf of the National Securities Market Commission.

f) Lead the Commission's entire workforce.

g) Exercise the powers expressly conferred upon him by the Board.

h) Execute the other duties assigned to him by the current code of laws.

3. The Vice-President of the National Securities Market Commission shall have the following powers:

a) Stand in for the President in the event of vacancy, absence or illness.

b) Chair the National Securities Market Commission Advisory Committee referred to in Article 22 of this Act.

c) Act as Vice-Chairman of the National Securities Market Commission Executive Committee.

d) Execute the functions delegated by the President or the Board.

In the event of vacancy, absence or illness, the Vice-President shall be replaced by the most senior of the Commissioners envisaged in Article 17.c) of this Act or, in the event of two or more Commissioners having the same seniority, by the oldest.

4. The Executive Committee shall consist of the President, the Vice-President and the Commissioners envisaged in Article 17.c) of this Act.

The Secretary of the Board of the National Securities Market Commission shall be the Secretary of the Executive Committee, but he shall not have a vote.

5. The Executive Committee shall have the following powers:

a) Prepare and study the matters to be submitted to the Board of the National Securities Market Commission.

b) Study, inform and deliberate on the matters submitted by the President for consideration.

c) Coordinate the actions of the Commission's various management bodies, without prejudice to the powers conferred on the President.

d) Approve, within the scope of private law, the Commission's asset acquisitions and disposals.

e) Grant the administrative authorisations for which it is empowered by the Board and exercise the powers expressly conferred on it by the Board.

Article 19

The President, Vice-President and Commissioners envisaged in Article 17.c) shall hold office for four years. Upon expiration, they may be re-appointed for one further term only.

If the President, Vice-President or any of the Commissioners envisaged in Article 17.c) should retire or be removed during their term of office, their successor's term shall expire upon expiration of the predecessor's term of office. Should such expiration take place within one year from appointment to the office, the limit provided in the last sentence of the preceding paragraph shall not apply and said term of office may be renewed twice.

Article 20

The President and Vice-President shall be removed from office for the following causes:

a) Expiration of their term of office.

b) Resignation accepted by the Government.

c) Removal by the Government due to serious breach of their obligations, permanent incapacity to discharge their duties, supervening incompatibility or conviction for a wilful criminal offence, following an investigation and hearing by the Ministry of Economy and Finance.

The same causes for removal shall be applicable to the Commissioners envisaged in Article 17.c) and the Minister of Economy and Finance shall have the powers to accept their resignation or decide upon their removal.

Article 21

The President, Vice-President and the Commissioners of the National Securities Market Commission shall be subject to the system of incompatibilities applicable to Senior Officers of the Administration. Upon retiring from office, and for two years thereafter, they may not perform any professional activity relating to the securities market. The financial compensation they receive for this restriction shall be laid down by regulation.

Article 22

The National Securities Market Commission Advisory Committee (*Comité Consultivo de la Comisión Nacional de Valores*) is the Board's advisory body. Said Committee shall be chaired by the Vice-President of the Commission, who shall not have a vote on its reports. The number of members and the manner in which they are selected shall be determined by regulation. The Commissioners shall be designated in representation of the members of all the official secondary markets, the issuers and investors, plus another representative of each of the Autonomous Regional Governments that have powers in securities market matters and in whose territory there is an official secondary market.

Article 23

The National Securities Market Commission Advisory Committee shall report on the matters put before it by the Board.

Said Committee's report shall be mandatory with regard to the following:

a) The provisions issued by the National Securities Market Commission referred to in Article 15 of this Act.

b) Actions of the National Securities Market Commission in connection with the collective deposit envisaged in Article 54 of this Act, when so required by regulation.

c) Imposition of sanctions due to extremely serious infringements, pursuant to the provisions of Title VIII of this Act.

d) The authorisation, withdrawal of authorisation, and corporate transactions of investment services firms and other persons or entities acting under the scope of Article 65.2, when so required by regulations, based on their importance from an economic and legal standpoint.

e) The authorisation and withdrawal of authorisation of branches of investment services firms from countries that are not members of the European Union, and

other subjects in the securities market, when so required by regulation, based on the economic and legal significance of such subjects.

Without prejudice to the nature of the Advisory Committee as an advisory body to the Board of the National Securities Market Commission, the Committee shall inform draft regulations of a general nature on matters relating directly to securities markets that are referred to it by the Government or by the Ministry of Economy and Finance, in order to implement the principle of the right of affected sectors to a hearing as part of the procedure of drawing up administrative provisions.

Article 24

The initial capital of the National Securities Market Commission shall consist of an initial endowment of five hundred million pesetas.

The funds of the National Securities Market Commission shall consist of the following:

a) Assets and securities making up its capital and the proceeds and yields from that capital.

b) Fees received for performing its activities or rendering its services.

c) Transfers by the Ministry of Economy and Finance from the State Budget.

The annual surplus may be used to:

a) Cover losses incurred in previous years.

b) Create the reserves needed to finance the investments required by the National Securities Market Commission in order to fulfil the objectives envisaged in Article 13 of this Act.

c) Create reserves to ensure the availability of sufficient working capital for its operating needs.

d) Transfer to the State as revenues for the year in which the financial statements corresponding to the year in which said surplus was registered were approved.

Together with the financial statements for the year, the Board of the National Securities Market Commission shall submit, for approval by the Government, a proposal for the distribution of surplus and an explanatory report to the effect that said proposal meets the requirements envisaged in paragraphs a), b) and c) above.

TITLE III - THE PRIMARY MARKET IN SECURITIES[8]

Chapter I - General provisions

Article 25. Freedom of issue, placement of issues and eligibility requirements for admission to trading on an official secondary market.

1. Issues of securities shall not require prior administrative authorisation.

[8] Title III amended by Royal Decree - Act 5/2005, of 11 March

2. The issuer is entitled to use any appropriate technique desired for the placement of issues. In the event that the issuer is obliged to draw up a prospectus, the placement will have to abide by the conditions included therein.

3. The issuer will have to be properly incorporated pursuant to the law of the country in which it is registered, and will have to be operating in accordance with its deed of incorporation, bylaws or equivalent documents.

4. The securities will have to fully respect the legal system to which they are subject.

5. The securities will be freely transferable.

Article 26. Information requirements for admission to trading in an official secondary market.

1. The admission of securities to trading in an official secondary market shall not require prior administrative authorisation. Nonetheless, prior compliance with the following requirements shall be necessary:

a) Submitting and registering the documents certifying that the issuer and the securities are subject to the legal system which is applicable thereto at the National Securities Market Commission.

b) Submitting and registering the financial statements of the issuer at the National Securities Market Commission. Said statements will have to be prepared and audited pursuant to the legislation applicable to said issuer.

c) Submitting, approval and registration of a prospectus, and the publication thereof, at the National Securities Market Commission.

2. When they are non-equity securities issued by the Government, the Autonomous Regional Governments and the Local Governments compliance with the aforesaid requirements will not be necessary. Nevertheless, these issuers will be entitled to draw up the prospectus in accordance with the stipulations of this chapter. This prospectus will have cross-border enforceability pursuant to article 29.

For the purposes of the provisions of this article, equity securities means shares and other transferable securities equivalent to shares in companies, as well as any other type of transferable securities giving the right to acquire any of the aforementioned securities as a consequence of their being converted or the rights conferred by them being exercised, provided that securities of the latter type are issued by the issuer of the underlying shares or by an entity belonging to the group of the issuer.

3. In addition, the Government shall be entitled to totally or partially exempt the admission to trading of certain securities from compliance with the requirements set forth in article 25 and section 1 above, depending on the nature of the issuer and of the securities, the amount being admitted, or the nature and the number of investors to whom they are directed. When the exceptions are based on the nature of the investor, additional requirements may be demanded to ensure correct identification.

4. The procedure for the admission to trading of securities in secondary markets should help the securities to be traded in a correct, efficient, and orderly fashion. Said

procedure shall be implemented, and the conditions which must be satisfied for approval of the prospectus to be granted by the National Securities Market Commission and for publication shall be determined, in accordance with regulations. Lack of express decision by the National Securities Market Commission regarding the prospectus during the term laid down by regulation is tantamount to rejection.

5. Furthermore, the number of fiscal years to which the financial statements mentioned in section 1.b) refer shall be determined by regulation.

6. Advertising relating to admission to trading in a regulated market shall abide by the provisions of article 94.

Article 27. Contents of prospectus.

1.The prospectus shall contain information concerning the issuer and the securities to be admitted to trading on an official secondary market. The prospectus shall contain all information which, according to the particular nature of the issuer and of the securities, is necessary to enable investors to make an informed assessment of the assets and liabilities, financial position, profits and losses, and prospects of the issuer and of any guarantor, and of the rights attaching to said securities. This information shall be presented in an easily analyzable and comprehensible form.

2.The prospectus shall have to be signed by a person with power to oblige the issuer of the securities.

3.The prospectus shall contain a summary which, in a brief manner and in non-technical language, shall convey the essential characteristics and risks associated with the issuer, any guarantors and the securities. Furthermore, the summary shall also contain a warning that:

a) It should be read as an introduction to the prospectus.

b) Any decision to invest in the securities should be based on consideration of the prospectus as a whole by the investor;

c) Civil liability is not attached to any person exclusively for the summary, unless said note is misleading, inaccurate or inconsistent in relation to the other parts of the prospectus.

4. The content of the different prospectus types shall be regulated by Ministerial Order, specifying the exceptions to the obligation to include certain information, the National Securities Market Commission being responsible for authorizing such an omission. Following express appointment, said Commission shall be entitled to implement or update the contents of the order.

The Ministry of Finance, and, following express authorization thereof, the National Securities Market Commission, shall also be responsible for determining the models for the different prospectus types, of the documents which must be attached, and of the situations in which the information contained in the prospectus may be incorporated by reference.

Article 28. Responsibility for prospectus.

1. Responsibility for the information contained in a prospectus shall attach, at least, to the issuer, the offeror or the person asking for the admission to trading on an official secondary market and the administrators of the foregoing, in accordance with the conditions established by regulation.

Furthermore, the responsibility indicated in the preceding paragraph shall attach to the guarantor of the securities in respect of the information to be drawn up.

The directing entity shall also be responsible for the audits it carries out in accordance with terms laid down by regulation.

Other persons who may assume responsibility for the prospectus, provided this is made clear in said document, and other persons not included amongst the foregoing who may have authorized the contents of the prospectus, shall also be responsible, in terms laid down in regulation.

2. The persons responsible for the information which appears in the prospectus shall be clearly identified in the prospectus with their name and position, or, in the case of legal entities, with their name and registered offices. Furthermore, they will have to state that in their opinion the information contained in the prospectus reflects reality and does not omit any fact which by its nature might alter the scope of said document.

3. In accordance with the conditions laid down by regulation, all the persons indicated in the previous sections, as the case may be, shall be held responsible for any damages which they might have caused to the owners of the securities acquired as a result of false information or omissions of relevant data from the prospectus or the document which, as the case may be, should be drawn up by the guarantor.

The action to claim responsibility shall expire three years from the time on that the claimant may have become aware of false information or omissions in relation to the contents of the prospectus.

It will not be possible to claim any responsibility from the persons mentioned in the above paragraphs concerning the summary or the translation thereof, unless it is misleading, inaccurate or inconsistent with the other parts of the prospectus

Article 29. Cross-border enforcement of prospectus.

Subject to the provisions of article 30, the prospectus approved by the National Securities Market Commission, and its supplements, shall be valid for admission to trading in any of the host member States, provided the National Securities Market Commission notifies the competent authority of each host Member State in accordance with regulations.

Furthermore, subject to the aforementioned article 30, the prospectus approved by the competent authority of the home State, and the supplements thereof, shall be valid for admission to trading in Spain, provided that said competent authority notifies the National Securities Market Commission accordingly. In this case, the National Securities Market Commission shall refrain from approving said prospectus or carrying out any administrative proceedings in relation to it.

Article 30. Preventive measures.

1.When Spain is a host Member State, the National Securities Market Commission will have to inform the competent authority of the home Member State if it observes that the issuer or the financial institutions responsible for the public offer have acted in an irregular fashion, or if it observes breaches of the obligations of the issuer arising from the admission to trading on an official secondary market.

2. In the event that despite the measures taken by the competent authority of the home Member State or owing to the fact that said measures have proven to be inadequate, the issuer or the financial institution responsible for the public offering continues to breach the pertinent legal or regulatory provisions, the National Securities Market Commission, having informed the competent authority of the home Member State, shall take all the pertinent measures to protect investors. The National Securities Market Commission shall immediately inform the European Commission of the measures taken.

Article 30 bis. Public offer for the sale or underwriting of securities.

1. A public offer of sale or underwriting of securities consists of any communication to persons in any form and by any means which shows sufficient information on the terms of the offer and the securities offered to allow an investor to decide on whether to acquire or underwrite said securities.

The obligation to publish a prospectus shall not apply to any of the following types of offer, which, for the purposes of this Act, shall not be considered to be a public offer:

a) An offer of securities exclusively directed to qualified investors.

b) An offer of securities directed to less than 100 natural or legal persons of a Member State, without including qualified investors.

c) An offer of securities directed to investors who acquire securities for a minimum of 50,000 euros per investor, for each separate offer.

d) An offer of securities the unit nominal value of which is at least 50,000 euros.

e) An offer of securities for a total sum of less than 2,500,000 euros, the limit of which shall be calculated over a 12 month period.

2. It will not be possible to perform a public offer of sale or underwriting of securities without prior publication of a prospectus approved by the National Securities Market Commission. The regulation shall set forth the exceptions to the obligation to publish a prospectus in the public offers of sale or underwriting, in accordance with the nature of the issuer or the securities, the amount of the offer or the number of investors to whom they are directed, in addition to the adaptations of the requisites laid down in the regulation of the admissions necessary for public offers.

3. Public offers of sale or underwriting of securities not exempt from the obligation to publish a prospectus shall be subject to all the regulation relating to the admission to trading of securities in regulated markets contained herein, with the amendments and exceptions determined by regulation. For these purposes, it shall be taken into account

that article 25.5 may not be applicable to the public offers of sale or underwriting of securities.

Chapter II. Issues of bonds or other securities recognising or creating debt

Article 30 ter. Regime for issues of bonds or other securities recognising or creating a debt claim.[9]

1. The provisions of this chapter shall be applicable to issues of bonds or other securities which recognise or create a debt claim which are to be the object of a public offering for sale or are to be listed on an official secondary market and in respect of which a prospectus is required to be drawn up, subject to approval and registration by the National Securities Market Commission in the terms set out in the preceding chapter.

Issues of bonds or other securities that recognise or create a debt claim which are referred to in Chapter X of Legislative Royal Decree 1564/1989 of 22 December, which approved the Consolidated text of the Public Limited Companies Act, shall also be subject to the provisions of the preceding paragraph provided that they meet the conditions established there. This chapter shall also apply to the issuance of bonds envisaged in Act 211/1964, of 24 December, regulating the issue of bonds by companies which have not adopted the form of public limited companies or by associations or other legal entities, and the incorporation of a syndicate of bond-holders.

The equity securities referred to in the second paragraph of article 26.2 of this Act, such as bonds convertible into shares, shall not be classified as bonds or other securities that acknowledge or create a debt claim provided that they are issued by the issuer of the underlying shares or by an entity belonging to the same group as the issuer.

2. Issuance of the securities referred to in this chapter shall not require a public instrument to be granted.

Advertising of all the acts concerning the issues of securities referred to in this chapter must comply with the provisions of this Act and its implementing regulations, but neither the issue nor any of the other acts related to it need be registered with the Registry of Companies or published in the "Official Gazette of the Registry of Companies".

3. The conditions of each issue, and the capacity of the issuer to impose such conditions, when not regulated by law, shall be subject to the clauses contained in the by-laws of the issuer and the stipulations of the issue agreement and prospectus.

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[9] Amended by Act 25/2005, of 24 November

TITLE IV - OFFICIAL SECONDARY MARKETS IN SECURITIES

Chapter I - General provisions

Article 31[10]

1. Regulated markets are multilateral systems which enable diverse interests in buying and selling financial instruments to come together in order to enter into contracts with respect to the traded financial instruments, which are authorised and function on a regular basis, as provided in this Chapter and its secondary legislation, subject in any event to conditions of access, listing, operating procedures, reporting and publicity.

2. The regulated markets in Spain are called official secondary markets (*mercados secundarios oficiales*). For these purposes, the following shall be considered to be official secondary markets:

a) The Stock Exchanges.

b) The Market in Public Debt Represented by Book Entries.

c) The Futures and Options Markets, whatever the underlying asset, be it financial or non-financial.

d) The AIAF fixed-income market.

e) Any other State-wide markets which, due to meeting the requirements set out in section 1 of this article, are authorised in the framework of the provisions of this Act and its secondary legislation, and those Autonomous Regional markets which are authorised by the Autonomous Regions with powers in this area.

3. In the terms provided in this Act and its secondary legislation, securities and other financial instruments of suitable characteristics may be traded in the official secondary markets.

4. The National Securities Market Commission shall maintain an updated list of the official secondary markets and shall send it to the European Commission and the other Member States of the European Union; it shall also notify any change in the list.

5. The holding by companies which manage Spanish official secondary markets of a direct or indirect stake in other companies that manage regulated markets outside Spain shall require prior authorisation by the National Securities Market Commission, which may, as appropriate, oppose said holding within a period of two months from the date on which it was informed thereof. If the Commission makes no statement within said period, it shall be understood to have accepted the request.

6. Direct or indirect ownership of capital of the companies that manage Spanish official secondary markets shall be subject to the system governing qualifiying holdings envisaged in Article 69 of this Act for investment firms, in the terms to be established by secondary legislation; a qualifiying holding shall be deemed to be any holding which,

[10] Amended by Act 47/2007, of 19 December

directly or indirectly, amounts to at least 1% of the capital stock or voting rights of the company or one which, though less than that percentage, enables the holder to exert a significant influence on the company, in the terms to be established by secondary legislation. Without prejudice to the power of the National Securities Market Commission to object to a qualifiying holding in the terms of Article 69.6, the Minister of Economy may, at the proposal of the National Securities Market Commission, oppose the acquisition of a qualifiying holding in those companies when he deems it necessary to do so in order to safeguard the orderly functioning of the markets or to avoid distortions in them, or, in the case of buyers from third countries, if Spanish entities do not receive equivalent treatment in the buyer's home country.

Article 31 bis. Authorisation and revocation.

1. Establishment of an official secondary market requires the authorisation of the Minister of Economy and Finance, at the proposal of the National Securities Market Commission. The deadline for a final decision on an application for authorisation will be six months from the application date or the date when the full required documentation was received in any of the registers of the Ministry of Economy and Finance, as the case may be. If no decision is issued by the deadline, the application is understood to have been rejected.

In the case of markets in Autonomous Regions, the authorisation must be given by the Autonomous Region with powers in this area.

2. Official secondary markets must fulfil the following requirements in order to be authorised:

a) Designate a market governing company in the form of a corporation whose basic functions shall be to organise, manage and supervise market activity.

b) Present the draft of the governing company bylaws.

c) Draw up a program of operations detailing the market's organisation structure, the financial instruments that may be traded in it and the services which the governing company plans to provide.

d) The members of the governing company's Board of Directors and the persons who are to manage the market's activities and operations must be of acknowledged good business or professional repute and have sufficient knowledge and experience in matters connected with the securities market.

e) Shareholders who are to hold a qualifiying stake in the market governing company must be suitable, as provided in article 67.

f) The governing company must meet the minimum requirements as to capital stock and own funds that are established by regulation, having regard to the need to ensure its orderly operation and to the nature and extent of the transactions concluded in the market and the range and degree of the risks to which it is exposed.

g) Present a draft market regulation which must contain at least the applicable rules on transferable securities, members, guarantees, trading, record-keeping, clearing and settlement of transactions, and supervision and discipline of the market, as well as

organisational measures relating to conflicts of interest and risk management, among other matters.

3. Except as provided by regulation, any amendment to the market governing company bylaws or to the market regulation shall require prior approval by the National Securities Market Commission or, as the case may be, by the Autonomous Regional Governments with powers in this area, in connection with markets in their territory.

4. The Ministry of Economy and Finance may revoke the authorisation granted to an official secondary market in any of the following cases:

a) Where the market fails to make use of the authorisation within twelve months or where it expressly waives the authorisation.

b) Due to lack of market activity in the six months prior to revocation.

c) Where the authorisation was obtained by making false statements or by any other irregular means.

d) Where the requirements on the basis of which authorisation was granted are no longer met.

e) In the event of a very serious infringement, as provided in Title VIII of this Act.

5. The specific rules for applying this provision shall be issued in the form of a regulation.

6. The Autonomous Regions with powers in this area may establish any additional organisational measures that they deem appropriate for markets located in their territory.

Article 31 ter[11]. Conditions for exercise of business.

To retain the authorisation, official secondary markets must at all times fulfil the requirements established in the preceding article and the provisions of this Chapter.

Article 31 quater[12]. Appointment of directors and executives and replacement of the governing company.

1. Once authorisation to commence operations has been obtained, appointments of members of the Board of Directors and executives of the governing company must be approved by the National Securities Market Commission or, as the case may be, the Autonomous Region with powers in this area, in order to ascertain whether the appointees fulfil the conditions set out in article 67.2.f) and 67.2.g) of this Act.

The National Securities Market Commission shall refuse to approve any proposed changes where there are objective and demonstrable grounds for believing that they pose a material threat to the sound and prudent management and operation of the regulated market. New appointments shall be deemed to have been approved by the

[11] Added by Act 47/2007, of 19 December

[12] Added by Act 47/2007, of 19 December

National Securities Market Commission if it does not issue any comment within three months from receipt of notice.

2. Replacement of the governing company of an official secondary market shall require authorisation by the Ministry of Economy and Finance based on a report by the National Securities Market Commission. The deadline for decisions in this case shall be three months from the presentation of the application or the completion of the required documentation. If no decision is issued by the deadline, the application is understood to have been rejected.

In the case of markets in Autonomous Regions, the authorisation must be given by the Autonomous Region with powers in this area.

Article 32[13]

1.The admission to trading of securities on official secondary markets shall require prior verification by the National Securities Market Commission that the requirements and procedure set forth in this Act and the rules implementing it have been complied with.

In the case of transferable securities in the Stock Exchanges, said verification will be unique and valid for all said Exchanges. The admission to trading in each one of the official secondary markets shall also require the agreement of the governing body of the pertinent market, at the request of the issuer, who shall be entitled to request it, under his responsibility, once the securities have been issued or the pertinent book entries made.

2. The requirements and procedure for securities to be listed on official secondary securities markets and the necessary publication of the listing resolutions shall be determined by regulation. The requirements may differ for different categories of securities or markets. The requirements and procedure for continued listing of securities in the event of division shall be determined in the same way.

3. Notwithstanding the provisions of paragraph 1 above, securities issued by the State and the Spanish Official Credit Institute (*Instituto de Crédito Oficial*) shall be considered to be listed upon their own motion on the Public-Debt Market Represented by Book Entries or, as appropriate, on the other official secondary markets, as determined at the time of issue. Securities issued by the Autonomous Regional Governments shall be deemed to be listed by virtue of a mere request by the issuer. However, in all the aforementioned cases, the technical specifications of the market in question must be adhered to, in accordance with the provisions of the preceding paragraph.

4. The powers envisaged in the foregoing sections shall correspond to the Autonomous Regional Governments with powers in the matter, with regard to securities traded exclusively on markets in the corresponding Autonomous Regional Governments, subject to fulfilment of the specific requirements demanded by said markets.

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[13] First paragraph amended by Royal Decree - Act 5/2005, of 11 March

Article 32 bis[14]. Additional rules established by the markets for listing financial instruments.

1. Without prejudice to the obligations set out in article 32, the markets must establish clear and transparent rules with regard to the listing of financial instruments so that they may be traded in a fair, orderly and efficient manner and, in the case of transferable securities, are freely transferable. In the case of derivatives, the rules shall ensure in particular that the design of the derivative contract allows for proper price discovery as well as for the existence of effective settlement conditions.

The provisions of this section must be applied in accordance with articles 35, 36 and 37 of Commission Regulation 1287/2006 implementing Directive 2004/39/EC as regards record-keeping obligations for investment firms, transaction reporting, market transparency, admission of financial instruments to trading, and defined terms for the purposes of that Directive.

2. The markets must have effective mechanisms for:

a) ascertaining that the issuers of listed transferable securities fulfil all the legal requirements with regard to reporting;

b) provide their members with access to the information published in accordance with this Act and its secondary legislation;

c) periodically check that the listed financial instruments fulfil the listing requirements at all times.

3. A financial instrument that is listed in an official secondary market or regulated market of another Member State may be subsequently listed in another official secondary market, even without the issuer's consent and in accordance with the provisions for listing established in this Act and in Royal Decree 1310/2005, of 4 November, partly implementing Act 24/1988, of 28 July, on the Securities Market, on the subject of listing on official secondary markets, primary and secondary public offerings, and the prospectus required for those purposes.

The official secondary market must inform the issuer of this circumstance. The issuer shall not be under any obligation to provide the information required under paragraph 2 directly to any official secondary market which has admitted the issuer's securities to trading without its consent. In these cases, it is the market governing company that must have the necessary means to obtain and disseminate that information.

Article 32. ter[15]. Obligations in the area of market abuse.

Market governing companies must monitor the transactions undertaken by their members in order to identify breaches of the market rules or conduct that may involve market abuse. To that end, market governing companies must:

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[14] Added by Act 47/2007, of 19 December

[15] Added by Act 47/2007, of 19 December

a) notify the National Securities Market Commission of any significant breach of its rules and any anomaly in trading conditions that may involve market abuse;

b) immediately provide the pertinent information to the National Securities Market Commission for the investigation and prosecution of the market abuse that has occurred;

c) provide full assistance in the investigation and prosecution of the market abuse committed using the markets' systems.

Article 33[16]. Suspension of financial instruments from trading.

1. The National Securities Market Commission may suspend trading of a financial instrument on the Spanish official secondary markets on which it is listed when special circumstances exist which may distort the normal course of trading in the financial instrument such as to make that measure advisable for the protection of investors. In the case of Autonomous Regions with powers in this area, the creation of such markets shall rest with the Autonomous Regional government in connection with financial instruments that are traded solely in markets within the region.

2. The National Securities Market Commission must immediately announce the decision to suspend and inform the competent authorities of other Member States where the instrument is traded so that they can order suspension of trading in the regulated markets, multilateral trading facilities and systematic internalisers under their supervision, except where this might cause serious harm to investor interests or the market's orderly working.

Where it sees fit, the National Securities Market Commission shall notify the suspension decision to the authorities of third countries whose markets might be affected by the decision.

Where the competent authority of another Member State notifies the National Securities Market Commission of a decision to suspend trading, the latter will issue an order to suspend trading in that financial instrument in the official secondary markets, Spanish MTFs and systematic internalisers under its supervision, except where this might cause serious harm to investor interests or the market's orderly working.

3. The governing company of an official secondary market may also suspend trading in a financial instrument that has ceased to fulfil the market's rules in accordance with the conditions envisaged in the market regulation, except where this might cause serious harm to investor interests or the market's orderly working. At all events, it must notify any such decision to the National Securities Market Commission and make it public immediately after it is adopted. In accordance with the provisions of the preceding section, the National Securities Market Commission will duly inform the competent authorities of the other Member States.

[16] Amended by Act 47/2007, of 19 December

4. The governing bodies of multilateral trading facilities and the institutions referred to in Chapter III of Title XI shall be obliged to suspend trading in a financial instrument from the moment the decision to suspend is made public.

Article 34[17]. Exclusions from trading

1. The National Securities Market Commission may exclude from trading those financial instrument that do not meet the requirements regarding dissemination, frequency or volume of trading to be determined by regulation, or whose issuer does not fulfil its obligations, particularly with regard to the provision and publication of information. Without prejudice to the precautionary measures that may be adopted, the issuer must always be given a hearing beforehand. In the case of Autonomous Regions with powers in this area, those powers shall rest with the Autonomous Regional government in connection with financial instruments traded solely in the regional territory.

2. The National Securities Market Commission must immediately announce the decision to exclude and inform the competent authorities of other Member States where the instrument is traded so that they can order exclusion from trading in the regulated markets, multilateral trading facilities and systematic internalisers under their supervision, except where this might cause serious harm to investor interests or the market's orderly working.

The National Securities Market Commission, where it sees fit, shall also notify the decision to exclude from trading to the authorities of third countries whose markets might be affected.

Where the competent authority of another Member State notifies the National Securities Market Commission of a decision to exclude from trading, the latter will issue an order to exclude that financial instrument from trading in the official secondary markets, Spanish MTFs and systematic internalisers under its supervision, except where this might cause serious harm to investor interests or the market's orderly working.

3. The governing company of an official secondary market may also exclude from trading a financial instrument that has ceased to fulfil the market's rules in accordance with the conditions envisaged in the market regulation, except where this might cause serious harm to investor interests or the market's orderly working. At all events, it must notify any such decision to the National Securities Market Commission and make it public immediately after it is adopted. In accordance with the provisions of the preceding section, the National Securities Market Commission will duly inform the competent authorities of the other Member States.

4. The governing bodies of multilateral trading facilities and the other institutions referred to in Chapter III of Title XI shall be obliged to exclude a financial instrument from trading from the moment the decision to exclude is made public.

5. The issuer may also request that a financial instrument be excluded from trading on an official secondary market. Where a company decides to exclude its shares from

[17] Amended by Act 47/2007, of 19 December

trading on the official secondary markets, it must make a takeover bid for all the shares which it wishes to exclude. Transactions by which shareholders of a listed company may become, wholly or partly, shareholders of an unlisted companies will be treated as equivalent to exclusions from trading.

The conditions for pricing and other requirements for the takeover bids envisaged in this section will be established by secondary legislation.

The National Securities Market Commission may grant a waiver of the obligation to make a takeover bid in cases where there is another equivalent procedure that ensures protection of the legitimate interests of the owners of the shares to be excluded from trading, and of the holders of convertible bonds and other securities giving entitlement to their subscription.

In the case of a bid prior to exclusion from trading, the limit on acquisition of own shares envisaged in Legislative Royal Decree 1564/1989, of 22 December, approving the Consolidated Text of the Public Limited Companies Act, for shares listed in an official secondary market will be 10 per cent of the share capital. If, as a result of the execution of the bid, the own shares exceed that limit, they must be amortised or disposed of within one year.

The decision to exclude and the decisions regarding the bid and the price must be approved by the general meeting of shareholders.

At the time of giving notice of the meeting of the company's governing bodies that must approve the bid, the owners of the affected shares will be provided with a report by the directors giving a detailed justification of the proposal and the price that is offered.

Article 35. Issuers' periodic reporting obligations[18]

1. Where Spain is the home Member State, issuers whose securities are listed in an official secondary market or another regulated market domiciled in the European Union must publish and disseminate their annual financial report within at most four months from the end of each year, and must make it available to the public for at least five years. Their annual accounts must also be audited. The auditors' report must be made public at the same time as the annual financial report.

The annual financial report will comprise the annual accounts and the management report, reviewed by the auditor with the scope defined in article 208 of the Consolidated Text of the Public Limited Companies Act, approved by Legislative Royal Decree 1564/1989, of 22 December, and the declarations of responsibility for its content.

2. Where Spain is the home Member State, issuers whose shares or debt securities are listed in an official secondary market or another regulated market domiciled in the European Union must publish and disseminate a half-yearly financial report relating to the first six months of the year, within at most two months from the end of the

[18] Amended by Act 6/2007 of 12 April

corresponding period. Issuers must ensure that the report is available to the public for at least five years.

Where Spain is the home Member State, issuers whose shares are listed in an official secondary market or another regulated market domiciled in the European Union must also publish and disseminate a second half-yearly financial report relating to the twelve months of the year, within at most two months from the end of the corresponding period. This obligation will not apply where the annual financial report has been made public within the two months following the end of the annual period in question.

The half-yearly financial report will comprise: the summarised annual accounts, an interim management report, and the declarations of responsibility for its content.

For the purposes of this and the next article, debt securities will be understood to mean bonds and other marketable securities that acknowledge or create a debt claim, except for securities that are equivalent to shares or which, by conversion or by exercise of the rights they confer, give entitlement to acquire shares or securities equivalent to shares.

3. Without prejudice to the provisions of article 82 of this Act, where Spain is the home Member State, issuers whose shares are listed in an official secondary market or another regulated market domiciled in the European Union must publish and disseminate, each quarter within the first and second halves of the year, an interim management report containing at least:

a) A description of significant events and transactions that took place in the corresponding period and their impact on the financial position of the company and its dependent companies, and

b) A general description of the financial position and results of the issuer and its dependent companies during the corresponding period.

Issuers which publish quarterly financial reports will not be required to issue an interim management report.

4. The periodic information referred to in the preceding sections must be sent to the National Securities Market Commission, where Spain is the home Member State in the terms to be established by regulation, for inclusion in the official register regulated in article 92 of this Act.

The National Securities Market Commission will check that the periodic information was drafted in accordance with the applicable regulations and demand compliance where this is not the case.

5. The provisions in the foregoing paragraphs of this article will not apply to:

a) Member states of the European Union, autonomous regional governments, local corporations and other analogous entities of the Member States of the European Union, international public bodies of which at least one Member State of the European Union is a member, the European Central Bank and the national Central Banks of the Member States of the European Union, whether or not they issue shares or other securities; and

b) Issuers which only have outstanding issues of debt securities listed in an official secondary market or another regulated market domiciled in the European Union whose unit nominal value is at least 50,000.

6. Where Spain is the home Member State, the provisions of section 2 will not apply to issuers incorporated before 31 December 2003 which only have debt securities listed in an official secondary market or another regulated market in the European Union, where such securities are unconditionally and irrevocably guaranteed by a State, an autonomous regional governments or a local corporation.

7. The following will be established by regulation:

a) The periods and other requirements for filing the financial information with the National Securities Market Commission.

b) The requirements for publication and dissemination of the periodic reports.

c) The periods for publication of the quarterly reports.

d) The content of the declaration of responsibility, and the bodies or persons at the issuer that must make it.

e) The content of the half-yearly and quarterly financial information and any adaptations or exceptions corresponding to specific categories of securities, markets or issuers.

f) The accounting principles that are acceptable for issuers from countries that are not Member States of the European Union.

g) Any other aspect that is needed for the application of this article and, in particular, the content of the information that is required for the publication of statistics by the National Securities Market Commission.

8. The provisions of this article and the following article will not apply to the investment funds and open-ended collective investment companies referred to in Act 35/2003, of 4 November, on Collective Investment Institutions.

Article 35. bis Other reporting obligations [19]

1. Issuers whose securities are listed in an official secondary market or another regulated market domiciled in the European Union, where Spain is the home Member State, must disclose and disseminate any change in the rights inherent to those securities. They must also publish and disseminate information about new debt issues. Issuers must present that information to the National Securities Market Commission, for inclusion in the official register regulated in article 92 of this Act.

The exceptions to the obligation established in the preceding paragraph, and the requirements for publication and dissemination of this information and for presentation to the National Securities Market Commission, will be established by regulation.

2. Issuers whose shares or bonds are listed in an official secondary market or another regulated market domiciled in the European Union must ensure that all the mechanisms and information necessary to enable shareholders and bondholders to exercise their rights are available in Spain, where Spain is the home Member State, and must ensure data integrity. Issuers of shares listed in an official secondary market will be deemed to comply with that obligation by application of the provisions of article 117 of this Act and its implementing regulations. The requirements applicable to other issuers will be established by regulation. The provisions of this section will not apply to securities issued by the Member States of the European Union, autonomous regional governments, local corporations and similar entities in the Member States.

3. Where Spain is the home Member State, issuers whose securities are listed in an official secondary market or another regulated market domiciled in the European Union that propose to amend their articles of incorporation or association must notify the National Securities Market Commission and the market or markets where their securities are listed of the proposed amendments, in the terms to be established. This disclosure must be made promptly and, in any event, on the date of notice of the Shareholders' Meeting that must vote on the amendment or be informed of same."

Article 35 ter Issuers' responsibility [20]

1. The responsability for drafting and publishing the information referred to in article 35.1 and 35.2 of this Act must lie at least with the issuer and its directors, in accordance with the terms to be established by regulation.

2. In accordance with the conditions to be established by regulation, the issuer and its directors will be responsible for any damages arising to the holders of the securities as a result of information that fails to provide a true and fair view of the issuer.

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[19] Added by Act 6/2007 of 12 April

[20] Added by Act 6/2007 of 12 April

The statute of limitations period for derivative suits will be three years from the time the claimant was in a position to know that the information did not provide a true and fair view of the issuer.

Article 36[21].

1. Purchase and sale transactions and other deals for a consideration on each market shall be deemed to be official secondary securities market transactions where they relate to transferable securities or financial instruments listed in such market and are made in that market in accordance with its rules of operation.

2. Transfers for a consideration other than those envisaged in the preceding section and transfers for no consideration of securities or financial instruments listed in an official secondary market shall not be deemed to be official secondary market transactions.

3. Without prejudice to other forms of lending, securities listed in a secondary market may be lent for the purpose of disposition for subsequent disposal, for lending or to serve as collateral for a financial transaction. In any event, the borrower must guarantee repayment of the loan by providing sufficient collateral. The National Securities Market Commission shall determine the nature of such collateral, as appropriate. Collateral shall not be required for loans of securities resulting from monetary policy transactions or public offerings.

The Ministry of Economy and Finance and, with its express authorisation, the National Securities Market Commission, may:

a) Establish limits on the volume of loans or their conditions, according to the market situation.

b) Establish specific disclosure requirements for such transactions.

Article 37[22]. Members of the official secondary markets.

1. Attainment of the status of member of an official secondary market shall be governed by:

a) the general rules established in this Act;

b) the specific rules of each market established in this Act and their secondary legislation or, in the case of markets subject to regional governments, by the rules established by Autonomous Regions with powers in this area, provided that they conform to the provisions of this Title, and

c) the conditions of access established by each market, which must in any event be transparent, non-discriminatory and objective.

2. The following may become members of official secondary markets:

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[21] Amended by Act 47/2007, of 19 December

[22] Amended by Act 47/2007, of 19 December

a) Investment firms that are authorised to execute client orders or trade for their own account.

b) Spanish credit institutions.

c) Investment firms and credit institutions authorised in other Member States of the European Union that are authorised to execute client orders or trade for their own account. Membership may be attained by any of the following mechanisms:

1. Directly, by establishing branches in Spain in accordance with article 71 bis of Title V, in the case of investment firms, or in accordance with Chapter II of Title V of Act 26/1988, of 29 July, on Discipline and Intervention of Credit Institutions, in the case of credit institutions.

2. By becoming remote members of the official secondary market without having to be established in the Spanish State, where the trading procedures or systems of the market in question do not require a physical presence for conclusion of transactions.

d) Investment firms and credit institutions authorised in a country that is not a Member State of the European Union provided that, in addition to complying with the requirements laid down in Title V of this Act for operating in Spain, the authorisation given by the authorities in the home country enables them to execute client orders or trade for their own account. The Minister of Economy and Finance may deny those entities access to Spanish markets or impose conditions upon access, for prudential reasons, where Spanish entities are not given equivalent treatment in the home country or where the compliance with the rules of order and discipline in the Spanish securities markets is not guaranteed.

e) The Central Government, acting through the Directorate-General of the Treasury and Financial Policy, the General Treasury of the Social Security, and the Bank of Spain.

f) Any other persons which, in the opinion of the corresponding official secondary market's governing company, having regard in particular to the special market functions which such persons may fulfil:

1. are suitable;

2. have a sufficient level of trading ability and competence;

3. have, where applicable, adequate organisational arrangements; and

4. have sufficient resources for the role they are to perform, taking into account the different financial arrangements that the official secondary market may have established in order to guarantee the proper settlement of transactions.

3. The market governing company shall notify the list of its members to the National Securities Market Commission or the Autonomous Regional Government with powers in this area, in the case of regional official secondary markets, with the frequency to be established by law.

4. Members of the official secondary market must fulfil the obligations provided for in Articles 79 bis, 79 ter and 79 sexies of this Act with respect to their clients when, acting on behalf of their clients, they execute their orders on an official secondary market. Nevertheless, in the case of transactions between members, for their own account and in their own name, they shall not be obliged to impose on each other the obligations established in the articles cited above.

Article 38[23]. Remote access.

1. A Spanish official secondary market that seeks to establish mechanisms in other Member States of the European Union for remote access by members from that State must notify the National Securities Market Commission, which, within one month from receipt of notice, must refer it to the competent authority of that Member State. The National Securities Market Commission shall, on the request of that competent authority and within a reasonable time, communicate the identity of the members of the official secondary market established in that Member State.

2. The regulated markets of other Member States of the European Union may establish appropriate arrangements in Spain so as to facilitate access to and remote trading on those markets by Spanish members, subject to prior remittal of the market's communiqué by the competent authority of the Home State to the National Securities Market Commission. The National Securities Market Commission may also request that the competent authority of the home Member State of the regulated market disclose the identity of the members of the regulated market, within a reasonable time.

Article 39

All members of official secondary markets shall be obliged to execute, on behalf of their clients, the orders they receive from said clients for the trading of securities on the corresponding market. Nevertheless, in the case of spot trades, compliance with such obligations may be conditional upon proof by the client of ownership of the securities or delivery by the client of funds in payment of the price of the securities. In forward transactions, compliance with such obligations may be made conditional upon the furnishing by the client of such collateral or margin as the member may deem advisable, which must be at least those to be laid down by regulation, if any.

Article 40

No member of an official secondary market may act on its own account with any non-member unless it has obtained explicit acknowledgement in writing that the non-member was aware of this circumstance before concluding the transaction in question.

All members of official secondary markets must disclose to the National Securities Market Commission any economic links and contractual relationships with third parties that may, when they act either on their own account or on behalf of third parties, give rise to conflicts of interest with other clients. Subject to the general criteria to be

[23] Amended by Act 47/2007, of 19 December

established by regulation, the National Securities Market Commission shall determine the cases and the form in which such links or relationships must be made public.

Article 41

In transactions carried out on behalf of third parties, members of official secondary securities markets shall be liable to their principals for the delivery and payment of the securities.

Article 42

Fees received by members of official secondary markets in respect of brokerage in the trading of securities shall be fixed freely. Nevertheless, the Government may establish maximum fee levels for transactions which do not exceed a certain amount and for those carried out as a consequence of the enforcement of court rulings. Publication of the lists of maximum fees and their communication to the National Securities Market Commission or, in the case of the Public-Debt Market Represented by Book Entries, to the Bank of Spain, shall be a prerequisite for the application of such fees.

Article 43. Transparency requirements.

1. In order to provide the market with transparency and to foster efficient price discovery, the official secondary markets shall be obliged to disseminate public information about the trades in shares listed in them in connection with the buy and sell positions existing at any given time and with the trades already concluded in the market, in accordance with the provisions of this article. The Minister of Economy and Finance and, with his express authorisation, the National Securities Market Commission shall determine the transparency requirements applicable to trades in other financial instruments and may, if they see fit, extend the transparency requirements of this article to financial instruments other than shares.

2. The official secondary markets must publish the following pre-trade information with respect to shares listed in them:

a) bid and offer prices existing at any given time, and

b) the depth of the trading positions at those prices that are broadcast through their systems.

That information must be made available to the public on reasonable commercial terms and on a continuous basis during normal trading hours.

The National Securities Market Commission may waive the obligation for official secondary markets to make public the information referred to in this section based on the market model or the type and size of orders. The National Securities Market Commission may also waive the obligation in respect of transactions that are large in scale compared with normal market size for the share or type of share in question.

3. The official secondary markets must publish the following post-trade information with respect to transactions in shares listed in them:

a) the price,

b) the volume, and

c) the execution time.

That information must be made public on a reasonable commercial basis and as close to real-time as possible.

4. The National Securities Market Commission may authorise official secondary markets to provide for deferred publication of the details of transactions based on their type or size. In particular, they may authorise the deferred publication in respect of transactions that are large in scale compared with the normal market size for that share or that class of shares. The official secondary markets must, in these cases, obtain the National Securities Market Commission's prior approval of proposed arrangements for deferred publication, and these arrangements must be clearly disclosed to market participants and the investing public.

5. Where the National Securities Market Commission waives the requirement of pre-trade transparency by virtue of section 2 of this article, or authorises a deferral of the post-trade transparency requirements by virtue of section 4, the National Securities Market Commission shall be obliged to grant the same treatment to all official secondary markets and MTFs, without discrimination.

6. The official secondary markets may give the entities referred to in article 128 of this Act access, on reasonable commercial terms and on a non-discriminatory basis, to the arrangements they employ for making public the information under sections 2 and 3 of this article.

7. The provisions of the foregoing sections must be applied in accordance with the provisions of Commission Regulation 1287/2006 implementing Directive 2004/39/EC as regards record-keeping obligations for investment firms, transaction reporting, market transparency, admission of financial instruments to trading, and defined terms for the purposes of that Directive.

8. Without prejudice to the public information envisaged in this article, the Autonomous Regions with powers in the matter may establish any other disclosure requirement relating to transactions performed in their territory.

Article 44

With the aim of protecting investor interests and ensuring market integrity, the Government may:

a) Establish that relationships between members of official secondary markets and third parties for the trading of securities be formalised in written contracts signed by the parties, a counterpart being delivered to each of them.

b) Lay down the regulations required to ensure that the contracts referred to in the preceding paragraph reflect, explicitly and with the necessary clarity, the commitments undertaken by the parties and the parties' rights in the event of the contingencies inherent in each transaction. For this purpose it may establish the matters or contingencies to be covered by or expressly provided for in agreements relating to standard transactions, require the use of standard forms

for these agreements, and impose some system of administrative control over said standard forms.

c) Determine which documents evidencing the execution of transactions on official secondary markets are to be provided to third parties by the members of said markets.

d) Establish the form and contents of documents which shall evidence the various stages of trading of securities in relationships between members of official secondary markets and between such members and the governing bodies or clearing and settlement systems of the relevant market.

The Government may authorise the Minister of Economy and Finance to enact regulations to be established in the application of this Article. With regard to the provisions of paragraph d) above, said authorisation may be extended to the National Securities Market Commission or, in the case of the Public-Debt Market Represented by Book Entries, to the Bank of Spain.

The provisions of the preceding paragraphs shall also be applicable to unofficial secondary markets.

Article 44 bis

1[24]. A corporation shall be formed under the name of "Sociedad de Gestión de los Sistemas de Registro, Compensación y Liquidación de Valores" (hereinafter the "Systems Company"), which shall have the following functions:

a) To keep, in the terms provided in Title I, Chapter II of this Act, the accounting records relating to securities represented by book entries and listed in Stock Exchanges or the Public-Debt Book-Entry Market, and securities listed in other official secondary markets or regulated markets and on MTFs, when requested to do so by their governing bodies.

b) To manage the settlement and, as the case may be, clearing of securities and cash derived from transactions in securities.

c) To provide technical and operating services directly related to securities registration, clearing and settlement and any other services required in order for the Systems Company to collaborate and coordinate with, and participate in, other securities registration, clearing and settlement environments and systems. In particular, they may perform record-keeping functions with respect to securities listed in official secondary markets or other regulated markets and MTFs where this is necessary to facilitate the settlement of trades in those securities.

d) Any other functions entrusted to it by the Government, on the basis of a report by the National Securities Market Commission and, if appropriate, the Bank of Spain.

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[24] Amended by Act 47/2007, of 19 December

2. The provisions of the preceding paragraph shall be understood without prejudice to the fact that, with regard to securities listed on a single Stock Exchange, the Autonomous Regional Governments with powers in this matter may order the creation by the governing company of the relevant Stock Exchange of its own book entry system that shall be responsible for keeping records of securities represented by book entry and for clearing and settlement, and which, with respect to such securities, shall possess the powers attributed to the Systems Company by this Act. For this purpose alone, the restrictions relating to corporate purpose and activity in the first paragraph of Article 46 and the first paragraph of Article 48 shall not apply. The provisions of Article 7 and of this Article shall apply to these services, except for the references to State bodies or entities, which shall be understood to refer to the corresponding bodies of the Autonomous Regional Government.

3.[25] Direct and indirect holdings in the capital of the Systems Company shall be subject to the rules governing qualifiying holdings set out in article 69 of this Act for investment firms, in the terms to be established by regulation; any holding which, directly or indirectly, amounts to at least 1% of the capital stock or voting rights of the Systems Company or one which, though less than that percentage, enables the holder to exert a significant influence on the Company, in the terms to be established by regulation, shall be classified as qualifiying.

Without prejudice to the power of the National Securities Market Commission to object to a significant holding in the terms of Article 69.6, the Ministry of Economy may, at the proposal of the National Securities Market Commission, oppose the acquisition of a significant holding in the Systems Company when it deems it necessary to do so in order to ensure the orderly functioning of the securities markets or record-keeping, clearing and settlement systems or to avoid distortions in them, or if Spanish entities do not receive equivalent treatment in the buyer's home country.

Apart from the exceptions to be established by regulation, the corporate by-laws of the Systems Company and any amendments to them shall require prior approval by the National Securities Market Commission. The appointment of members of the Boards of Directors, General Managers and similar positions in the Systems Company shall require prior approval by the National Securities Market Commission.

4. The Systems Company shall be governed by this Act and its secondary legislation and by a Regulation to be approved by the Minister of Economy on the basis of a report by the National Securities Market Commission, the Bank of Spain and the Autonomous Regional Governments whose Statutes of Autonomy empower them in the matter of regulating securities trading venues. That Regulation shall govern the functioning of the Systems Company, the services it provides, its economic regime, the procedures for setting and disclosing tariffs, the conditions and principles according to which it shall provide the aforementioned services, and the legal regime of the entities participating in the systems that it manages. In particular, the Regulation shall establish the legal regime of the participating entities that hold individualised accounts relating to securities

[25] Amended by Act 12/2006, of 16 May

belonging to parties which do not hold that status. The Regulation shall also regulate the proceedings to ensure the delivery and payment of securities and all types of collateral that the entities participating in the systems managed by the Systems Company must present.

5. If a member firm ceases to meet part or all of the obligation of payment in cash derived from the settlement, the Systems Company may dispose of the unpaid securities by taking the necessary measures to dispose of them via a member of the market.

6. Without prejudice to the disclosure requirements envisaged in Article 55.4 of this Act, the Systems Company shall provide the Minister of Economy and the various supervisory bodies, within the scope of their respective powers, with information on the registration, clearing and settlement activities in the systems managed by the Systems Company as requested by the Ministry and said bodies, provided that the information is at its disposal in accordance with the applicable regulations and subject to the provisions of this and other laws.

7. The Systems Company may establish agreements with resident and non-resident entities that perform similar functions, with central counterparties and others, subject to the provisions of this Act, of its secondary legislation and of the Regulation envisaged in paragraph 4 above, with regard to the opening and keeping of accounts or other activities of the Systems Company.

8. Once the courts have declared the insolvency (and the meeting creditors regime) of a firm participating in the systems managed by the Systems Company, the latter shall be entitled to the absolute right of separation with regard to the assets and rights constituting the collateral presented by the entities participating in the systems managed by the Systems Company. Without prejudice to the foregoing, any surplus remaining after settlement of the guaranteed operations shall be incorporated into the bankrupt's estate.

9. Once the courts have declared the insolvency (and the meeting creditors regime) of a firm participating in the systems envisaged in this article, the National Securities Market Commission, without prejudice to the powers of the Bank of Spain, may, immediately and at no cost to the investor, transfer its book entry records of securities to another firm authorised to perform this activity. In the same way, the owners of such securities may request for them to be transferred to another firm. If no firm is in a position to take on the responsibility for the aforementioned records, this activity shall provisionally be undertaken by the Systems Company until the owners request that the registration of their securities be transferred. For these purposes, both the competent judge and the bodies involved in the insolvency proceedings shall provide the firm to which the securities are to be transferred with access to the documentation and the book and computer entries necessary to make the transfer effective. The existence of the insolvency proceedings shall not prevent the owners of the securities from receiving the cash generated by the exercise of their economic rights or the sale thereof.

10. The Systems Company shall be considered as registered dealer and settlement agency of the securities payment, clearing and settlement systems envisaged in Article 8.c), 8.g) and, if appropriate, 8.i) of Act 41/1999, of 12 November, on the securities payment and

settlement systems, subject to legislation of the State or the Autonomous Regional Government with powers in the matter, where applicable, of the systems referred to in paragraphs d), e), f) and h) for all the purposes envisaged in that Act and, in particular, the purposes envisaged in Articles 11, 13 and 14 thereof.

11[26]. On the basis of a report by the National Securities Market Commission and the Bank of Spain, the Government may authorise other financial entities to perform any or all of the functions envisaged in paragraph 1 of this Article. Those entities shall be subject to the provisions of paragraph 8 and 9 of this Article and, in any case, they must comply with the minimum requirements to be established by secondary legislation, which must necessarily include the rules for becoming members of the systems, minimum equity, the good repute and professionalism of the executives in charge of the entity, organisational and operating structure, operational and accounting procedures, establishment of the measures to minimise and control risks, and connection to the payment systems. Those entities shall also be subject to the same supervisory and disciplinary rules as the Systems Company, with the specific features to be established by secondary legislation.

12[27]. The Government or, with its express authorisation, the Minister of Economy and Finance may establish the regulations to be complied with by the clearing and settlement systems relating to the trading of securities and the activity of financial institutions participating in such systems.

Article 44 ter

1. The Minister of Economy may, at the proposal of the National Securities Market Commission, and on the basis of a report by the Bank of Spain, authorise one or more central counterparties to operate as interposed parties on their own account with regard to the clearing and settlement of the obligations derived from the participation by the member entities in the clearing and settlement systems of securities or recognised financial instruments in accordance with Act 41/1999, of 12 November, on the securities payment and settlement systems, and with regard to transactions not carried out on the official markets. The firm or entities so authorised shall perform their activities in accordance with the provisions established by the corresponding Regulation, which must be approved by the Minister of Economy, on the basis of a report by the National Securities Market Commission, the Bank of Spain and the Autonomous Regional Governments whose Statute of Autonomy empowers them in matters of regulating securities trading venues.

Said Regulation shall determine, at least, the requirements to obtain the status of participant in same and shall establish the technical, operating and regulatory conditions of access to the services provided, the collateral required of member entities and the information that said entities must provide in relation to the transactions which they disclose to it, and the economic systems of the central counterparties.

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[26] Amended by Act 47/2007, of 19 December

[27] Added by Act 47/2007, of 19 December

2. The central counterparty may, on behalf and on the account of the trading entities, execute the obligations derived from the master contracts on transactions in transferable securities or derivatives, subject to the provisions of this or other applicable Laws and of the secondary legislation.

3. The central counterparty shall be subject to supervision by the National Securities Market Commission and the Bank of Spain, in their respective scope of competence and in the terms laid down in Article 88 of this Act.

4. Likewise, the central counterparty shall be subject to the provisions regarding the Systems Company established in Article 44 bis.8 and 44 bis.9 of this Act and the provisions of Act 41/1999, of 12 November, on the securities payment and settlement systems, as regards the systems regulated therein.

5. Subject to the provisions of this and other Laws and of the secondary legislation under this Act, the central counterparty may establish agreements with other resident and non-resident entities with similar functions or which manage securities clearing or settlement systems, and it may have a holding in said entities or accept them as shareholders. Such agreements must be approved by the National Securities Market Commission.

Article 44 quater[28]. Possibility of choosing the clearing and settlement system or the central counterparty.

1. The official secondary markets may enter into arrangements with a central counterparty or clearing and settlement system of another Member State with a view to providing for the clearing and/or settlement of some or all trades concluded by market participants under their systems.

2. The National Securities Market Commission may oppose such arrangements where it considers that they may be detrimental to the orderly operation of the market, having regard to the conditions of the settlement systems envisaged in paragraph 1 of article 44 quinquies.

Article 44 quinquies[29]. Right to designate a settlement system.

1. The official secondary markets must offer all their members the right to designate the system for the settlement of transactions in financial instruments undertaken on that market, subject to:

a) Establishment, between the settlement system designated by the market and the system or infrastructure designated by the member, of such procedures, links and technical and operating mechanisms as may be necessary to ensure the efficient and economical settlement of the transaction in question.

b) Recognition by the National Securities Market Commission that the technical conditions for settlement of transactions conducted in that market through a system other than the designated one enable the smooth and orderly functioning

[28] Added by Act 47/2007, of 19 December

[29] Added by Act 47/2007, of 19 December

of the financial markets, having regard in particular to the way in which relations are assured between the various record-keeping systems for transactions and financial instruments. This assessment by the National Securities Market Commission shall be without prejudice to the competencies of the Bank of Spain as supervisor of payment systems or other supervisory authorities of such systems. The National Securities Market Commission shall take into account the oversight/supervision already exercised by those institutions in order to avoid undue duplication of control.

2. The provisions of this article shall be without prejudice to the right of operators of central counterparty, clearing or settlement systems for financial instruments to refuse on legitimate commercial grounds to make the requested services available.

Article 44 sexies[30]. Access to central counterparty, clearing and settlement facilities.

Investment firms and credit institutions from other Member States of the European Union shall have the right of access to central counterparty, clearing and settlement systems in Spanish territory for the purposes of settling or arranging the settlement of transactions in financial instruments, regardless of whether they are traded in Spanish official secondary market or MTFs or in regulated markets or MTFs of other Member States of the European Union.

Access to such systems shall be subject to the same non-discriminatory, transparent and objective criteria as apply to local members.

The provisions of this article shall be without prejudice to the right of operators of central counterparty, clearing or securities settlement systems to refuse on legitimate commercial grounds to make the requested services available.

Chapter II - The stock exchanges

Article 45[31]

The authority to create Stock Exchanges rests with the Minister of Economy and Finance, in accordance with the provisions of article 31 bis, except in the case of Stock Exchanges located in the Autonomous Regions having Statutes of Autonomy which grant them powers in this area. In this case, the authority to create Stock Exchanges shall rest with such Autonomous Regions.

Article 46[32]

The purpose of the Stock Exchanges shall be to trade those categories of transferable securities and other financial instruments envisaged in Article 2 whose characteristics make them suitable for this purpose in accordance with the market regulation, as established in article 31 bis.

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[30] Added by Act 47/2007, of 19 December

[31] Amended by Act 47/2007, of 19 December

[32] Amended by Act 47/2007, of 19 December

Financial instruments listed in another official secondary market may be traded on Stock Exchanges in the terms to be established by their Regulation. In this case, any necessary coordination between the respective record-keeping, clearing and settlement systems must be established.

Article 47

The entities which comply with the provisions of Article 37 of this Act may become members of the Stock Exchanges.

Article 48

1.[33] The Stock Exchanges shall be managed and administered by a governing company, as provided in article 31 bis, which shall be responsible for their internal organisation and functioning, and shall own the necessary resources for such ends, this being its main object. These companies may perform other ancillary services. The shares of such companies shall be registered shares. These companies must have a Board of Directors composed of not less than five persons, and at least one General Manager. These companies shall not have the legal status of members of the corresponding Stock Exchanges, and they may not perform any brokerage activity or any of the activities listed in Article 63.

2. The Autonomous Regional Governments with powers in this area may establish the organisation that they deem appropriate for Stock Exchanges located in their territory.

Article 49

The Stock Exchanges shall establish a nationwide Stock Exchange Interconnection System (*Sistema de Interconexión Bursátil*), linked by a computer network, on which those securities determined by the National Securities Market Commission from among those previously listed on at least two Stock Exchanges shall be traded, at the request of the issuer and on the basis of a favourable report by the Stock Exchange Company (*Sociedad de Bolsas*) referred to in the following Article, in accordance with the provisions to be established by regulation.

Article 50

The Stock Exchange Interconnection System shall be managed by the Stock Exchange Company, which shall consist of the Governing Companies of the Stock Exchange existing at any given time. The capital of the Stock Exchange Company shall be distributed equally among said governing companies. Its Board of Directors shall consist of one representative from each Stock Exchange plus one further representative, elected by a majority of those governing companies, who shall act as Chairperson. The Stock Exchange Company shall own the necessary resources for the functioning of the Stock Exchange Interconnection System and shall be responsible for said system as its governing body, this being its sole corporate purpose.

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[33] Amended by Act 47/2007, of 19 December

The Stock Exchange Company's Articles of Association, any amendments thereto, and the appointment of the members of its Board of Directors shall require approval by the National Securities Market Commission, on the basis of a report by the Autonomous Regional Governments with powers in this area.

Article 51

The National Securities Market Commission may order that inclusion of an issue of securities in the Stock Exchange Interconnection System entails trading of the issue through that system alone, and it may demand as a prerequisite that the issue be included in the Securities Clearing and Settlement Service.

Article 52

Each stock trade shall be allocated to a sole Stock Exchange or to the Stock Exchange Interconnection System. In the case of transactions in which members of different Stock Exchanges take part, the criteria to be followed for said allocation shall be established by regulation.

Article 53. Obligations of shareholders and holders of other securities and financial instruments[34]

1. Any shareholder who, directly or indirectly, acquires or disposes of shares with voting rights of an issuer whose home state is Spain, in the terms to be established by regulation, and whose shares are listed in an official secondary market or another regulated market domiciled in the European Union, with the result that the voting rights in his power exceed or fall below the thresholds to be established must notify the issuer and the National Securities Market Commission, in the conditions to be determined, of the resulting proportion of voting rights.

The obligation contained in the preceding paragraph will apply also where the proportion of voting rights exceeds, attains or falls below the thresholds referred to in the preceding paragraph as a result of a change in the issuer's total number of voting rights based on information disclosed to the National Securities Market Commission and made public.

2. The obligations established in the preceding paragraph will also apply to any person who, regardless of the ownership of the shares, is entitled to acquire, dispose of or vote them, in the cases to be determined by regulation.

3. The provisions of the preceding paragraphs will also apply to anyone directly or indirectly owning, acquiring or disposing of other securities and financial instruments that grant the right to acquire shares with voting rights, in the terms to be established by regulation.

4. The obligations established in the preceding paragraphs will also apply where shares of an issuer whose home Member State is Spain are listed for the first time in an official secondary market or another regulated market domiciled in the European Union.

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[34] Amended by Act 6/2007 on 12 April

5. Where the party in any of the cases listed in the preceding paragraphs is a director of the issuer, in addition to fulfilling the obligation to disclose any transaction with the issuer's shares or other securities or financial instruments referenced to the shares, he must notify the National Securities Market Commission of the shares he possessed at the time of appointment and removal.

The issuer's executives are obliged to disclose the transactions referred to in article 83.bis.4 of this Act.

6. The issuer must publish and disseminate the information referred to in the preceding sections.

7. The form, deadline and other conditions for compliance with the obligations established in this article and any exceptions to compliance with these obligations will be determined by regulation.

8.The provisions of this article and the following article will not apply to the shareholders and unit-holders of mutual funds and open-ended collective investment companies referred to in Act 35/2003, of 4 November, on Collective Investment Institutions.

Article 53 bis. Issuers' obligations with respect to own shares[35]

Issuers whose home Member State is Spain and whose shares are listed in an official secondary market or another regulated market domiciled in the European Union must present to the National Securities Market Commission and publish and disseminate information on transactions with their own shares, in the terms to be established by regulation, where the proportion attains, exceeds or falls below the percentages to be determined. This information will be included in the official register regulated in article 92 of this Act.

The provisions of this article will not apply to the open-ended collective investment companies referred to in Act 35/2003, of 4 November, on Collective Investment Institutions.

Article 53 ter. Preventive measures [36]

1. Where Spain is the host Member State in the terms to be established by regulation, the National Securities Market Commission must inform the competent authority of the home Member State if it observes that the issuer, a shareholder or holder of other financial instruments, or a natural or legal person as referred to in article 53.2, has committed irregularities or breached its obligations under articles 35, 35.bis, 53 and 53.bis of this Act.

2. If, because the authority of the home Member State has not adopted measures or despite the measures adopted by the competent authority of the home Member State or where such measures proved to be insufficient, the person indicated in the preceding

[35] Added by Act 6/2007 of 12 April

[36] Added by Act 6/2007 of 12 April

paragraph persists with its violation of the law or regulations, the National Securities Market Commission will, after notifying the competent authority of the home Member State, adopt the pertinent measures to protect investors. The National Securities Market Commission will notify the European Commission of the measures that are adopted

Article 54 (repealed on 1 April 2003)

Chapter III - Public-Debt Market Represented by Book Entries

Article 55[37]

1. The Public-Debt Book-Entry Market's exclusive object shall be to trade fixed-income securities represented by book entries and issued by the State, the Official Credit Institute (Instituto de Crédito Oficial) and, at their request, by the European Central Bank, the National Central Banks of the European Union, or by the Autonomous Regions and by the multilateral development banks of which Spain is a member, the European Investment Bank, or other public entities, in the cases to be established by secondary legislation, as well as trading in other financial instruments, in all the foregoing cases in accordance with the provisions of the market's regulation as established in article 31 bis. In any case, the securities must conform to the technical specifications to be established for this purpose in the market's Regulation. Securities listed in this market may be traded on other official secondary markets, in the terms to be established in the corresponding market's regulations.

2. The Bank of Spain shall have the status of governing body of the Public-Debt Book-Entry Market. The Bank of Spain shall carry out the financial services for the book-entry securities when it arranges to do so with the issuers and on their behalf, in the terms to be established by the market's regulation.

3. The replacement of the governing body of the Public-Debt Book-Entry Market shall be governed by the provisions of paragraph 2 of article 31 quater.

4. The Public-Debt Book-Entry Market shall be governed by this Act and its secondary legislation, and by a Regulation, as provided in article 31 bis.

5. The Autonomous Regions with powers in the matter may create, regulate and organise regional Public-Debt Book-Entry Markets whose purpose shall be to trade fixed-income securities issued by those regions and by other public law entities within their territory.

Article 56

1[38]. In addition to the Bank of Spain, membership of the Public-Debt Book-Entry Market may be granted to those entities which meet the requirements laid down in Article 37 of this Act, in the terms of this article and in accordance with the provisions of the Market regulation.

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[37] Amended by Act 47/2007, of 19 December

[38] Amended by Act 47/2007, of 19 December

2. The members of the market may operate on their own account or on that of third parties, with or without representation, in accordance with the legislation governing their activities.

3. REPEALED by Act 47/2007, of 19 December, amending Act 24/1988, of 28 July, on the Securities Market

Article 57

1. The Systems Company envisaged in Article 44 bis.1 of this Act and its member entities so authorised by virtue of their status as registered dealers (*entidades gestoras del mercado de deuda pública*) in the Public-Debt Market shall be responsible for record-keeping of the securities listed on the Public-Debt Market Represented by Book Entries.

2. The Systems Company shall keep accounts of all securities listed on said market, either individually, in the case of accounts in the name of the participating entities which are account owners on the Public-Debt Market, or collectively, in the case of accounts for clients of the participating entities so authorised by virtue of their status as registered dealers in that market.

3[39]. In addition to the Bank of Spain, the clearing and settlement systems and bodies of the official secondary markets, the interbank clearing systems intended to manage the guarantee system, and those which meet the requirements to be established for that purpose by the market regulation may be owners of accounts in their own name on the Public-Debt Book-Entry Market and hold accounts as member entities in their own name in the record-keeping system of the Systems Company.

Article 58[40]

1. In addition to the Bank of Spain, those members of the market that comply with the requirements to be established by the market regulation may be registered dealers.

2. As participants in the record-keeping system under the supervision of the Systems Company, the registered dealers shall keep a record of the securities owned by parties that are not account-holders in their own name in the Public-Debt Book-Entry Market, and they shall maintain an omnibus account at the Systems Company which shall be the exact counterparty of the aforementioned records at all times.

3. When the registered dealers also own an account in their own name in the Public-Debt Market, the latter accounts shall be kept by the Systems Company, totally separate from the omnibus accounts envisaged in the preceding paragraph.

4. In the terms to be established by secondary legislation, the Bank of Spain may resolve to suspend or restrict the activities of market members and registered dealers as a preventive measure when their actions create risks or cause serious disruption to the market, the clearing and settlement procedures or, in the case of registered dealers, the legal certainty of the recorded securities. The Bank of Spain shall communicate these

[39] Amended by Act 47/2007, of 19 December

[40] Amended by Act 47/2007, of 19 December

measures to the National Securities Market Commission and to the Ministry of Economy and Finance, so that they may be ratified by the Minister, if appropriate.

5. In the event of insolvency by a registered dealer in the Public-Debt Book-Entry Market, the Bank of Spain may order, immediately and at no cost to the investor, the transfer of the book-entry securities to third-party accounts of other registered dealers. In the same way, the owners of such securities may request for them to be transferred to another registered dealer. For these purposes, both the judge in charge of the insolvency proceedings and the bodies involved in the insolvency proceedings shall provide the registered dealer to which the securities are transferred with access to the documentation and the book and computer entries necessary to make the transfer effective, thus safeguarding the rights of the owners of the securities. The insolvency proceedings shall not prevent the owners of the securities from receiving the cash generated by the exercise of their economic rights or the sale thereof.

6. If, in accordance with the provisions of article 55.3, the Bank of Spain ceases to be the market's governing body, the powers attributed to it in paragraphs 4 and 5 of this article shall rest with the National Securities Market Commission.

6. (REPEALED by the repealing provision, paragraph a), of Act 44/2002.)

7. (REPEALED by the repealing provision, paragraph a), of Act 44/2002.)

Chapter IV - Official secondary markets in futures and options represented by book entries

Article 59[41]. Official Secondary Markets in Futures and Options.

1. Official Secondary Markets in Futures and Options represented by book entries may be created at State level. The authority to approve their creation shall rest with the Minister of Economy and Finance, at the proposal of the National Securities Market Commission, in accordance with the provisions of article 31 bis.

The authorisation to establish a market and the other authorisations and approvals provided in this article shall rest with the Autonomous Region with powers in this area, in the case of regional markets.

2. Futures and options contracts and other derivative financial instruments, regardless of the underlying asset, as defined by the market governing body, may be traded on such markets.

The governing company shall organise trading, clearing and settlement of such contracts by performing all or just some of these functions. Record-keeping of the financial instruments that are traded shall be the responsibility of the governing company, which shall keep the central record, with the members authorised to keep detailed records of the contracts with their clients, as appropriate.

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[41] Amended by Act 47/2007, of 19 December

The Government shall establish the solvency conditions and technical resources required for members to be authorised to keep records of their clients' contracts, which must match the central record kept by the governing company.

The market governing company shall itself act, or engage another entity to act, as counterparty in all the contracts that it issues, in the latter case with prior approval by the National Securities Market Commission. The market governing company may also perform the activities of the central counterparty envisaged in Article 44 ter, in which case the provisions of this Article shall apply subject to any conditions to be laid down by the corresponding Regulation.

3. The entities envisaged in Article 37 of this Act may be members of these markets. Those entities whose principal object is to invest in organised markets and which meet the conditions as to resources and solvency established by the Market Regulation envisaged in paragraph 7 of this article may also be members, with capacity restricted exclusively to trading, either on their own account or on the account of entities of their group. In the markets in futures and options with non-financial underlyings, attainment of membership by entities other than those envisaged above may be determined by regulation, provided that those entities meet the specialisation, professionalism and solvency requirements

4. As provided in article 31 bis, within the official secondary markets in futures and options, there shall be a market governing company in the form of a corporation whose basic functions shall be to organise, manage and supervise market activity. Such market governing companies may not carry out any brokerage activities or any of the activities envisaged in article 63, except as provided in this Act. Nevertheless, for the purposes of managing the system of collateral, they may have accounts in the Public-Debt Market or hold an equivalent position in markets or systems outside Spain which perform similar functions.

5. The amendment of the Articles of Association of the governing company shall require prior approval from the National Securities Market Commission, as provided in article 31 bis, subject to the exceptions to be provided by secondary legislation.

6. The market governing company shall have a Board of Directors, consisting of at least five members, and, at least, a General Manager. Once initial authorisation has been obtained, the new appointments must be approved by the National Securities Market Commission or, as the case may be, by the Autonomous Region with powers in this area, to ensure that the appointees meet the requirements of article 67.2.f) and 67.2.g) of this Act.

7. In addition to the rules of this Act and its secondary legislation, these Markets shall be governed by a specific Regulation, which shall have the status of a Securities Market regulation of order and discipline and which shall be approved by the procedure envisaged in article 31 bis. That Regulation shall detail the classes of members, specifying the technical and solvency requirements that they must meet in connection with the various activities to be performed in the market, the contracts traded in the market, the legal relations between the governing company and the market members, on the one hand, and the clients operating in the market, on the other, the rules of

supervision, the system of collateral, the means of trading, clearing, settlement and record-keeping of the contracts in the market, and any other aspects to be determined by regulation.

8. The collateral provided by the members of the market and the clients in accordance with the rules of the respective Regulation and in connection with any trades made in the scope of the futures and options market shall be valid only vis-à-vis the entities in whose favour it was provided and only for the obligations deriving from such transactions for the governing company or the market members.

9. In the event of insolvency on the part of the members of the official secondary markets or the clients, the governing companies of such markets shall have the absolute right of separation with regard to financial instruments and cash representing the collateral which the members and clients have provided or accepted in their favour, in accordance with the provisions of the respective markets' Regulation. Without prejudice to the foregoing, any surplus remaining after settlement of the guaranteed transactions shall be incorporated into the estate in insolvency of the client or member in question.

Where the clients of members of official secondary markets are involved in insolvency proceedings, those members shall be entitled to the absolute right of separation with regard to securities and cash representing the collateral which their clients have provided in their favour, in accordance with the provisions of the respective market's Regulation. Without prejudice to the foregoing, any surplus remaining after settlement of the operations shall be incorporated into the estate in insolvency of the client in question.

Once a member has been declared bankrupt, the market governing company, after first notifying the National Securities Market Commission, shall arrange for the transfer of any contracts registered for clients, together with the securities and cash representing the corresponding collateral. Where such transfer cannot be effected, the managing company may order the settlement of the contracts which the member had open with the governing company, including those for the account of clients. In that case, once the procedures that must be performed with respect to the registered positions and collateral provided by clients vis-à-vis the member in question have concluded, the clients shall have the absolute right of separation with respect to any surplus.

For these purposes, both the competent judge and the administrators in the bankruptcy proceedings shall provide the entity to which the book entries and collateral are to be transferred with access to the documentation and the computer records required to make the transfer effective.

Chapter IV BIS[42]. Notification of transactions

Article 59 bis[43]. Notification of transactions to the National Securities Market Commission.

1. Investment firms and credit institutions that perform transactions in financial instruments must report them to the National Securities Market Commission as soon as possible; the data set out in the first paragraph of section 3 of this article must be presented no later than the end of the business day following execution. This obligation applies in all cases, regardless of the method, means, market or system on which the trade was performed.

Trades in units or shares of UCITS that are not listed in regulated markets or multilateral trading facilities are exempted from this reporting obligation.

2. Trades may be reported by the investment firm itself, a third party acting on its behalf, the governing company of the regulated market or investment firms or market operators operating the multilateral trading facility where the trade was performed, or by a trade-matching or reporting system approved by the National Securities Market Commission.

Where transactions are notified to the National Securities Market Commission by the governing company of the regulated market or investment firms or market operators operating the MTF, or by a trade-matching or reporting system approved by the National Securities Market Commission, the investment firm or credit institution may be exempted from the obligation established in item 1 of this article.

3. The content of the reports must conform to Commission Regulation 1287/2006 implementing Directive 2004/39/EC as regards record-keeping obligations for investment firms, transaction reporting, market transparency, admission of financial instruments to trading, and defined terms for the purposes of that Directive.

Also, the entities indicated in section 1 of this article must provide the National Securities Market Commission, in the form, detail and time to be determined by regulation, with the identity of the clients on whose behalf the transactions were executed.

The Minister of Economy and Finance is empowered to establish any additional reporting requirements that are considered necessary to enable the National Securities Market Commission to perform the supervisory functions entrusted to it, provided that any of the following holds:

> a) the financial instrument to which the report refers has specific characteristics that are not included in the information required under Commission Regulation 1287/2006; or

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[42] Added by Act 47/2007, of 19 December

[43] Added by Act 47/2007, of 19 December

b) the specific trading methods of the trading system where the transaction was performed are not included in the information required under Commission Regulation 1287/2006.

4. Investment firms and credit institutions must also keep the data on transactions set out in this article at the disposal of the CNMV for at least five years.

5. The National Securities Market Commission shall be responsible for remitting the reports received under the provisions of article 91 bis to the competent authority of the most relevant market in terms of liquidity of the financial instrument to which the transaction referred, where that market is located in another European Union Member State.

Reports to the National Securities Market Commission by branches in Spain of investment firms and credit institutions from other Member States, filed in accordance with the provisions of paragraph five of article 71 bis.2, shall be remitted to the competent authority of the entity's home State, except where that authority has waived the receipt of information.

6. The most relevant market in terms of liquidity, the specific channels for sending reports, the exchange of information by the National Securities Market Commission with other competent authorities, and the detailed rule-making on the other matters established in this article are covered in articles 9 to 14 of Commission Regulation 1287/2006 of 10 August 2006 implementing Directive 2004/39/EC of the European Parliament and of the Council as regards record-keeping obligations for investment firms, transaction reporting, market transparency, admission of financial instruments to trading, and defined terms for the purposes of that Directive.

Chapter V - Takeover bids

Article 60 Mandatory takeover bids[44]

1. Any person that attains control of a listed company by any of the means listed below will be obliged to make a takeover bid, addressed to all shareholders at an equitable price, for all of the shares or other securities that can directly or indirectly give entitlement to subscribe or acquire shares:

a) By acquisition of shares or other securities that, directly or indirectly, give entitlement to subscribe or acquire voting shares in the company;

b) By means of agreements with other shareholders; or

c) As a result of other similar circumstances to be determined by regulation.

The obligations referred to in this Chapter will be deemed to apply to companies some or all of whose shares are listed on an official Spanish secondary market and whose corporate domicile is in Spain.

[44] Amended by Act 12/2007 of 12 April

The obligations referred to in this Chapter will also apply, in the terms to be established by regulation, to companies not domiciled in Spain whose shares are not listed on a regulated market in the European Union Member State where they have their corporate domicile, in the following cases:

a) Where the companies' securities are listed only on an official Spanish secondary market.

b) Where the first listing of the securities on a regulated market was on an official Spanish secondary market.

c) Where the company's securities are simultaneously listed on regulated markets of more than one Member State and on an official Spanish secondary market, and the company so decides by means of notice to those markets and their competent authorities on the first day of trading in the securities.

d) Where, on 20 May 2006, the company's securities were already simultaneously listed on regulated markets of more than one Member State and on an official Spanish secondary market and the National Securities Market Commission so agrees with the competent authorities of other markets where the securities are listed or, absent such agreement, where the company itself so decides.

The provisions of this Chapter will also apply, in the terms to be established by regulation, to companies domiciled in Spain whose securities are not listed on an official Spanish secondary market.

The price will be deemed to be equitable if it is equal to the highest price paid by the party obliged to make the takeover bid, or the persons acting in concert with it, for the same securities, during the period prior to the bid that is determined by regulation, and in the terms to be established. Nevertheless, the National Securities Market Commission may modify the price so calculated in the circumstances and in accordance with the criteria to be established by regulation. Such circumstances may include the following, among others: the highest price was established by agreement between the buyer and seller; the market prices of the securities in question have been manipulated; the market prices generally, or certain prices in particular, were affected by exceptional events; the purpose is to refloat the company. The aforementioned criteria may include, among others, the average market price in a given period, the company's net asset value, or other generally-used objective criteria.

In the event of modification of the price referred to in the preceding paragraph, the National Securities Market Commission will publish, on its web site, the decision that the takeover bid be made at a price other than the equitable price. That decision must be substantiated.

2. For the purposes of this chapter, a natural or legal person will be deemed, individually or with others acting in concert, to have control of a company where they, directly or indirectly, attain 30% or more of the voting rights; or, even if their stake is lower, where they appoint, in the terms to be established by regulation, a number of directors that, combined with any which they had already appointed, represent more than half of the members of the company's governing body.

The National Securities Market Commission may, in the terms to be established by regulation, waive the obligation to present a takeover bid that is established in this article if another natural or legal person directly or indirectly owns a percentage of votes that is equal to or greater than that held by the party obliged to make a takeover bid.

3. Parties in breach of the obligation to present a takeover bid may not exercise the political rights deriving from any of the securities of the listed company to which they are entitled for any reason, without prejudice to the sanctions set out in Title VIII of this Act. This prohibition will also apply to securities held indirectly by the party obliged to present the takeover bid and those held by parties acting in concert with that party.

For the purposes of this section, breach of the obligation to present a takeover bid consists of failure to present, presentation after the established deadline, or presentation with essential deficiencies.

Decisions adopted by the company's governing bodies will be null and void where the quorum for the meeting or the majority for the vote were attained only by counting the securities whose political rights are suspended in accordance with the provisions of this section.

The National Securities Market Commission will be entitled to challenge such decisions within one year from the date on which it had knowledge of the decision, without prejudice to the standing of any other parties.

The National Securities Market Commission may challenge the decisions of the listed company's Board of Directors within one year from the date on which it had knowledge of the decision.

4. Where the consideration offered consists of securities to be issued by the company obliged to make the takeover bid, the pre-existing shareholders and holders of convertible bonds will not have the pre-emptive subscription right envisaged in article 158 of Legislative Royal Decree 1564/1989, of 22 December, which approved the Consolidated Text of the Public Companies Act.

5. The following will be established by regulation:

a) The securities which the takeover bid must address;

b) The rules and periods for counting the percentage of votes granting control of a company, considering direct and indirect holdings, and any agreements, pacts or situations of joint control;

c) The party that is obliged to present the takeover bid in situations of shareholder agreements and supervening control where a takeover bid must be made;

d) The terms in which the takeover bid will be irrevocable or in which it may be made conditional or amended;

e) The guarantees to be demanded depending on whether the consideration is in the form of money, pre-existing securities, or securities whose issuance has not yet been approved by the offeror;

f) The form of administrative control to be exercised by the National Securities Market Commission and, generally, the procedure for takeover bids;

g) The rules for competing bids, if any;

h) The pro-rating rules;

i) Transactions which are exempt from these rules;

j) The equitable price, the forms of consideration and any applicable exceptions;

k) The information that must be made public before the takeover bid is presented, after it has been decided to present it, during the bid, and after its completion;

l) The deadline by which a takeover bid must be presented, counted from the date of its public announcement;

m) The rules on lapsing of takeover bids;

n) The rules on publication of the outcome of the takeover bids;

o) The information to be supplied by the governing bodies or management of the offeree and of the offeror to the representatives of their respective workers or, if none exist, to the workers themselves, and the procedure applicable for that obligation, all without prejudice to the provisions of labour law; and

p) Any other matters which it is considered advisable to regulate.

Article 60 bis Obligations of the governing and executive bodies[45]

1. During the period and in the terms to be established by regulation, the governing and management bodies of the offeree or the companies in its group must obtain prior authorisation from the Shareholders' Meeting, as provided in article 103 of the Consolidated Text of the Public Limited Companies Act, approved by Legislative Royal Decree 1564/1989, of 22 December, before taking any action, other than seeking alternative bids, which may result in the frustration of the bid and in particular before issuing any shares which may prevent the offeror from acquiring control of the offeree company.

As regards decisions taken before the beginning of the period referred to in the preceding paragraph and not yet partly or fully implemented, the Shareholders' Meeting must approve or confirm, in accordance with article 103 of the Consolidated Text of the Public Limited Companies Act, approved by Legislative Royal Decree 1564/1989, of 22 December, any decision which does not form part of the normal course of the company's business and whose implementation may result in the frustration of the bid.

If the offeree company has a dual governance system, the provisions of the preceding paragraphs will be deemed to apply also to the oversight board.

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[45] Added by Act 6/2007 of 12 April

The Shareholders' Meeting referred to in this section may be convened with fifteen days' advance notice by means of an announcement published in the Official Bulletin of the Mercantile Register and in one of the newspapers with the largest circulation in the province, indicating the date of the meeting at first call and the business to be transacted.

The Official Bulletin of the Mercantile Register will publish the announcement immediately upon receipt.

2. Companies may elect not to apply the provisions of the preceding section where they are the target of a takeover bid by a company not domiciled in Spain and not subject to those or equivalent rules, including the rules governing the adoption of decisions by the Shareholders' Meeting, or by an entity controlled directly or indirectly by such an entity, as provided in article 4 of this Act.

Any decision adopted by virtue of the provisions of the preceding paragraph will require the authorisation of the Shareholders' Meeting in accordance with the provisions of article 103 of the Consolidated Text of the Public Limited Companies Act, approved by Legislative Royal Decree 1564/1989, of 22 December, which must have been adopted at most 18 months prior to the publication of the takeover bid.

3. The offeree's governing body must publish a detailed report on the takeover bid in the terms and within the deadlines to be established by regulation.

Article 60 ter Optional breakthrough measures

1. Companies may decide to apply the following breakthrough measures:

a) Suspension, during the bid acceptance period, of restrictions on the transfer of securities established in shareholder agreements relating to the company.

b) Suspension, at the Shareholders' Meeting called to decide upon defensive measures as referred to in article 60.bis.1 of this Act, of the restrictions on voting rights set out in the offeree's bylaws and in non-statuary shareholder agreements relating to the company.

c) Suspension of the restrictions set out in a) and b) above where an offeree has attained 75 per cent or more of the voting capital in a public takeover bid.

2. The decision to apply this article must be adopted by the company's Shareholders' Meeting, as provided by article 103 of the Consolidated Text of the Public Limited Companies Act, approved by Legislative Royal Decree 1564/1989, of 22 December, and must be notified to the National Securities Market Commission and the supervisors of the Member States where the company's shares are listed or where a listing application has been presented. The National Securities Market Commission must publish this communiqué in the terms and within the deadline to be established by regulation.

The Shareholders' Meeting of the company may, at any time, revoke the decision to apply this article, in accordance with the provisions of article 103 of the Consolidated Text of the Public Limited Companies Act, approved by Legislative Royal Decree 1564/1989, of 22 December. The majority required by virtue of this paragraph must coincide with that required by virtue of the preceding paragraph.

3. Where the company decides to apply the measures described in section 1, it must provide appropriate compensation for the loss suffered by the holders of the rights referred to there.

4. Companies may cease to apply the breakthrough measures that were implemented under the preceding sections where they are the target of a takeover bid by an entity or group that has not adopted equivalent breakthrough measures.

Any measure adopted by virtue of the preceding paragraph will require the authorisation of the Shareholders' Meeting, in accordance with the provisions of article 103 of the Consolidated Text of the Public Limited Companies Act, approved by Legislative Royal Decree 1564/1989, of 22 December, adopted at most 18 months prior to the announcement of the takeover bid.

5. Any other aspects which it is considered necessary to regulate for the implementation of the provisions of this article may be established by regulation.

Article 60 quater Squeeze-out and sell out [46]

1. Where, as a result of a takeover bid for all of the securities, in the terms of articles 60 and 61 of this Act, the offeror owns securities representing at least 90 per cent of the voting capital and the offer has been accepted by owners of securities representing at least 90 per cent of the voting rights not owned by the offeror:

a) The offeror may demand that the remaining owners of securities sell them to it at a equitable price.

b) The owners of the offeree's securities may demand that the offeror buy their securities at a equitable price.

2. The procedure and requirements for squeeze-out and sell out referred to in the preceding section will be established by regulation.

[46] Added by Act 6/2007 of 12 April

Article 61 Voluntary takeover bids [47]

Voluntary takeover bids to acquire shares or other securities that indirectly grant voting rights in a listed company must be addressed to all the holders, will be subject to the same rules of procedure as the takeover bids envisaged in this Chapter and may be made, in the conditions to be established by regulation, for less than the total number of securities.

The mandatory takeover bid envisaged in article 60 of this Act will not be required where control has been acquired following a voluntary takeover bid for all of the securities, addressed to all the holders, and the other requirements set out in this chapter have been complied with.

TITLE V - INVESTMENT FIRMS

Chapter I - General provisions

Article 62[48]. Definition of investment firm, and exclusions.

1. Investment firms are companies whose principal activity consists of providing investment services, on a professional basis, to third parties with respect to the financial instruments set out in article 2 of this Act.

2. In accordance with their specific legal regime, investment firms shall provide investment services and the ancillary services envisaged in the next article, and they may be members of the official secondary markets if they wish, in accordance with the provisions of Title IV of this Act.

3. The Act shall not apply to the following persons:

a) persons who do not provide any investment service other than dealing on their own account unless they are market makers or deal on their own account outside a regulated market or MTF on an organised, frequent and systematic basis by providing a system accessible to third parties in order to engage in dealings with them;

b) persons providing investment services that consist solely of both administration of employee-participation schemes and/or the provision of investment services exclusively for their parent undertakings, for their subsidiaries or for other subsidiaries of their parent undertakings;

c) persons dealing on their own account in financial instruments, or providing investment services in commodity derivatives or derivative contracts included in

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[47] Amended by Act 6/2007 of 12 April

[48] Amended by Act 47/2007, of 19 December

article 2.8 to the clients of their main business, provided this is an ancillary activity to their main business, when considered on a group basis, and that their main business is not the provision of investment services within the meaning of this Act or banking services under Directive 2000/12/EC;

d) persons whose main business consists of dealing on their own account in commodities or commodity derivatives. This exception shall not apply where the persons that deal on their own account in commodities and/or commodity derivatives are part of a group the main business of which is the provision of other investment services within the meaning of this Act or banking services under Directive 2000/12/EC;

e) firms which provide investment services consisting exclusively in dealing on their own account on markets in financial derivative instruments and on cash markets for the sole purpose of hedging positions on financial derivatives markets or which deal for the accounts of other members of those markets or make prices for them and which are guaranteed by clearing members of the same markets, where responsibility for ensuring the performance of contracts entered into by such firms is assumed by clearing members of the same markets;

f) persons providing an investment service where that service is provided in an incidental manner in the course of a professional activity and that activity is regulated by legal or regulatory provisions or a code of ethics governing the profession which does not preclude the provision of that service;

g) persons providing investment advice in the course of providing another professional activity not covered by this Act provided that the provision of such advice is not specifically remunerated;

h) the members of the European System of Central Banks and other national bodies performing similar functions and other public bodies charged with or intervening in the management of the public debt;

i) UCITS and pension funds, and their depositories and management companies. However, the Act shall apply to the management companies of UCITS in connection with the activities described in article 65.2 of this Act and under the conditions provided therein.

4. This Act shall not apply to the provision of services as counterparty in transactions carried out by public bodies dealing with public debt or by the Bank of Spain, the European Central Bank or other members of the European System of Central Banks when performing the tasks assigned to them by the applicable legislation.

Article 63[49]. Investment services and ancillary services.

1. The following are considered to be investment services:

[49] Amended by Act 47/2007, of 19 December

a) Reception and transmission of orders in relation to one or more financial instruments.

This service is deemed to include putting two or more investors in contact in order to trade among themselves in one or more financial instruments.

b) The execution of such orders for the account of clients.

c) Dealing on own account.

d) Discretionary and individualised management of investment portfolios on the basis of mandates granted by clients.

e) Placing of financial instruments, with or without a firm commitment basis.

f) Underwriting the issuance or placement of financial instruments.

g) Investment advice, i.e. the provision of personal recommendations to a client, either upon the latter's request or at the initiative of the investment firm, in respect of one or more transactions relating to financial instruments. For the purposes of this paragraph, generic non-personalised recommendations made in the context of marketing securities and financial instruments shall not constitute advice. Such recommendations shall be treated as commercial communications.

h) Operation of multilateral trading facilities.

2. The following are considered to be ancillary services:

a) The custody and administration of the instruments envisaged in article 2 for the account of clients.

b) The provision of loans and credit to investors for them to arrange a transaction on one or more of the instruments envisaged in article 2, provided that the lender participates in the transaction.

c) Advisory services to companies about capital structure, industrial strategy and related matters, and advice and other services related to mergers and acquisitions of companies.

d) Services related to underwriting issues or placements of financial instruments.

e) Investment research and financial analysis or other forms of general recommendations relating to transactions in financial instruments.

This section shall also apply to any information that, without taking account of the personal circumstances of the client to which it is addressed, recommends or suggests an investment strategy, explicitly or implicitly, concerning one or several financial instruments or the issuers of financial instruments, including any opinion as to the present or future value or price of such instruments, provided that it is intended for distribution channels or for the public, and in relation to which the following conditions are met:

i) The investment report is classified as such or as financial analysis or another similar term, or is presented as an explanation that is objective or

independent of those issuers or instruments to which the recommendations refer.

ii) The recommendation in question if made by an investment firm to a client would not constitute the provision of investment advice for the purposes of paragraph g) of the preceding section of this article.

f) Foreign exchange services where these are connected to the provision of investment services.

g) Investment services and ancillary services related to the non-financial underlying of the financial derivatives included under paragraphs 3, 4, 5 and 8 of article 2 of this Act, where these are connected to the provision of investment or ancillary services.

The deposit or delivery of merchandise classified as deliverables shall be deemed to be included.

3. In the terms to be established by secondary legislation, and provided that any risks and conflicts of interest between them and their clients, or between different types of clients, are suitably resolved, investment firms may perform the activities envisaged in the preceding paragraphs in connection with instruments not envisaged in article 2 of this Act, and other ancillary activities that represent an extension of their business, where this does not clash with the exclusive object of investment firms.

Investment firms may not operate solely as managers of UCITS, pension funds or asset securitisation trusts.

4. The marketing of investment services and the capture of clients do not, in themselves, constitute investment services but, rather, are activities preceding each of the investment services enumerated in the preceding paragraphs and may be performed separately from the provision of the service itself.

5. The Government may amend the contents of the list of investment services and ancillary activities contained in this article and the list of financial instruments contained in article 2 so as to adapt to amendments in European Union legislation. The government may also regulate the form of providing the services and ancillary services referred to in this article.

Article 64[50]. Classes of investment firm.

1. The following are investment firms:

a) Broker-dealers (*sociedades de valores*).

b) Brokers (*agencias de valores*).

c) Portfolio management companies (*sociedades gestoras de carteras*).

d) Financial advisory firms.

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[50] Amended by Act 47/2007, of 19 December

2. Broker-dealers are investment firms that may operate professionally, for both their own account and that of third parties, and perform all the investment services and ancillary activities envisaged in article 63.

3. Brokers are investment firms which may only trade professionally for the account of third parties, with or without representation. They may perform the investment services and ancillary services envisaged in article 63, with the exception of those envisaged in articles 63.1.c), 63.1.f) and 63.2.b).

4. Portfolio management companies are investment firms that may only provide the investment services envisaged in article 63.1.d) and 63.1.g). They may also provide the ancillary services envisaged in article 63.2.c) and 63.2.e).

5. Investment advisory firms are natural or legal persons that may only provide the investment services envisaged in article 63.1.g) and 63.2.c) and 63.2.e).

In no event will the activities performed by these companies be covered by the Investment Guarantee Fund regulated in Title VI of this Act.

These companies, and those described in the preceding paragraph, may not engage in transactions in securities or cash for their own account except to administer their own funds and subject to the limitations to be established by secondary legislation. These firms are not allowed to hold clients' funds or securities, for which reason they may not in any event place themselves in debt to their clients.

6. The terms "*Sociedad de Valores*" (broker-dealer), "*Agencia de Valores*" (broker), "*Sociedad Gestora de Carteras*" (portfolio management company) and "*Empresa de Asesoramiento Financiero*" (investment advisory firm) and the abbreviations "S.V.", "A.V.", "S.G.C." and "E.A.F.I.", respectively, are reserved for the entities registered in the corresponding registers of the National Securities Market Commission, which are obliged to include those terms in their names. No other person or entity may use such names or abbreviations or the description "*empresa de servicios de inversión*" (investment firm) or any other name or abbreviation that might lead to confusion.

7. No person or entity may perform, on a professional basis, the activities envisaged in article 63.1 and in article 63.2 paragraphs a), b), d), f) and g) in connection with the instruments envisaged in article 2, including currency transactions for this purpose, unless they have the necessary authorisation and are registered in the corresponding administrative registers.

Also, the marketing of investment services and the capture of clients may only be performed professionally, directly or through the agents regulated in article 65 bis of this Act, by entities authorised to provide such services.

8. Persons or entities that breach the provisions of the preceding two paragraphs shall be ordered to immediately cease using the names or offering or providing the aforementioned services. If, after thirty days have elapsed from the date of the order, they continue to use or perform them, they shall be penalised with coercive penalties amounting to up to 500,000 euro, which may be repeated on the occasion of subsequent orders.

The National Securities Market Commission shall be the body empowered to issue orders and impose fines as described in the preceding paragraph, and it may also issue public warnings about the existence of such conduct. Such orders shall be issued after hearing the interested person or entity, and the imposition of fines shall conform to the procedures provided by the Act.

The provisions of this section shall be understood without prejudice to the other penalties that may be applicable by application of Title VIII of this Act and other liabilities, including criminal liabilities, that may exist.

9. The Mercantile Register and other public Registers shall not register entities whose object or name clashes with the provisions of this Act. Nevertheless, where such registrations have been made, they shall be null and void and must be cancelled at the registrar's own initiative or at the request of the National Securities Market Commission. Such nullity shall not impair the rights of third parties acting in good faith which were acquired based on the content of the corresponding Registers.

Article 65[51]. Other institutions.

1. Credit institutions, even if not investment firms in accordance with this Act, may habitually perform all the activities envisaged in article 63 hereof provided that their legal regime, articles and specific authorisation allow them to do so.

In the procedure for authorising credit institutions to provide investment services or ancillary services, a report by the National Securities Market Commission shall be mandatory.

Also, credit institutions shall be subject to the provisions of this Act and its secondary legislation with regard to the performance and discipline of the services and activities envisaged in article 63 and to their possible participation in official secondary markets.

2. The provisions of this Act and its secondary legislation shall apply to authorised UCITS operators with regard to discretionary individual portfolio management, investment advice, custody and administration of shares in mutual funds and, as appropriate, shares of investment companies. In particular, articles 70 ter, 70 quater, 78, 78 bis, 79, 79 bis, 79 ter and 79 quater shall apply to them, with any specific regulatory adaptations that may be made.

Article 65 bis[52]. Agents of investment firms.

1. Investment firms may appoint agents to promote and market the investment services and ancillary services referred to in their schedule of activities. They may also designate them to provide to clients, in the name and on behalf of the investment firm, the investment services envisaged in article 63.1.a) and 63.1.e) and to provide advice on the financial instruments and investment services that the firm supplies.

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[51] Amended by Act 47/2007, of 19 December

[52] Added by Act 47/2007, of 19 December

Agents must act solely for one investment firm, or for several in the same group, and in no event may they represent investors or undertake other activities that might create a conflict of interest with the proper performance of their functions.

2. Agents must comply with the requirements of good repute established in article 67.2.f) and have the appropriate general, commercial and professional knowledge so as to be able to communicate accurately all relevant information regarding the proposed service to the client or potential client

3. Agents shall act for the account of and under the full and unconditional liability of the investment firm that hired them.

4. As a pre-requisite to appointing an agent, investment firms must have the necessary means to effectively oversee the agents' actions and ensure that the internal rules applicable to them are complied with. They must also ensure that the agents comply with the provisions of paragraph 2 above; that they do not perform activities that might negatively affect the provision of the services entrusted to them, and that they inform the clients of the name of the investment firm they represent and of the fact that they are acting in its name and on its behalf when they contact a client or before negotiating with any client or potential client.

Investment firms that appoint agents must give them sufficient powers to act in their name and on their behalf in providing the services entrusted to them.

Agents may not receive from clients, not even temporarily, any financial instruments or money, nor may they receive fees, commissions or any other type of compensation from clients. Agents may not sub-delegate their functions.

5. Investment firms that hire agents must notify the National Securities Market Commission, which will enter them in the register referred to in article 92 of this Act, following registration of their powers with the Mercantile Register and after it has been established that they are of sufficiently good repute and that they possess appropriate general, commercial and professional knowledge so as to be able to communicate accurately all relevant information regarding the proposed service to the client or potential client. Registration in the register kept by the National Securities Market Commission shall be a necessary pre-requisite for agents to commence operating as such.

When an investment firm terminates its relationship with an agent, it must notify the National Securities Market Commission immediately so that this can be entered in the corresponding register.

When a Spanish investment firm appoints a tied agent established in another European Union Member State, the tied agent shall be entered in the register of the National Securities Market Commission if the Member States where the agent is established does not allow its home investment firms to use tied agents.

6. Credit institutions that are authorised to provide investment services under the preceding article may appoint agents in the terms and conditions established in this article. In this case, the agents shall be entered in the register created for this purpose at the Bank of Spain and shall be governed by the banking regulations that are applicable to them where they do not clash with the provisions of this article.

7. The provisions of this article shall be elaborated upon in the form of regulations, establishing in particular the other requirements imposed on the agents and the investment firms for which they work.

Article 65 ter[53]. Electronic trading.

In accordance with the regulations which, in general, govern electronic commerce, the Minister of Economy is empowered to regulate the special features of electronic commerce in investment services, guaranteeing the protection of the clients' legitimate interests and without prejudice to the freedom of commerce which, in its fundamental aspects and with any restrictions that may result from other legal provisions, must prevail in the relationships between investment firms and their clients.

Chapter II - Conditions for gaining access to the activity

Article 66[54]. Authorisation and registration.

1. The authority to authorise the creation of broker-dealers, dealers and portfolio management companies is vested in the Minister of Economy and Finance, subject to a proposal from the National Securities Market Commission. The authority to authorise the creation of financial advisory firms is vested in the National Securities Market Commission.

The authorisation must state the class of investment firm in question and the specific investment services and ancillary services that are authorised from among those listed in the schedule of activities referred to in the next paragraph.

The administrative resolution must state the reasons and must be notified within three months from the date of application or from the date on which all the obligatory documentation was provided and, in any case, within six months from receipt of the application. When the application is not resolved upon in the aforementioned period, it shall be deemed to have been rejected.

2. The application for authorisation must be accompanied by the bylaws and other documentation to be determined by regulation, plus a programme of operations specifying which of the activities envisaged in article 63 the firm plans to engage in and to what extent, indicating the firm's organisation and resources. Investment firms may not perform activities that are not expressly set out in the authorisation referred to in section 1 above.

Authorisation shall in no case be granted solely for the provision of ancillary services.

3. Authorisation to provide the service of managing a multilateral trading facility may also be granted to the governing companies of official secondary markets and entities established for this purpose by one or more governing companies, provided that their sole object is the management of the system and they are owned 100% by one or more

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[53] Added by Act 47/2007, of 19 December

[54] Amended by Act 47/2007, of 19 December

governing companies, and that they fulfil, in the terms established and amended by regulation, the requirements for authorisation of investment firms established in this chapter, with the exception of the obligation to join the Investment Guarantee Fund and the provisions of article 71.4, paragraph two.

4. In any of the following cases, consultations must be made with the competent supervisory authority in the corresponding European Union Member State before authorising an investment firm:

a) The new firm will be controlled by an investment firm, a credit institution, an insurance company or a UCITS management company authorised in such State.

b) It is to be controlled by the controlling company of an investment firm, credit institution, insurance company or UCITS management company authorised in such State.

c) It is to be controlled by the same natural or legal persons which control an investment firm, credit institution, insurance company or UCITS management company authorised in such Member State.

A firm shall be deemed to be controlled by another in any of the cases envisaged in article 4 of this Act.

Such consultation shall include, in particular, an evaluation of the suitability of the shareholders and the good repute and experience of the directors and executives of the new entity or the controlling entity, and it may be repeated for continuous assessment of compliance with such requirements by Spanish investment firms.

5. In the case of the creation of investment firms that will be controlled, directly or indirectly, by one or more companies authorised or domiciled in a State that is not a Member State of the European Union, the requested authorisation must be suspended or denied, or its effects constrained, if Spain has been notified of a decision by the European Union on ascertaining that European Union investment firms do not benefit from the same conditions of competition in that State as its domestic entities and that the conditions for effective access to the market are not met.

6. For an investment firm, once authorised, to commence operations, the promoters must incorporate a company and register it with the Mercantile Register and subsequently with the appropriate Register of the National Securities Market Commission. Where the financial advisory firm is a natural person, a registration in the Register of the National Securities Market Commission will suffice.

7. The authorisation referred to in this article shall be declared to have lapsed if, within a period of one year from the day following the date of notice of the administrative resolution granting authorisation, the promoters of the investment firm have not fulfilled the provisions of the preceding paragraph and applied for registration in the corresponding register of the National Securities Market Commission.

Article 67[55]. Denial of authorisation and requirements for access.

1. The Minister of Economy and Finance or, in the case of financial advisory firms, the National Securities Market Commission, may only refuse authorisation to constitute an investment firm for the following reasons:

a) Breach of the legal and regulatory requirements envisaged for obtaining and maintaining the authorisation.

b) When, based on the need to ensure sound and prudent management of the entity, the shareholders which are to have a significant stake, as defined in article 69, are not considered to (be fit and proper) suitable. Suitability shall be assessed on the basis of the following factors, among others:

1. The shareholders' business and professional good repute or integrity.

2. The assets which those shareholders have to cover the commitments they undertake.

3. The possibility that the entity may be exposed inappropriately to the risk of its promoter's non-financial activities or, in the case of financial activities, that the stability and control of the entity may be affected by their high risks.

References to shareholders in this article shall be construed as referring also to the businessperson in the case of financial advisory firms that are natural persons.

c) Lack of transparency in the structure of any group to which the entity may belong, or the existence of close links with other investment firms or legal or natural persons that effectively prevent the National Securities Market Commission from performing its functions and, generally, the existence of serious difficulties in inspecting it or obtaining the information that the National Securities Market Commission considers to be necessary for appropriate performance of its supervisory functions.

d) Where the laws, regulations or administrative provisions rulings of a state that is not a Member States of the European Union that govern the legal or natural persons with which the investment firm has close links, or difficulties involved in their enforcement, prevent the effective exercise of the supervisory functions.

e) The lack of business and professional repute on the part of the members of the Board of Directors and of the persons who will effectively manage the mixed-activity portfolio holding company(sociedad financiera mixta de cartera), where the investment firm is to be dependent upon the latter as part of a financial conglomerate.

f) The existence of serious conflicts of interest between the offices, responsibilities or functions held by the members of the Board of Directors of the

[55] Amended by Act 47/2007, of 19 December

investment firm and other offices, responsibilities or functions they hold at the same time.

2. The following requirements shall be necessary to enable a company to obtain authorisation as an investment firm:

a) Its sole object must be the performance of the activities pertaining to investment firms in accordance with this Act.

b) It must be a Public Limited Company (sociedad anónima) constituted for an indefinite period and the shares comprising its capital must be registered. It may be permitted by regulation for the investment firm to have another corporate form in the case of financial advisory firms that are legal persons.

c) In the case of a newly-created entity, it must be organised by the procedure of incorporation in a single act and its founders may not reserve for themselves any advantage or special remuneration of any kind.

d) The minimum capital stock must be fully paid in cash and the minimum own funds established by regulation on the basis of the services and activities to be performed and the projected volume of business must have been provided.

Investment firms that are authorised only to provide the service of investment advice or receive and transmit orders from investors without holding money or securities belonging to their clients and which for that reason may not at any time place themselves in debt to those clients, must have the minimum capital stock or arrange professional liability insurance, or both, as may be established by secondary legislation.

e) It must have at least three directors or, where there is a Board of Directors, it must consist of no less than three members. Depending on the investment and ancillary services that the firm is to provide, a larger number of directors may be required by regulation. Where a financial advisory firm is a legal person, the undertaking may appoint a sole director.

f) All the directors or members of the Board of Directors, including natural persons representing legal persons on the Boards and on those of the controlling undertakings, if any, and those holding executive positions in the undertaking or in its controlling undertaking, if any, must of proven business or professional repute.

For the purposes of this article, general managers and persons performing senior management functions who report directly to the governing body, executive committee or managing director shall be deemed to hold executive positions.

A person is of business and professional good repute if they have a personal track record of compliance with the mercantile and other legislation governing economics and business and with good commercial and financial practices. In any event, persons who, in Spain or other countries, have a criminal record for crimes with malicious intent, who have been disqualified from holding public office or from being directors or executives of financial institutions, or who are disqualified under Act 22/2003, of 9 July, governing Insolvency, until expiration

of the period of disqualification established in the bankruptcy decision, and persons who have not emerged successfully from bankruptcy or insolvency, shall be deemed to lack such good repute.

The members of the Board of Directors and the persons effectively holding executive functions in a mixed-activity portfolio holding company shall also be held to that standard of business and professional good repute where the investment firm is to be a dependent company of the former as a component of a financial conglomerate.

g) The majority of the directors or, as the case may be, members of its Board of Directors and, in any case, three of them, as well as the persons holding executive positions, must have suitable knowledge and experience in matters connected with the securities market. Such knowledge and experience shall in all cases be required of executive directors and of a majority of the members of the delegate committees or similar bodies to which the Board has delegated executive functions.

h) It must have the necessary procedures, measures and means to fulfil the organisation requirements envisaged in paragraphs 1 and 2 of article 70 ter of this Act.

i) It must have an internal regulation of conduct of business that conforms to the provisions of this Act and control and security mechanisms for its information systems as well as adequate internal control procedures including, in particular, a system governing personal transactions by directors, executives, employees and authorised signatories of the firm.

j) It must join the Investment Guarantee Fund envisaged in Title VI of this Act, when the Fund's specific regulations require this. This requirement shall not apply to the investment firms envisaged in article 64.1.d) of this Act.

k) It must have presented a business plan that reasonably accredits that the investment firm's plans are viable.

l) It must have presented appropriate documentation about the conditions and the services, functions and activities that are to be subcontracted or outsourced, so that it can be ascertained that this does not render the requested authorisation void or invalid.

The secondary legislation governing the pre-requisites in this section must take account of the type of investment firm in question and the type of activities it performs, particularly in connection with the establishment of the minimum capital stock and minimum own funds envisaged in paragraph d) above.

Where the official secondary market governing company requests authorisation and the multilateral trading facility is to be managed by the same persons who manage that market, those persons will be presumed to fulfil the requirements established in f) and g) above.

3. Additionally, when the request for authorisation is to manage a multilateral trading facility, the investment firm, the governing company or, as the case may be, the

undertaking established for this purpose by one or more governing companies must submit the Rules of Operation for approval by the National Securities Market Commission, which, without prejudice to the other requirements of article 120, must:

a) Establish clear and transparent rules regulating access to the multilateral trading facility in accordance with the conditions established in article 37.2 and which establish the requirements under which specific financial instruments may be traded in the facility.

b) Establish rules and procedures regulating trading on these facilities in a fair and orderly manner, establishing objective criteria for effective order execution.

4. Financial advisory firms that are natural persons must comply with the following requirements in order to obtain authorisation:

a) be of business or professional good repute in accordance with the requirements of section 1.f) above.

b) have appropriate experience and knowledge in the area of the securities markets;

c) fulfil the financial requirements to be established by secondary legislation;

d) fulfil the requirements of section 2.h) and 2.i) above in the terms to be established by secondary legislation.

Chapter III - Operating conditions

Article 68[56]. Amendments to the bylaws, changes in the investment services and ancillary services and changes of officers and executives.

1. Amendments to the bylaws of investment firms shall be subject to the procedure for authorisation for new undertakings, although the application for approval must be resolved upon and notified to the interested parties within two months from filing. If no resolution is issued in that period, the application shall be deemed to have been accepted. All of the aforementioned changes must be registered with the Mercantile Register and the National Securities Market Commission within the deadlines and subject to the requirements that may be established by secondary legislation.

Amendments to the bylaws for the purposes listed below shall not require prior authorisation but must be notified to the National Securities Market Commission for entrance into the corresponding register:

a) Changes of domicile within the national territory, and the change of name of the investment firm.

b) Addition to the bylaws of investment firms of imperative or prohibitive requirements arising from law or regulation, or in compliance with court or administrative decisions.

[56] Amended by Act 47/2007, of 19 December

c) Capital increases out of the reserves of investment firms.

d) Any other amendments which the National Securities Market Commission, in response to a prior query or by means of a general decision, considers do not require authorisation because they are not material.

2. Any amendment to the specific investment services and ancillary activities authorised initially shall require prior authorisation granted under the procedure for the authorisation of new entities, based on a report by the National Securities Market Commission, and must be registered in the Commission's registers in the form to be determined by regulation. Authorisation may be denied if the entity does not comply with the provisions of articles 67, 70 and 70 ter and, in particular, if the entity's administrative and accounting organisation, human and technical resources or internal control procedures are deemed to be insufficient.

If, as a result of an authorised amendment, the investment firm restricts the scope of its activities, any unsettled transactions must be settled and any securities, instruments and cash entrusted to it by its clients must be transferred, as necessary. The National Securities Market Commission may take the appropriate precautionary measures, including intervention in the settlement of outstanding transactions.

3. The appointment of new officers or executives of investment firms or of their controlling companies, if any , must be notified beforehand to the National Securities Market Commission in the form and within the deadlines to be established by secondary legislation. The National Securities Market Commission may issue a reasoned objection to such appointments within three months from receipt of notice if it considers that such persons are not of sufficient good repute or experience in accordance with the provisions of article 67.2.f) and g) or where there are objective demonstrable reasons to believe that the proposed changes may jeopardise the proper, prudent management of the undertaking or the group to which it belongs.

Where the new officers or executives of the investment firm's controlling company are subject to authorisation by other supervisory bodies, it shall be sufficient to notify the National Securities Market Commission of the new appointments.

Article 69

1. For the purposes of this Act, a qualifying holding in a Spanish investment services firm shall be one which, directly or indirectly, amounts to 5% of the company's capital or voting rights.

Any holding which makes it possible to exert a significant influence over the company, even if it is below the aforementioned percentage, shall also be deemed to be qualifying. Regulations may be issued to determine, based on the characteristics of the various types of investment services firms, when a person is presumed to exert significant influence.

2[57]. The provisions of this Title for investment firms shall be understood without prejudice to the application of the rules on takeovers and disclosure of significant stakes

[57] Amended by Act 47/2007, of 19 December

contained in this Act and the specific rules established by additional provision seventeen and in articles 31 and 44 bis of this Act and their secondary legislation.

3. Any natural or legal person seeking to acquire, directly or indirectly, a qualifying holding in an investment services firm must first inform the National Securities Market Commission of this fact, indicating the size of the holding, the form of acquisition and the maximum period within which it is planned to carry out the transaction.

4. They must also provide advance notice to the National Securities Market Commission, in the terms set out in item 3 above, when they wish to increase, directly or indirectly, their qualifying holding such that their percentage of capital or voting rights attains or exceeds any of the following thresholds: 10%, 15%, 20%, 25%, 33%, 40%, 50%, 66% or 75%. In any case, this obligation shall also apply to any person who might attain control of an investment services firm by means of the proposed transaction.

5. A relationship of control shall be deemed to exist for the purposes of this Title whenever any of the cases envisaged in article 4 of this Act arise.

6[58]. The National Securities Market Commission shall have a period of at most three months from the date it was informed in which to object to the acquisition, as provided in article 67.1.b) of this Act. If the Commission does not respond within that period, the proposal shall be deemed to be accepted. Where the National Securities Market Commission does not object, it may set a deadline for the acquisition that differs from the one requested.

It shall not be necessary to await tacit approval of the National Securities Market Commission in cases of the increase or decrease of an indirect stake as a result of changes in the shareholder structure of the controlling company of the investment firm where such changes have been authorised by another supervisor in Spain or another Member State of the European Union.

7[59]. In the event that, as a result of the acquisition, the investment firm were to fall under any of the forms of control envisaged in article 66.4, the National Securities Market Commission must consult the competent supervisory authority.

The National Securities Market Commission must suspend its decision or limit its effects when, by virtue of the acquisition, the investment firm will be controlled by a company authorised in a non-EU State and the circumstances envisaged in article 66.5 apply

8[60]. When an acquisition of the type regulated in the preceding sections is performed without first informing the National Securities Market Commission, or where it was informed but the three-month period envisaged in this article has not elapsed, or where the Commission has expressly objected, the following effects shall occur:

a) At all events, the voting rights corresponding to the stakes acquired in an irregular manner shall be automatically suspended until such time as the

[58] Amended by Act 47/2007, of 19 December

[59] Amended by Act 47/2007, of 19 December

[60] Amended by Act 47/2007, of 19 December

National Securities Market Commission considers them to be appropriate on the basis of having received and evaluated the necessary information. Nevertheless, if they are exercised, the related votes shall be null and void and the resolutions may be challenged in the courts, as provided by the Public Llimited Companies Act, the National Securities Market Commission being entitled to commence proceedings in this case.

b) Suspension of activities may be ordered in accordance with the provisions of article 75.

c) If necessary, it may be decided to take charge of the company or replace its directors, as provided in Title VIII.

Moreover, the sanctions envisaged in Title VIII of this Act may be imposed.

9. Any natural or legal person seeking, directly or indirectly, to cease to hold a qualifying holding in an investment services firm or seeking to reduce their holding so that it crosses one of the thresholds envisaged in item 4 above or which, by virtue of the proposed disposal, may lose control of the firm must first inform the National Securities Market Commission of this fact, indicating the amount of the proposed transaction and the deadline by which it is planned to carry it out.

Failure to comply with this duty to disclose shall be punished as provided in Title VIII of this Act.

10[61]. Investment firms shall not enter in their Share Record Books any transfers of shares that require authorisation, in accordance with this Act, until they have evidence of authorisation by the National Securities Market Commission. They shall also notify the National Securities Market Commission of acquisitions or disposals of stakes in their capital which cross any of the thresholds indicated in the preceding sections of this article as soon as they become aware of them.

11. Where there are sound accredited reasons to suggest that the influence exerted by persons owning qualifying holdings in an investment services firm may be detrimental to sound prudent management of same so as to seriously impair its financial position, the Ministry of Economy and Finance shall, at the proposal of the National Securities Market Commission, adopt one or more of the following measures.

a) Those envisaged in items 8.a) and 8.b) above, but voting rights may not be suspended for more than three years.

b) Exceptionally, withdrawal of authorisation.

Additionally, the appropriate penalties as envisaged in Title VIII of this Act may be imposed.

[61] Amended by Act 47/2007, of 19 December

Article 69 bis[62]. Disclosure of shareholder structure.

Investment firms must inform the National Securities Market Commission, in the form and with the frequency to be established by secondary legislation, regarding the composition of their shareholder structure and any changes occurring in it. Such information shall necessarily include the holdings in their capital by other financial institutions, regardless of the amount. The cases in which the reported information must be made public shall be established by secondary legislation.

Additionally, at least once per year, investment firms must notify the National Securities Market Commission the identity of the shareholders owning qualifiying holdings, indicating the size of such holdings.

Article 70[63]. Financial requirements.

1. Investment firms shall have the following obligations:

a) Consolidated groups of investment firms and investment firms that are not part of a consolidated group must at all times maintain a volume of own funds that is proportional to their activity, to the risks they assume and to any structural costs. In particular, their own funds must be equal to or greater than the following minimum own funds requirements:

1. With respect to all their activities, with the exception of their trading portfolio and illiquid assets when deducted from own funds, the own funds requirements that apply for credit risk and dilution risk.

2. With respect to their trading portfolio, the own funds requirements that apply to the risk position, settlement risk and counterparty risk and, to the extent authorised, to major risks that exceed the regulatory limits.

3. With respect to all their activities, the own funds requirements for exchange rate risk and commodity risk.

4. With respect to all their activities, the own funds requirements for operating risk.

5. The financial requirements set out in this item shall not apply to investment firms that provide only investment advice but do not hold funds or securities owned by clients and, for that reason, may not at any time place themselves in debt to their clients.

6. Likewise, the financial requirements set out in this section shall not apply to investment firms that are authorised only to receive and transmit orders from investors without holding money or securities belonging to their clients and which for that reason may not at any time place themselves in debt to those clients. The financial requirements applicable

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[62] Added by Act 47/2007, of 19 December

[63] Amended by Act 47/2007, of 19 December

to this class of investment firms, whether or not they also provide financial advisory services, shall be determined by regulation.

The calculations for ascertaining whether investment firms fulfil the obligations established in this section (a) shall be performed at least once every six months, on the dates of reference for the disclosures corresponding to the end of each half-year.

Investment firms shall notify the National Securities Market Commission of the outcome and all components of the necessary calculations, in the form and with the content which the Commission determines.

b) Investment firms must maintain the minimum volume of investments in certain categories of low-risk liquid assets, to be established by secondary legislation, in order to safeguard their liquidity.

c) The financing of investment firms, where it is in any form other than own funds, must comply with the limits to be established by secondary legislation.

2. The methods for calculating the requirements established in item a) of the preceding section, the weightings of the various risks, the admissible techniques for reducing the credit risk and any possible additions to any of those requirements on the basis of the undertaking's or group's risk profile shall be determined by regulation. In order to use external ratings for this purpose, the rating agency must be recognised for that purpose by the National Securities Market Commission in accordance with the criteria it establishes for this purpose, having regard in any event to the objectivity, transparency and constant review of the methodology that is used, and the credibility and market acceptance of the ratings issued by the agency. Authorisation by the National Securities Market Commission, in the conditions which it determines, shall be required to use internal credit ratings or internal methods of measuring operating and market risk developed by the undertakings themselves.

3. Consolidated groups of investment firms and investment firms that are not part of consolidated groups must specifically have solid, effective and exhaustive strategies and procedures for permanently evaluating and maintaining the amounts, types and distribution of internal capital that they consider appropriate on the basis of the nature and extent of the risks to which they are or may be exposed. Those strategies and procedures must be subject to a periodic internal review to ensure that they are still exhaustive and proportional to the nature, scale and complexity of the undertaking's activities.

Article 70 bis[64]. Information on solvency.

1. Consolidated groups of investment firms and investment firms that are not part of a consolidated group must publish, as soon as possible and at least once per year, duly included as part of a single document called the "Solvency Report", specific information about their financial situation and activity which may be of interest to the market and

[64] Added by Act 47/2007, of 19 December

other stakeholders with a view to assessing the risks they face, their market strategy, their risk control, their internal organisation and their situation vis-à-vis compliance with the minimum own funds requirements established in this Act.

The National Securities Market Commission shall determine the minimum information to be contained in the publication regulated in the preceding paragraph. In any event, undertakings may omit information that is not material and, subject to disclosing the fact, any data they consider to be private or confidential; they may also determine the medium, place and form of publication of that document.

For the same purposes, groups and undertakings must adopt a formal policy of compliance with those disclosure requirements and for verifying the sufficiency and accuracy of the disclosed data and the frequency of disclosure, and they must have procedures that enable them to evaluate the appropriateness of that policy.

2. These same obligations shall apply on an individual or sub-consolidated basis to investment firms, whether Spanish or established in another Member State of the European Union, which are subsidiaries of Spanish investment firms, in the cases where the National Securities Market Commission considers it necessary on the basis of their activity or materiality within the group. Where the subsidiary is established in another Member State of the European Union, the National Securities Market Commission shall send the corresponding decision to the Spanish controlling company, which shall be obliged to take the necessary measures for effective compliance.

3. This obligation shall not apply to groups or individual investment firms controlled by other investment firms or portfolio financial companies authorised or incorporated in another Member State of the European Union except where they include an investment firm that is classified as important either under the criteria which the authority responsible for consolidation supervision of the group has notified to the National Securities Market Commission or by decision of the latter, having regard to its activity in Spain or its materiality within the group.

4. Except with authorisation from the National Securities Market Commission, the disclosure in accordance with the mercantile or securities market legislation of the data referred to in section 1 of this article shall not exempt the firm from disclosing it in the "Solvency Report" in the form envisaged in that section.

5. Undertakings obliged to disclose the information referred to in section 1 may be required by the National Securities Market Commission:

a) to have the information that is not covered by their statutory audit verified by auditors or independent experts or by other means that the Commission considers to be satisfactory;

b) to disclose one or more of such items of information, independently at any time or more often than once per year, and establish deadlines for disclosure;

c) to make that disclosure by means and in places other than the financial statements.

6. The provisions of this article shall not apply to investment firms that are authorised only to provide the service of investment advice or to receive and transmit orders from

investors without holding money or securities belonging to their clients and which for that reason may not at any time place themselves in debt to those clients.

70 ter[65]. Internal organisational requirements.

1. Investment firms and the other undertakings which, in conformity with this Title, provide investment services must define and apply appropriate policies and procedures to ensure that the company, its executives, personnel and agents comply with the obligations imposed by the securities market legislation.

To that end, they must have:

a) In the case of investment firms, an appropriate structure that is proportioned in accordance with the nature, scale and complexity of their activities, with clearly-defined, transparent and coherent lines of responsibility. In the case of other undertakings that provide investment services, as provided in this Title, an organisation structure that is also appropriate and proportioned in accordance with the nature, scale and complexity of the investment services that they provide.

b) The organisation must have a unit that guarantees the performance of the compliance function and is independent of the areas and units which provide the investment services to which the compliance function refers. There must also be procedures and controls to ensure that the staff comply with the decisions that are made and discharge the duties entrusted to them.

The compliance unit must regularly oversee and evaluate that the procedures established to detect risks, and the measures adopted to address any deficiencies and to assist and advise the persons responsible for performing the investment services are appropriate and effective in pursuit of those goals.

c) Information systems that ensure that the staff are aware of the obligations, risks and liabilities, arising from their actions and the regulations governing the investment services which they provide.

d) Appropriate administrative and organisational measures to ensure that possible conflicts of interest that are regulated in article 70 quater of this Act have no detrimental impact on clients.

Measures must also be established to supervise the personal transactions performed by the members of the governing bodies, the employees, agents and other persons related to the company, where such transactions might entail conflicts of interest or generally breach the law.

e) Keep records of all transactions in securities and financial instruments and the investment services that are provided so as to make it possible to ascertain that all the requirements imposed by this Act in connection with relations with clients were complied with.

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[65] Added by Act 47/2007, of 19 December

The data to be included in the record of transactions are established in Commission Regulation 1287/2006 implementing Directive 2004/39/EC as regards record-keeping obligations for investment firms, transaction reporting, market transparency, admission of financial instruments to trading, and defined terms for the purposes of that Directive. The other obligatory book-keeping requirements that may be established by secondary legislation.

They must also inform the National Securities Market Commission, in the form to be determined by regulation, of the transactions they perform, as provided in article 59 bis.

f) Take the appropriate measures to protect the financial instruments entrusted to them by clients and avoid improper use thereof. In particular, they may not use client financial instruments for their own account except with the client's express consent. They must also keep an effective separation between the company's securities and financial instruments and those of each client. The undertaking's internal records must make it possible to ascertain, at any time and without delay, and particularly in the event of the undertaking becoming insolvent, each client's position in terms of securities and pending transactions.

Once insolvency proceedings have commenced against a securities depository, the National Securities Market Commission, without prejudice to the powers of the Bank of Spain, may immediately transfer, to another undertaking authorised to perform this activity, the securities deposited in clients' names, even if those assets are deposited at third entities in the name of the undertaking providing the depository service. For these purposes, both the competent judge and the bodies involved in the insolvency proceedings shall provide the entity to which the securities are to be transferred with access to the documentation and the accounting and computer entries necessary to make the transfer effective. The insolvency proceedings shall not prevent the clients who own the securities from receiving the cash generated by the exercise of their economic rights or their sale.

2. Additionally, undertakings providing investment services must:

a) Have appropriate administrative and accounting procedures, internal control mechanisms and effective procedures for assessing the undertaking's risks.

The organisation must have an oversight body that performs the internal audit function and is independent of the areas and units which provide the investment services to which the function refers.

The function of internal audit is to establish, implement and maintain an audit plan to examine and evaluate the adequacy and effectiveness of the investment firm's systems, internal control mechanisms and arrangements, make recommendations on the basis of the work performed under the plan, and check that they are complied with.

b) Take reasonable steps to ensure continuity and regularity in service provision in the event of an incident. In particular, they must have mechanisms for

overseeing and safeguarding their computer systems and contingency plans for damage or disaster.

c) Take the appropriate measures, in connection with the funds entrusted to them by clients, to protect their rights and avoid improper use of the funds. Undertakings may not use clients' funds for their own account apart from exceptional cases that may be established by secondary legislation, and only with the client's express consent. The undertaking's internal records must make it possible to ascertain each client's position in terms of funds at any time and without delay, and particularly in the event of the undertaking becoming insolvent.

d) Adopt the necessary measures to ensure that the operating risk does not increase unduly in the event of outsourcing the provision of investment services or the performance of functions that are essential to the provision of investment services. Where internal control functions are outsourced, undertakings must ensure that this does not reduce the degree of internal control and they must ensure that the competent supervisor has the necessary access to the information. In no case may functions be outsourced where this reduces the internal control capacity or the competent supervisor's supervisory ability. The undertaking is responsible for ascertaining that the person or entity to which it plans to outsource functions fulfils the requirements established in this Act and its secondary legislation.

Credit institutions that provide investment services must fulfil the internal organisation requirements established in this section, with the specific features to be established by secondary legislation, and the Bank of Spain is in charge of supervision, inspection and discipline with respect to those requirements. The prohibition from using client funds for their own account as provided in item c) above shall not apply to these institutions.

3. The conditions and requirements for the procedures, records and measures in this article shall be established by secondary legislation. The detailed rule-making may take account, in particular, of the dimension, complexity and nature of the investment services that each undertaking provides. The internal control requirements that apply to financial advisory firms that are natural persons shall be established by secondary legislation.

4. In any consolidated group of investment firms, every financial institution which is a member of the group must adopt the necessary measures to appropriately resolve conflicts of interest between clients of different entities in the group.

Article 70 quater[66]. Conflicts of interest.

1. In accordance with the provisions of section 1.d) of article 70 ter, companies that provide investment services must organise themselves and adopt measures to detect possible conflicts of interest between clients and the company itself or its group,

[66] Added by Act 47/2007, of 19 December

including its executives, employees, agents and persons related to it, directly or indirectly, by a relationship of control; or between different interests of two or more clients where the firm has obligations to each of them.

To this end, it is not enough that the firm may gain a benefit if there is not also a possible disadvantage to a client, or that one client may make a gain or avoid a loss without there being a concomitant possible loss to another such client.

They must also approve, apply and maintain a policy for handling conflicts of interest that is effective and appropriate to their organisation, with the aim of ensuring that conflicts of interest to not impair clients' interests.

2. Where organisational or administrative arrangements made to manage conflicts of interest are not sufficient to ensure, with reasonable confidence, that risks of impairment of client interests will be prevented, the investment firm shall clearly disclose the nature and sources of the conflict of interest to the client before undertaking business on the client's behalf.

3.Regulations will be issued to establish the rules for identification and registration of conflicts of interest, and the measures, organisational requirements and policies that must be adopted to ensure the independence of the personnel performing activities that might entail a conflict of interest, and the information that must be provided to affected clients and the general public.

Chapter IV - Cross-border transactions

Article 71[67]. Cross-border operations by Spanish investment firms.

1. Spanish investment firms may provide, in the territory of other Member States of the European Union, investment services and ancillary services for which they are authorised, either by establishing a branch or under the free provision of services, in the terms established in the next two sections of this article.

2. Any Spanish investment firm wishing to establish a branch in the territory of another Member State must notify the National Securities Market Commission. The notification must state:

a) The Member States within the territory of which it plans to establish a branch.

b) A programme of operations setting out, inter alia, the investment services and ancillary services to be offered and the organisational structure of the branch and indicating whether the branch intends to use tied agents.

c) The address in the host Member State from which documents may be obtained.

d) The names of the executives responsible for the management of the branch.

Unless the National Securities Market Commission has reason to doubt the adequacy of the administrative structure or the financial situation of the firm, taking into account the

[67] Amended by Act 47/2007, of 19 December

activities envisaged, it shall, within three months of receiving all the information from the Spanish investment firm, communicate that information to the competent authority of the host Member State, and inform the investment firm accordingly.

If the National Securities Market Commission decides not to forward the information to the Host Member State for any of the reasons set out in the preceding paragraph, it must notify the investment firm within three months from receiving the information, stating the reasons for its refusal.

In the event of a change in any of the information presented in accordance with the provisions of items a), b), c) or d) of the first paragraph of this article, the investment firm must notify the National Securities Market Commission in writing at least one month before the change takes effect. The National Securities Market Commission shall notify it to the competent authority of the host Member State.

Also, the National Securities Market Commission must send the competent authority of the host Member State the data about the Investment Guarantee Fund of which the firm is a member, and any modifications in this connection.

The branch may be established and commence operations upon receipt of a communication from the competent authority of the host Member State or, failing such communication, within two months from the date of transmission of the communication by the National Securities Market Commission to that competent authority.

Where a Spanish investment firm uses an agent established in another Member State of the European Union, such agent shall be deemed to be equivalent to a branch and shall be subject to the provisions of this article relating to branches.

3. Any Spanish investment firm wishing to provide services under the free provision of services within the territory of another Member State for the first time, or which wishes to change the range of services or activities so provided, shall notify the National Securities Market Commission. The notification must state:

a) The Member State in which it intends to operate.

b) A programme of operations stating in particular the investment services and ancillary services which it intends to perform and whether it intends to use tied agents in the territory of the Member States in which it intends to provide services. Where the investment firm intends to use tied agents, the National Securities Market Commission shall, at the request of the competent authority of the host Member State and within a reasonable time, communicate the identity of the tied agents that the investment firm intends to use in that Member State.

The National Securities Market Commission must send all the information referred to in the first paragraph of this section to the competent authority of the host Member State within one month from receiving it. From that point, the investment firm may begin providing services in the host Member State. In the event of a change in any of the information referred to in the first paragraph of this section, the investment firm must notify the National Securities Market Commission at least one month before implementing the change. The National Securities Market Commission shall notify it to the competent authority of the host Member State.

4. Spanish investment firms seeking to open a branch or to provide services without a branch in a State which is not a Member State of the European Union must first obtain authorisation from the National Securities Market Commission; the requirements and procedure applicable in this case shall be established by secondary legislation.

The National Securities Market Commission shall inform the European Commission of any general difficulties which investment firms encounter in establishing themselves or providing investment services in any third country.

5. The creation by a Spanish investment firm or group of Spanish investment firms of a foreign investment firm, or the acquisition of a holding in an existing firm, where such foreign services firm is to be constituted or is domiciled in a State that is not a Member State of the European Union, shall require prior authorisation by the National Securities Market Commission. The information to be included in the application shall be determined by regulation.

The National Securities Market Commission shall resolve on the application within three months from receipt of all the necessary documentation. Where the application is not resolved upon in the aforementioned period, it shall be deemed to have been accepted.

The National Securities Market Commission may deny the application when, based on the investment firm's financial situation or management capacity, the Commission considers that the project may have a negative effect on activities in Spain; when, in view of the location and characteristics of the project, effective supervision of the group on a consolidated basis by the Commission cannot be assured; or when the activity of the controlled entity is not subject to effective oversight by any national supervisory authority.

Article 71 bis[68]. Investment firms authorised by another Member State of the European Union.

1. Investment firms authorised in another Member State of the European Union may provide investment services or ancillary services in Spain either by opening a branch or under the free provision of services. The authorisation, articles and legal regime of the entity must allow it to perform the intended activities. In any event, the ancillary services may only be provided in conjunction with investment services.

In no event may the establishment of branches or the free provision of services referred to in the preceding paragraph be made conditional upon obtaining an additional authorisation or the establishment of a provision or any other equivalent measure.

2. Prior authorisation shall not be required for the establishment in Spain of branches of investment firms authorised in other Member States of the European Union. However, such establishment shall be conditional upon the National Securities Market Commission receiving a communiqué from the competent authority of the investment firm's home Member State. Such communiqué must contain the information indicated in sections a), b), c) and d) of the first paragraph of article 71.2.

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[68] Added by Act 47/2007, of 19 December

Upon receipt of the communiqué, the National Securities Market Commission shall notify the firm of its receipt, and the firm must register the branch in the Mercantile Register and in the corresponding register of the National Securities Market Commission, notifying to the former the date of effective commencement of its activities. If the National Securities Market Commission does not issue that communiqué, the branch may be established, and it may be registered with the Mercantile Register and the National Securities Market Commission, and it may commence operations two months after the date of notification by the competent authority of the home Member State.

If the branch is not registered in the corresponding register of the National Securities Market Commission within one year from the notification to the investment firm of receipt of the communiqué from the supervisory authority, the proceeding will be deemed to have lapsed.

Branch closures must be notified to the National Securities Market Commission at least three months in advance of the planned date of closure.

The National Securities Market Commission shall assume responsibility for ensuring that the services provided by the branch within its territory comply with the obligations laid down in articles 79 bis, 79 ter, 79 sexies, 59 bis and in Chapter III of Title XI, and in measures adopted pursuant thereto. Consequently, the National Securities Market Commission shall have the right to examine branch arrangements and to request such changes as are strictly needed to enable the competent authority to enforce the obligations set out in those articles and measures adopted pursuant thereto with respect to the services or activities provided by the branch within Spanish territory.

Also, the National Securities Market Commission shall assume oversight of the obligation established in section 1.e) of article 70 ter as regards the branch's record-keeping without prejudice to the possibility of the competent authority of the home Member State of the investment firm having direct access to those records.

The provisions of the preceding two paragraphs shall also apply to branches of EU credit institutions which are authorised to provide investment services in Spanish territory.

Without prejudice to the provisions of the preceding two paragraphs, the competent authority of the home Member State may perform on-the-spot inspections of the branch in the discharge of its duties, subject to prior notice to the National Securities Market Commission.

The National Securities Market Commission may also, for statistical purposes, require all investment firms with branches in Spanish territory to report to it periodically on the activities of those branches.

In cases where an investment firm uses an agent established in a Member State other than its home Member State, such tied agent shall be deemed to be equivalent to the branch and shall be subject to the provisions of this Act relating to branches.

3. The performance in Spain for the first time of investment activities or services and ancillary services under the free provision of services by investment firms authorised in another Member State of the European Union may commence once the National

Securities Market Commission has received a communiqué from the competent authority of the firm's home Member State in the terms of article 71.3.

Where the investment firm intends to use tied agents, the National Securities Market Commission may request that the competent authority of the home Member State, within a reasonable time, communicate the identity of the tied agents that the investment firm intends to use in Spanish territory. The National Securities Market Commission may publish that information at its discretion.

Article 71 ter[69]. Coercive measures.

1. Where the National Securities Market Commission has clear and demonstrable grounds for believing that an investment firm authorised in another Member State of the European Union that is operating in Spain through a branch or via the free provision of services is in breach of the obligations arising from the national provisions adopted pursuant to Directive 2004/39/EC, it shall refer those findings to the competent authority of the home Member State.

If, despite the measures taken by the competent authority of the home Member State, the investment firm persists in acting in a manner that is clearly detrimental to the interests of Spanish investors or the orderly functioning of markets, the National Securities Market Commission, after informing the competent authority of the home Member State, shall take all the appropriate measures, including the possibility of preventing the infringing investment firms from performing further transactions in Spanish territory. The National Securities Market Commission shall notify the European Commission promptly of such measures.

2. Notwithstanding the provisions of the preceding section, where the National Securities Market Commission observes that a branch in Spain of an EU investment firm is in breach of its obligations under articles 79 bis, 79 ter, 79 sexies, 59 bis and Chapter III of Title XI of this Act and its secondary legislation, it shall demand that the investment firm put an end to its irregular situation.

If the investment firm fails to take the necessary steps, the National Securities Market Commission shall take the appropriate measures to put an end to the irregular situation, and must inform the competent authority of the home Member State about the nature of the measures adopted.

If, despite the measures adopted by the National Securities Market Commission, the firm continues to infringe the provisions of this Act and its secondary legislation, the National Securities Market Commission may, after notifying the competent authorities of the home Member State, discipline it or even prohibit it from engaging in further transactions in Spanish territory. The National Securities Market Commission shall notify the European Commission promptly of such measures.

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[69] Added by Act 47/2007, of 19 December

3. Any measure adopted pursuant to the provisions of this article involving sanctions or restrictions on the activities of an investment firm or of a regulated market shall be properly justified and communicated to the investment firm.

4. The provisions of this article shall also apply to EU credit institutions which are authorised to provide investment services in Spanish territory either under the free provision of services or under the freedom of establishment regime."

Article 71 quater[70]. Non-EU investment firms.

Non-EU investment firms seeking to open a branch in Spain shall be subject to the prior authorisation procedure envisaged in Chapter II of this Title V, as may be adapted by regulation. If they intend to provide services without a branch, they must be authorised in the form and under the conditions to be established by secondary legislation. In both cases, the authorisation may be denied or made conditional, for prudential reasons, where Spanish entities are not given equivalent treatment in the home country or where the compliance with the rules of order and discipline in the Spanish securities markets is not guaranteed.

Non-EU investment firms operating in Spain shall be subject to this Act and its secondary legislation

Chapter V - Corporate restructuring and withdrawal of investment services firms' authorisation

Article 72

The conversion, merger, division or spin-off of a line of business, and any other corporate changes by an investment services firm or which lead to the incorporation of an investment services firm shall require prior authorisation in accordance with the procedure established in article 66, as may be adapted by regulation, and in no event may the change in the company entail any impairment of the requirements established by law or regulation for the incorporation of an investment services firm.

Article 73

The authorisation granted to an investment services firm or to one of the firms referred to in article 65.2 of this Act or to a branch of a firm based in a non-EU State may be revoked in the following cases:

a) If, for causes attributable to the applicant, the investment services firm does not make use of the authorisation within 12 months following the date of notice of the authorisation.

b) If the investment services firm expressly renounces the authorisation, whether due to change of corporate form or to dissolution.

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[70] Added by Act 47/2007, of 19 December

c) If it ceases to provide the specific authorised activities for more than six months.

d) If the volume of activity in a given year is below the normal level to be established by regulation.

e) If it ceases to meet any of the conditions under which authorisation was granted, except where provided otherwise in connection with such requirements.

f)[71] In the event of a serious and systematic breach of the obligations established in article 70.1.a), article 70.1.e) and 70.1.f) and article 70.2.c) of this Act.

g) In the event envisaged in article 69.11.

h) If the investment services firm or the person or firm, as the case may be, is declared by a court to be insolvent and under meeting creditors regime.

i) As a penalty, as provided in Title VIII of this Act.

j) If the investment services firm ceases to belong to the Investor Compensation Scheme envisaged in Title VI.

k) When any of the cases of compulsory winding up provided in article 260 of the Public Limited Companies Act or in article 104 of the Limited Companies Act arises.

l) Where authorisation was obtained by means of false statements or by other irregular means.

ll)[72] In the case envisaged in article 69.11.b).

Article 74

1. The withdrawal of authorisation shall conform to the common procedure envisaged in Title VI of the Law on the Legal Regime of the Public Administrations and the Common Administrative Procedure, and specifically:

a) Commencement of proceedings and investigation shall be the competence of the National Securities Market Commission.

b) The decision on the file shall be made by the Minister of Economy and Finance based on a proposal by the National Securities Market Commission, or directly by this body in the cases envisaged in article 73.b) and article 73.j).

2. Nevertheless, where withdrawal of authorisation is due to any of the reasons envisaged in items a), b) or h) of the preceding article, it shall suffice to grant a hearing to the interested party. In the cases envisaged in items i) and j), the specific procedures envisaged in this Act must be followed.

3. The resolution of withdrawal shall be enforceable immediately. Once the investment services firm in question has been notified, it may not perform any further operations.

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[71] Amended by Act 47/2007, of 19 December

[72] Added by Act 47/2007, of 19 December

The resolution must be registered with the Mercantile Register and the National Securities Market Commission, and the Commission of the European Union must be informed. It shall also be published in the Official State Gazette, from which point it shall be effective vis-à-vis third parties.

4. The Minister of Economy and Finance may, at the proposal of the National Securities Market Commission, resolve that withdrawal of authorisation entails compulsory winding up of the firm. In these cases, in order to protect investors and ensure the integrity of the securities markets, the National Securities Market Commission and the governing bodies of the official secondary markets, at their own initiative or at the request of the National Securities Market Commission, if such markets are affected, may adopt the precautionary measures they deem to be appropriate, especially:

a) Resolve that the transferable securities, financial instruments and cash entrusted to it by its clients be transferred to another firm.

b) Demand some specific guarantee from the liquidators designated by the company.

c) Appoint the liquidators.

d) Participate in the liquidation procedure. If, by virtue of the provisions of this item or other items of this Act, it is necessary to appoint liquidators or receivers in the operations of liquidation, the provisions of Title III of Act 26/1988, on the Control and Intervention of Credit Institutions, as suitably adapted, shall apply.

5. Where withdrawal of authorisation does not entail winding up of the investment services firm, it must settle its outstanding transactions in an orderly manner and, where appropriate, transfer the transferable securities, financial instruments and cash entrusted to it by its clients. The National Securities Market Commission may take the appropriate precautionary measures, including intervention in the settlement of outstanding transactions.

6. When an investment services firm decides to wind up for any of the reasons envisaged in article 260 of the Public Companies Act or article 104 of the Limited Companies Act, the authorisation shall be deemed to have been revoked, and the National Securities Market Commission may resolve any of the measures envisaged in item 4 of this article in order to ensure orderly liquidation.

7. The withdrawal of the authorisation granted to a non-EU investment services firm shall determine the withdrawal of the authorisation of its branch operating in Spain.

8. In the event that the National Securities Market Commission becomes aware that an investment services firm from another European Union Member State operating in Spain has had its authorisation withdrawn, it shall immediately adopt the pertinent measures to ensure that the firm does not engage in further activities and that the interests of investors are safeguarded. Without prejudice to the powers of the other supervisory authority, and in cooperation with it, the National Securities Market Commission may adopt the measures envisaged in this Act to ensure proper settlement.

Article 75

The National Securities Market Commission may partly or wholly suspend the effects of the authorisation granted to an investment services firm. Where suspension is partial, it shall affect some of the activities or the scope under which they were authorised.

Article 76

1. The suspension referred to in the preceding article may be decided upon in any of the following cases:

a) Commencement of proceedings due to a serious or very serious infringement.

b) In any of the cases envisaged in items e), f), h), j) or l) of article 73, until the proceeding for withdrawal of authorisation is completed.

c) In the case envisaged in article 69.8.

d) When the firm fails to make the contributions to the Investor Compensation Scheme envisaged in Title VI.

e) As a sanction as provided in Title VIII.

2. Suspension may only be decided when, in one of the cases envisaged in item 1 above, the measure is necessary to ensure the firm's solvency or to protect investors. Except where it is used as a sanction, suspension may not be for more than one year, with the possibility of a further one-year extension.

3. Suspension of activities shall be ordered and it shall produce its effects as envisaged in article 74 except in any of the cases which are specially regulated in this Act.

Article 76 bis

The National Securities Market Commission shall have the power to apply the courts for a declaration of insolvency of investment services firms and a creditors meeting regime if financial statements filed by the entities or checks performed by the Commission services reveal that the firms are insolvent in accordance with the rules of the Insolvency Act

TITLE VI - INVESTOR COMPENSATION SCHEME

Article 77.

1. An Investor Compensation Scheme shall be created to ensure the coverage envisaged in item 7 of this article when providing the services contemplated in article 63 and the ancillary activity consisting of the deposit and administration of financial instruments.

2. The Investor Compensation Scheme shall be established as a separate estate, without legal personality, and it shall be represented and managed by a managing company that shall have the form of a public company limited by shares, whose capital shall be distributed among the investment services firms in the same proportion as their contributions to the Fund.

3. The managing companies' budgets, their bylaws, and amendments thereto shall require prior approval by the National Securities Market Commission. The estimated budget of the Funds drawn up by the managing companies shall also be subject to such approval.

The procedure provided for in the third, fourth, fifth and sixth paragraphs of Article 48 shall apply *mutatis mutandis* to the entry or departure of shareholders and the adjustment of their holdings to changes in capital. The results of these adjustments shall be notified to the National Securities Market Commission.

4. The appointment of members of the Boards of Directors and General Managers of the managing companies shall require prior approval by the National Securities Market Commission.

The Board of Directors shall include a representative of the National Securities Market Commission, who may speak but not vote, and who shall ensure compliance with the regulations governing the activity of each Fund. Likewise, each Autonomous Regional Government with competencies in the matter, and in whose territory an official secondary market is located, shall designate a member of said Board of Directors, who shall have the same functions.

The National Securities Market Commission may suspend all resolutions by the Board of Directors which it deems contrary to said regulations and to the Fund's purposes.

5. All Spanish investment services firms must join the Investor Compensation Schemes. Branches of non-Spanish companies may join if they are from the European Union. The manner in which branches of companies from third countries join the Scheme shall conform to the terms to be laid down by regulation.

The Funds shall cover transactions performed by member firms inside or outside the European Union, depending on the type of firm, in the terms to be laid down by regulation.

The following points shall also be established by regulation:

a) Revoked.

b) Revoked.

c) The specific membership regime for newly-created investment services firms.

d) The exceptions to membership of the Fund of those investment services firms which do not incur the risks envisaged in item 1 of this Article.

6. An investment services firm may only be excluded from the Fund of which it is a member if it fails to comply with its obligations to said Fund. Said exclusion shall lead to the firm's authorisation being withdrawn. The guarantee shall cover those clients who have made investments up to that point.

The National Securities Market Commission shall be empowered to order said exclusion, on the basis of a report by the Fund's Managing Company. Before such a decision is taken, the necessary measures must be taken, including the imposition of surcharges on unpaid amounts, in order to compel the investment services firm to comply with its

obligations. The National Securities Market Commission may also resolve to apply the suspension envisaged in Article 75. The Fund's Managing Company shall collaborate with the National Securities Market Commission in order to maximise the effectiveness of the agreed measures.

The exclusion decision shall be publicised sufficiently so as to ensure that the clients of the investment services firm in question are immediately aware of the measure.

7. Investors who are unable to obtain the refund of the sums of money, or the restitution of the securities or instruments which they own, directly from a firm that is a member of a Fund, may apply to the Managing Company of said Fund to execute the guarantee that the Fund provides, in any of the following circumstances:

a) The firm has been declared bankrupt.

b) A court accepts for processing an application for a declaration of suspension of payments by the firm.

c) The National Securities Market Commission declares that the investment services firm cannot, apparently and for reasons directly related to its financial situation, fulfil the obligations contracted with investors, provided that the investors had applied to the investment services firm for restitution of the funds or securities which they had entrusted to it, and that they had not been satisfied by said firm within a maximum period of 21 working days.

Once the Fund has paid the guarantee, it shall be subrogated to the rights of the investors vis-à-vis the investment services firm, up to an amount equal to that which was paid to them as indemnity.

In the event that the securities or other financial instruments entrusted to the investment services firm are returned by said firm after the Fund has paid the amount guaranteed by it, the latter may be reimbursed for part or all of the amount paid if the value of the instruments to be returned is greater than the difference between the value of those entrusted to the investment services firm and the amount paid to the investor. To that end, it is entitled to sell them for the appropriate amount, in accordance with the regulations.

8. The Government has the powers to regulate the functioning of the Investor Compensation Schemes and the scope of the guarantee they provide, in all aspects not provided for by this Act. In particular, it may determine:

a) The amount of the guarantee and the manner and period in which it must be paid.

b) The investors excluded from the guarantee, which shall include professional or institutional investors and those with specific links to the firm in breach.

c) The budgetary and financial regime of the Investor Compensation Schemes and their managing companies, which shall regulate matters including the possibility of indebtedness and the manner in which managing companies may pass on their operating costs to Investor Compensation Schemes.

d) The rules governing investment of the funds that make up the funds' assets, which shall be inspired by the principles of profitability and liquidity in order to fulfil their commitments rapidly.

e) The rules to determine the amount of the contributions to be made by the member firms, which must be sufficient to cover the guarantee provided.

f) The intervals at which the contributions must be made and the rules governing non-payment.

TITLE VII - CODES OF CONDUCT

Chapter I[73]. Rules of conduct applicable to providers of investment services.

Article 78[74]. Parties to which this obligation refers.

1. Providers of investment services must respect:

a) Conduct of business rules envisaged in this Chapter.

b) The conduct of business codes which, in the implementation of the rules envisaged in paragraph a) above, are approved by the Government or, with the latter's express authorisation, by the Minister of Economy, at the proposal of the National Securities Market Commission.

c) Their internal regulations of conduct of business.

2. The Minister of Economy and Finance and, with his/her express authorisation, the National Securities Market Commission shall establish the minimum content required of the internal regulations of conduct of business.

Article 78 bis[75]. Classes of clients.

1. For the purposes of the provisions of this Title, investment firms shall classify their clients into professional and retail clients. Other firms providing investment services shall be under the same obligation with respect to the clients to which they provide or offer such services.

2. A professional client is a client who is presumed to possess the necessary experience, knowledge and expertise to make its own investment decisions and properly assess the risks that it incurs.

3.In particular, the following shall be deemed to be professional clients:

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[73] Added by Act 47/2007, of 19 December

[74] Amended by Act 47/2007, of 19 December

[75] Added by Act 47/2007, of 19 December

a) Financial institutions and other legal persons that need to be authorised or regulated by States, of the European Union or otherwise, in order to operate in the financial markets.

They shall include credit institutions, investment firms, insurance companies, UCITS and their management companies, pension funds and their management companies, securitisation trusts and their management companies, parties that trade habitually with commodities or commodities derivatives, and traders that trade for their own account and other institutional investors.

b) National and regional governments, public bodies that manage public debt, central banks, international and supranational institutions such as the World Bank, the International Monetary Fund, the European Central Bank, the European Investment Bank and other similar organisations.

c) Entrepreneurs that individually meet at least two of the following criteria:

1. Their total assets amount to 20 million euro or more.

2. Their annual revenues amount to 40 million euro or more.

3. Their own funds amount to 2 million euro or more.

d) Institutional investors not included under item a) above that invest habitually in securities and other financial instruments.

In particular, venture capital firms and their management companies shall be included in this category.

The entities indicated in the preceding paragraphs shall be considered as professional clients without prejudice to their option to request non-professional treatment and the possibility for investment firms to offer them a higher level of protection.

e) Other clients that request it beforehand and expressly waive treatment as retail clients.

Admission of the request and waiver shall be conditional upon the firm that provides the investment service conducting an appropriate assessment of the client's experience and knowledge in connection with the transactions and services he/she requests and ensuring that he/she is able to take his/her own investment decisions and understands the risks. In the course of the above assessment, as a minimum, two of the following criteria should be satisfied:

1. The client has carried out transactions of significant size on the securities market at an average frequency of 10 per quarter over the previous four quarters;

2. The value of cash and securities deposited is over 500,000 euro;

3. The client works or has worked in the financial sector for at least one year in a professional position that requires knowledge of the transactions or services envisaged.

The Government and, with its express empowerment, the Minister of Economy and Finance or the National Securities Market Commission may determine the method for calculating the magnitudes indicated in this section and establish the requirements for the procedures established by firms for classifying clients.

4. All clients not classified as professionals shall be classified as retail clients.

Article 78 ter[76]. Transactions with eligible counterparties.

1.For the purposes of this article, the following entities shall be classified as eligible counterparties: investment firms, credit institutions, insurance companies, Investment Collective Schemes and their management companies, pension funds and their management companies, other financial institutions authorised or regulated under Community legislation or the national law of a Member State, undertakings indicated in article 62.3.d) and 62.3.e), national governments and their corresponding offices including public bodies that deal with public debt, central banks and supranational organisations. Equivalent entities from third countries and Autonomous Regional governments shall also be so classified.

Also, companies that fulfil the requirements established in section 3.e) of article 78 bis shall also be classified as eligible counterparties at their own request, but only in connection with services or transactions for which they may be classified as professional clients. Third-country companies that are subject to equivalent requirements and conditions shall also be deemed to be included.

2. Companies providing investment services that are authorised to execute orders for the account of third parties, trade for their own account or receive and transmit orders may perform those transactions, or the ancillary services directly related to them, with the entities indicated in the preceding section without fulfilling the requirements of articles 79 bis, 79 ter and 79 sexies, provided that such entities are informed of this beforehand and do not expressly ask for them to be applied.

In the case of the entities indicated in the first paragraph of the preceding section, classification as an eligible counterparty shall be without prejudice to the right of such entities to request treatment as clients, either on a general basis or on a trade-by-trade basis, in which case the relationship with the investment firm shall be subject to the provisions of articles 79 bis, 79 ter and 79 sexies of this Act.

Also, in the case of the companies referred to in the second paragraph of the preceding section, express confirmation must be obtained that the company agrees to be treated as an eligible counterparty, either on a general basis or on a trade-by-trade basis.

Where the transaction is with a company domiciled in another Member State of the European Union, that company's status in accordance with the legislation of that State must be respected.

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[76] Added by Act 47/2007, of 19 December

Article 79[77]. Obligation of diligence and transparency.

Firms that provide investment services must behave diligently and transparently in the interests of their clients, safeguarding such interests as if they were their own and, in particular, complying with the rules established in this chapter and in its secondary legislation.

Specifically, investment firms shall be regarded as not acting diligently and transparently in accordance with the best interests of a client if, in relation to the provision of an investment or ancillary service to the client, they pay or are paid any fee or commission, or provide or are provided with any non-monetary benefit, other than as established in the secondary legislation of this Act.

Article 79 bis[78]. Reporting obligations.

1. Firms that provide investment services must keep their clients appropriately informed at all times.

2. Any information addressed to clients, including marketing communications, must be impartial and clear and must not be misleading. Marketing communications shall be clearly identifiable as such.

3. Clients, including potential clients, must be given sufficient comprehensible information about the firm and the services it provides; about the financial instruments and investment strategies; about the centres where orders are executed and the associated expenses and costs, so as to enable them to understand the nature of the risks in the investment service and in the specific type of financial instrument being offered to them, thus enabling them to make informed investment decisions. For these purposes, a potential client is any person who has been in direct contact with the firm for the provision of an investment service, at the initiative of either party.

The information referred to in the preceding paragraph may be provided in a standardised format.

Information relating to financial instruments and investment strategies should include appropriate guidance on, and warnings of, the risks associated with investments in those instruments or strategies.

4. The client must receive from the firm adequate reports on the service it provided. These reports shall include, where applicable, the costs associated with the transactions and services undertaken on behalf of the client.

5. Firms providing investment services must ensure at all times that they possess all necessary information on their clients in accordance with the provisions of the following sections.

6. When providing investment advice or portfolio management, the investment firm shall obtain the necessary information regarding the client's or potential client's

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[77] Amended by Act 47/2007, of 19 December

[78] Added by Act 47/2007, of 19 December

knowledge and experience in the investment field relevant to the specific type of product or service, his financial situation and his investment objectives so as to enable the firm to recommend the investment services and financial instruments that are most suitable for him. Where the firm does not obtain that information, it shall not recommend investment services or financial instruments to the client or potential client. In the case of professional clients, the firm shall not be obliged to obtain information about their knowledge and experience.

7. When providing investment services other than those referred to in the preceding section, investment firms must ask the client or potential client to provide information regarding his knowledge and experience in the investment field relevant to the specific type of product or service offered or requested so as to enable the firm to assess whether the investment service or product envisaged is appropriate for the client.

Where, based on that information, the firm considers that the investment product or service is not appropriate for the client, it must inform him accordingly. Also, where the client does not provide the information indicated in this section or where the information is insufficient, the firm shall inform him that his decision prevents the firm from determining whether the investment product or service is suitable for him.

The warnings envisaged in this section may be provided in a standardised format.

8. Where the firm provides the service of executing or receiving and transmitting client orders, with or without the provision of ancillary services, it shall not have to follow the procedure described in the preceding section provided that the following conditions are met:

a) The order relates to: shares admitted to trading on a regulated market or in an equivalent third-country market, money market instruments; bonds or other forms of securitised debt (excluding those bonds or securitised debt that embed a derivative); investment collective schemes harmonised at European level; and other non-complex financial instruments. A third-country market shall be considered as equivalent to a regulated market if it complies with equivalent requirements to those established under Title IV. The European Commission shall publish and periodically update a list of those markets that are to be considered as equivalent.

In addition to the instruments indicated expressly in the preceding paragraph, any financial instrument meeting the following conditions shall be classified as non-complex:

i) there are frequent opportunities to dispose of, redeem, or otherwise realise that financial instrument at prices that are publicly available to market participants and that are either market prices or prices made available, or validated, by valuation systems independent of the issuer;

ii) they do not involve any actual or potential liability for the client that exceeds the cost of acquiring the instrument;

iii) sufficient information about their characteristics are available to the public. This information must be readily comprehensible so as to enable

the average retail client to make an informed judgement as to whether to enter into a transaction in that instrument.

The following shall not be considered to be non-complex financial instruments:

i) any other securities giving the right to acquire or sell any such transferable securities or giving rise to a cash settlement determined by reference to transferable securities, currencies, interest rates or yields, commodities or other indices or measures;

ii) the financial instruments referred to in sections 2 to 8 of article 2 of this Act;

b) where the service is provided at the client's initiative;

c) the firm has clearly informed the client that it is not required to assess the suitability of the instrument or service provided or offered and that therefore the client does not benefit from the protection established in the preceding section. This warning may be provided in a standardised format;

d) the firm complies with the provisions of article 70.1.d) and 70 ter.1.d).

Article 79 ter[79]. Records of contracts.

Investment firms that provide investment services shall establish a record that includes the contract(s) agreed between the firm and the client that set out the rights and obligations of the parties, and the other terms on which the firm will provide services to the client.

Contracts with retail clients must obligatorily be in writing. For the provision of investment advisory services to such clients, written or certifiable evidence of the personalised recommendation shall suffice.

Article 79 quater[80]. Exceptions to the information and record-keeping obligations.

The provisions of the preceding two articles shall not apply where an investment service is offered as part of a financial product which is already subject to other provisions of Community legislation or common European standards related to credit institutions and consumer credit with respect to risk assessment of clients and/or information requirements.

Article 79 quinquies[81]. Fulfilment of the information obligations when providing services through another investment firm.

Where a firm provides investment or ancillary services on behalf of a client on the instructions of another investment firm, it may rely on client information transmitted by

[79] Added by Act 47/2007, of 19 December

[80] Added by Act 47/2007, of 19 December

[81] Added by Act 47/2007, of 19 December

the latter firm. In this case, the investment firm which issues the instructions shall remain liable for the completeness and accuracy of the information about the client.

The investment firm which receives instructions shall also be able to rely on any recommendations in respect of the service or transaction that have been provided to the client by another investment firm. In this case, the investment firm which issues the instructions shall remain liable for the appropriateness for the client of the recommendations or advice provided.

In any event, the investment firm which receives the instructions or orders shall remain responsible for concluding the service or transaction, based on any such information or recommendations, in accordance with the relevant provisions of this chapter.

Article 79 sexies[82]. Obligations with regard to managing and executing orders.

1. When executing client orders, either as an independent service or in conjunction with another service, persons and entities providing investment services must:

a) Take all reasonable steps to obtain the best possible result for their clients taking into account price, costs, speed, likelihood of execution and settlement, size, nature or any other consideration relevant to the execution of the order.

b) Have order management procedures and systems, in the terms to be determined by regulation, which enable them to be executed and subsequently allocated rapidly and properly so that no client's interests are impaired when transactions are performed for several of them or the firm trades for its own account. These procedures or arrangements shall allow for the execution of comparable client orders in accordance with the time of their reception by the investment firm.

2. To comply with item a) of the preceding section, firms must have an order execution policy that defines the relative importance attributed to price, costs, speed and efficiency in execution and settlement and to any other factor that they consider to be relevant in executing the order.

The order execution policy shall include, for each class of instruments, information on the different markets, systems or venues where the investment firm executes its client orders and the factors affecting the choice of execution venue. The firm must identify those venues that, in its opinion, enable it to obtain on a consistent basis the best possible result for the execution of client orders.

3. Firms must inform their clients about their order execution policy and obtain the client's consent before applying it. Where that policy allows the firm to execute the orders outside regulated markets and multilateral trading facilities, clients must be informed of this fact and must give their express prior consent before the orders are executed outside such markets or systems. This consent may be obtained either in the form of a general agreement or in respect of individual transactions.

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[82] Added by Act 47/2007, of 19 December

Firms must be able to demonstrate to their clients, at their request, that they have executed their orders in accordance with the firm's execution policy.

4. Whenever there is a specific instruction from the client about executing the order, the investment firm shall execute the order follow the specific instruction.

In the case of retail client orders where no specific instructions were given, the best possible result shall be determined in terms of the total consideration, representing the price of the financial instrument and the costs related to execution, which shall include all expenses incurred by the client that are directly related to the execution of the order, including execution venue fees, clearing and settlement fees and any other fees paid to third parties involved in the execution of the order.

5. Firms shall monitor the effectiveness of their order execution arrangements and execution policy in order to identify and correct any deficiencies. In particular, they shall assess, on a regular basis, whether the execution venues included in the order execution policy provide for the best possible result for the client or whether they need to make changes to their execution arrangements. Firms shall notify clients of any material changes to their order execution arrangements or execution policy.

6. The following shall be established by secondary legislation: the minimum requirements for order execution arrangements and procedures; the form of considering the costs and fees associated with execution; the rules for selecting different systems or markets and for executing limit orders; and the other features of the order execution policy and arrangements.

CHAPTER II[83]. Market abuse

Article 80[84]. Parties to which this obligation refers.

1. Investment firms, credit institutions, UCITS, issuers, analysts and, in general, any persons or entities that, directly or indirectly, perform activities related to securities markets must observe the rules set out in this Chapter.

2. Additionally, firms to which the provisions of articles 82 and 83 bis apply must draw up, file with the National Securities Market Commission and adhere to an internal regulation of conduct of business which must include the provisions of the aforementioned articles and of their secondary legislation. They must also file a written commitment to update those internal regulation of conduct of business and a statement that their content is known, understood and accepted by all persons to whom they apply within the organisation.

In those cases where the content of such regulations fails to comply with the aforementioned provisions or is inappropriate to the nature of the firm or to the combination of activities undertaken by the firm or group, the National Securities

[83] Added by Act 47/2007, of 19 December

[84] Amended by Act 47/2007, of 19 December

Market Commission may demand that such amendments or additions as it deems necessary be incorporated into those regulations.

Article 81

1. Inside information shall mean all information of a precise nature which has not been made public, relating, directly or indirectly, to one or more transferable securities or financial instruments within the scope of application of this law, or to one or more issuers of such transferable securities or financial instruments and which, if it were made public, would be likely to have a significant effect on the prices of those securities in a regulated market or multilateral trading facility.

The provisions of the preceding paragraph shall also apply to transferable securities or financial instruments with regard to which a request has been made for admission to trading on a regulated market or multilateral trading facility.

In relation to derivatives on commodities, inside information shall mean information of a precise nature which has not been made public, relating, directly or indirectly, to one or more such derivatives and which users of markets on which such derivatives are traded would expect to receive in accordance with accepted market practices in those markets.

2. All those who possess inside information must refrain from performing any of the following activities, directly or indirectly, on their own account or for third parties:

a) Preparing or carrying out any type of transaction on the transferable securities or financial instruments envisaged in the previous paragraph to which the information refers, or on any other security, financial instrument or any type of contract, regardless of whether it is traded on a secondary market, whose underlying is the transferable security or financial instrument to which the information refers.

The preparation or execution of transactions whose very existence constitutes inside information, and transactions conducted in the discharge of an obligation that has fallen due to acquire or dispose of financial instruments, where that obligation results from an agreement concluded before the person concerned possessed inside information or other transactions performed in accordance with the applicable regulations are not subject to the first subparagraph.

b) Disclosing inside information to any other person unless such disclosure is made in the normal course of the exercise of his employment, profession or duties.

c) Recommending or inducing another person, on the basis of inside information, to acquire or dispose of instruments to which that information relates.

The prohibitions established in this section shall apply to any person who possesses inside information when that person knows, or ought to have known, that the information possessed is inside information.

3. The prohibitions established in the preceding section shall not apply to transactions to carried out in pursuit of monetary, exchange-rate or public debt-management policy by a

Member State, by the European System of Central Banks, by a national central bank or by any other officially designated body, or by any person acting on their behalf.. Nor shall they apply to trading in own shares in buy-back programmes or to the stabilisation of a transferable security or financial instrument, provided such trading is carried out in accordance with the conditions to be established by regulation.

4. All persons or firms that operate on the securities markets or perform activities related to them and, in general, anyone that possesses inside information, is under the obligation to safeguard that information, without prejudice to the duty to communicate and collaborate with the legal and administrative authorities, in the terms established in this or other laws. Therefore, they shall adopt the appropriate measures to prevent that information from being used in an abusive or disloyal manner and, if that occurs, they shall immediately take the necessary steps to remedy the consequences.

5. Public bodies that provide statistics which may have significant repercussions on the financial markets shall disclose those statistics in a correct and transparent manner.

6. The Minister of Economy and, with his express authorisation, the National Securities Market Commission, are empowered to establish specific measures in relation to the various categories of persons or firms and their transactions on the securities markets to safeguard inside information.

Article 82. Significant information, parties obliged to disclose it, and publication [85]

1. Significant information is defined as all information whose knowledge may reasonably encourage an investor to acquire or transfer securities and which, therefore, may have a significant influence on the security's price in a secondary market.

2. Issuers of securities are obliged immediately to publish and disseminate any significant information to the market. They must also present such information to the National Securities Market Commission for inclusion in the official register regulated by article 92 of this Act.

3. That communication to the National Securities Market Commission must take place at the same time as the information is disclosed by any other means and as soon as the fact becomes known, the decision is adopted or the relevant agreement or contract with third parties is signed. The contents of the communication must be truthful, clear, complete and, where the nature of the information so demands, quantified, in such a way that does not confuse or mislead. The issuers of securities must also disseminate said information on their web sites. Nevertheless, where the significant information may perturb trading in the securities of the issuer or jeopardise investors' interests, the issuer must notify the National Securities Market Commission of the significant information prior to publication, and the National Securities Market Commission will disseminate it immediately.

4. An issuer may, under its own responsibility, delay the publication and dissemination of significant information where it considers that the information jeopardises its

[85] Amended by Act 6/2007 on 12 April

legitimate interests, provided that such omission is not likely to mislead the public and that the issuer can guarantee the confidentiality of the information. The issuer must inform the National Securities Market Commission immediately.

5. The Minister of Economy and Finance and, with his/her express authorisation, the National Securities Market Commission, is empowered, with regard to the obligations established in this Article, to implement the procedures and forms in which the aforementioned communications must be made, determine the period in which the significant information must be published on the issuers' web sites, and specify the other points to which that information refers.

Article 83

1. All firms or groups of firms that provide investment services, and other firms that operate or provide investment advice services on the securities markets, are obliged to establish the necessary measures to prevent a flow of inside information between their various areas of activity, to ensure that each of these areas makes decisions regarding the securities markets on an autonomous basis and that conflicts of interest are prevented.

In particular, these firms shall be obliged to:

a) Establish Separate Areas of activity within the firm or group to which they belong, provided that they act simultaneously in several of them. In particular, the departments responsible for own portfolio management, third-party portfolio management and research, must be established as Separate Areas.

b) Establish adequate barriers to information among Separate Areas and between each Separate Area and the rest of the organisation.

c) Define an investment decision-making system which ensures that the investments are decided upon autonomously within the Separate Area.

d) Draw up, and keep updated, a list of securities and financial instruments on which they have inside information, and of persons who have had access to that information and the dates on which this occurred.

2. Moreover, all firms and groups of firms which draft, publish or disseminate reports or recommendations on companies that issue listed securities or financial instruments must act in a loyal and fair manner, disclosing prominently in their reports, publications or recommendations any significant links, including commercial relationships, and any stable shareholding that the firm or group holds or will hold in the analysed company, and highlighting that the document does not constitute an offer for sale or subscription of securities.

3. The Minister of Economy and, with his express authorisation, the National Securities Market Commission, may establish obligatory measures in the implementation of this Article and, in particular, the obligation that these firms have a specific internal regulation of conduct of business for the investment advisory service.

Article 83 bis

1. During the study or negotiation phases of any legal or financial operation that may have a significant influence on the price of the securities or financial instruments in question, the issuers of securities are obliged to:

a) Limit knowledge of the information strictly to the essential persons inside or outside the organisation.

b) Keep, for each transaction, a documentary record of the names of the persons envisaged in the previous paragraph and the date on which each of them received the information.

c) Expressly inform those persons included in the record of the nature of the information, the duty of confidentiality and the prohibition of use.

d) Establish security measures for the safekeeping, filing, access, reproduction and distribution of the information.

e) Supervise the market performance and price formation of the securities issued by them and the news issued by professional disseminators of economic information and the mass media which may affect them.

f) In the event that the prices or the volumes traded perform abnormally and that there are rational indications that this performance is due to a premature, partial or distorted disclosure of the transaction, immediately issue a disclosure of material fact which clearly and precisely indicates the status of the transaction under way or contains a preview of the information to be provided, without prejudice to the provisions of Article 82.4 of this Act.

2. Issuers of securities are obliged to subject transactions on their own shares or on financial instruments referenced to them to measures that ensure that decisions to invest or divest are not affected by knowledge of inside information.

3. Issuers are also obliged to subject the members of their governing body, the executives as defined by regulation, and the personnel in the areas related to securities market activities to measures that prevent the use of inside information relating to the securities and financial instruments issued by the firm itself or by others in its group.

4. The Minister of Economy and, with his express authorisation, the National Securities Market Commission, may establish obligatory measures in implementation of this Article. In particular, they shall determine the manner and period in which the directors and executives, and those persons who have close links to them, must inform the National Securities Market Commission and the public in general of the acquisition of securities and financial instruments issued by the firm in which they hold such positions, or of securities or financial instruments referenced to them.

Article 83 ter

1. All persons or entities that act in, or are connected to, the securities market must refrain from preparing or engaging in practices that distort price discovery.. Such practices shall be understood to include:

a) Transactions or orders:

Which give, or are likely to give, false or misleading signals as to the supply of, demand for or price of financial instruments, or

Which secure, by means of a person or persons acting in collaboration, the price of one or several financial instruments at an abnormal or artificial level, unless the person who entered into the transactions or issued the orders to trade establishes that his reasons for so doing are legitimate and that these transactions or orders to trade conform to accepted market practices on the regulated market concerned

b) Transactions or orders to trade which employ fictitious devices or any other form of deception or contrivance

c) Dissemination of information through the media, including the Internet, or by any other means, which gives, or is likely to give, false or misleading signals as to financial instruments, including the dissemination of rumours and false or misleading news, where the person who made the dissemination knew, or ought to have known, that the information was false or misleading. In respect of journalists when they act in their professional capacity, such dissemination of information is to be assessed taking into account the rules governing their profession, unless those persons derive, directly or indirectly, an advantage or profits from the dissemination of the information in question.

2. Nevertheless, the transactions or orders envisaged in Article 81.3 and, in general, those executed in accordance with the applicable regulations, shall not be covered by the preceding paragraph.

3. The Minister of Economy and, with his express authorisation, the National Securities Market Commission, is empowered, in connection with the prohibition established in this Article, to draw up a non-exhaustive list and description of specific practices contrary to prices discovery.

Article 83 quater. Notification of suspicious transactions.[86]

1. Entities that engage in transactions with financial instruments must notify the National Securities Market Commission, as soon as possible, when they have reasonable grounds to suspect that a transaction is based on inside information or seeks to distort price discovery.

Spanish investment firms and credit institutions, including subsidiaries of foreign entities, and branches of non-EU investment firms and credit institutions, are subject to this obligation to notify the National Securities Market Commission. If appropriate, the National Securities Market Commission shall notify the suspicious transaction to the supervisor of the Member States where the market in which the transaction took place is located.

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[86] Added by Act 12/2006, of 16 May

2. Suspicious transactions may be notified by letter, e-mail, fax or telephone (in the latter case, written confirmation must be provided at the request of the National Securities Market Commission).

3. The communication must contain the following information:

a) Description of the transactions, including the type of order and the method of trading used.

b) The grounds for suspicion that the transaction makes use of inside information or seeks to distort price discovery.

c) The identity of the persons through whom the transactions were performed, and of any others involved in the transactions.

d) Whether the person obliged to give notice is acting for their own account or on behalf of third parties.

e) Any other pertinent information about the suspicious transactions.

If such information is not available at the time of giving notice, the notice must at least state the reasons why the transaction is considered to be suspicious, without prejudice to the obligation to provide supplementary information as soon as it becomes available.

4. Entities reporting suspicious transactions to the National Securities Market Commission must keep silent about such notice except in the cases provided in the current legislation. In any case, notice given in good faith may not lead to liability of any type nor shall it constitute a violation of the prohibitions against disclosure contained in contracts, laws, regulations or administrative rules.

5. The identity of the party reporting the suspicious transaction shall be subject to professional secrecy as established in article 90.4 of this Act.

TITLE VIII - RULES FOR SURVEILLANCE, SUPERVISION AND SANCTION

Chapter I - General provisions

Article 84[87]. Scope of supervision, inspection and discipline.

The following are subject to the system of supervision, inspection and discipline under this Act, for which the National Securities Market Commission is responsible.

1. The following persons and entities governed by this Act:

[87] Amended by Act 47/2007, of 19 December

a) The governing bodies of official secondary markets, with the exception of the Bank of Spain and the governing entities of multilateral trading facilities.

b) The Systems Company (Sociedad de Sistemas), central counterparties, the Sociedad de Bolsas and those companies which own all the shares in the bodies envisaged under item a), as well as other settlement and clearing systems of markets created according to the provisions of this Act.

c) Spanish investment firms, including any office or centre within or outside Spain.

d) Non-EU investment firms which operate in Spain.

e) Agents of firms that provide investment services.

f) Management companies of investment guarantee funds.

g) Persons and entities not included in the preceding list which are members of any official secondary market or of the entity which handles its clearing and settlement.

2. The following persons and entities, with regard to their transactions connected with the securities market:

a) Securities issuers.

b) Credit institutions and their agents, including any branch opened outside Spain, and non-community credit institutions operating in Spain.

c) Investment firms authorised in another European Union Member State that operate in Spain, in the terms provided in this Act and in its secondary legislation, including their tied agents and branches in Spanish territory and, in the same terms, the branches in Spain of credit institutions authorised in another Member State of the European Union.

d) Other individuals and legal entities, to the extent that they are affected by the provisions of this Act and its implementing provisions.

3. Persons resident or domiciled in Spain who control, directly or indirectly, investment firms in other Member States of the European Union within the framework of cooperation with the supervisory authorities of these firms, as well as holders of qualifiying holdings for the purposes of complying with the provisions of article 69 of this Act.

4. Entities which form part of the consolidated groups of the investment firms envisaged in article 86 of this Act, solely for the purpose of complying with consolidated own funds requirements and restrictions regarding investments, operations and positions which imply high risks.

5. Entities which form part of consolidated groups controlled by entities described in items 1.a) and 1.b) above, solely for the purpose of complying with the obligation to consolidate their financial statements and the restrictions which may be imposed regarding their business and own funds balance.

6. Natural persons and non-financial institutions mentioned under article 86.9, solely for the purposes envisaged in that article.

7. Any person or entity, for the purposes of verifying whether they contravene the naming and operating restrictions envisaged in articles 64, 65 and 65 bis.

In the case of legal persons, the powers of the National Securities Market Commission envisaged in the previous paragraphs may be exercised over the persons that hold the position of director, executive or similar within those persons.

The provisions of this article shall be understood without prejudice to the powers of supervision, inspection and sanction vested in the Autonomous Regions that have devolved powers in this area over the governing companies of secondary markets located in their territory and, in connection with the transactions in securities listed only on such markets, over the other persons or entities listed in the first two sections above. For the exercise of these powers, the relevant provisions of this Title shall be of a basic nature, except for the references to State agencies or institutions contained therein. The National Securities Market Commission may enter into agreements with the Autonomous Regions with authority in matters of securities markets in order to coordinate their respective actions.

8. With respect to the provisions of articles 81, 82 and 83 ter and without prejudice to the powers of the Autonomous Regions, the National Securities Market Commission shall be competent not only for transactions undertaken within and outside Spain regarding transferable securities and other financial instruments listed in an official secondary market or those which have applied to be listed in such markets, but also for transactions undertaken in Spain regarding transferable securities and other financial instruments listed in a regulated market of another Member State of the European Union or which have applied to be listed in any such market.

Article 85[88]. Powers of the National Securities Market Commission. Supervision and inspection.

1. The National Securities Market Commission shall be given all supervisory and investigatory powers that are necessary for the exercise of its functions. It may exercise those powers:

a) directly;

b) in cooperation with other authorities, whether domestic or foreign, in the terms of this Act and its secondary legislation;

c) by application to the competent judicial authorities. In particular, it may request the seizure or freezing of assets.

2.The National Securities Market Commission's powers of supervision and inspection shall include, in the form and subject to the limitations established by law, the right at least to:

[88] Amended by Act 47/2007, of 19 December

a) have access to any document in any form whatsoever and to receive a copy of it;

b) demand information from any person and if necessary to summon and question a person with a view to obtaining information;

c) perform inspections on site in any office or premises of the firms and companies;

d) demand existing telephone and data traffic records;

e) demand the cessation of any practice that is contrary to the provisions established in this Act and its secondary legislation;

f) request the seizure or freezing of assets;

g) request temporary prohibition of professional activity;

h) obtain from the auditors of investment firms and of the governing companies of official secondary markets any information they may have obtained in the course of their duties;

i) adopt any type of measure to ensure that investment firms and official secondary markets continue to comply with legal requirements;

j) order the suspension or limitation of the type or volume of transactions or activities that natural or legal persons may perform in the securities markets;

k) order the suspension or exclusion from trading of a financial instrument, on either an official secondary market or a multilateral trading facility;

l) refer matters for criminal prosecution;

(m) allow auditors or experts to carry out verifications or investigations in accordance with the provisions of article 91.4.c);

n) in discharging its duty to check the periodical disclosures referred to in article 35.4 of this Act, the National Securities Market Commission may:

i) Obtain from the auditors of issuers whose securities are listed in an official secondary market or in another regulated market domiciled in the European Union, by means of a written demand, any information or documentation that may be necessary, in accordance with the Audit Act (Act 19/1988, of 11 July).

Disclosure by the auditors of the information demanded by the National Securities Market Commission under the provisions of this article shall not constitute a breach of their duty of secrecy.

ii) Demand that issuers whose securities are listed in an official secondary market or in another regulated market domiciled in the European Union publish additional information, reconciliations, corrections or restatements of their periodic disclosures.

The measures referred to in items e), i), j) and k) above may be adopted provisionally in the course of a disciplinary proceeding or otherwise, in accordance with the provisions

of articles 71 ter, 91, 91 bis, 91 ter and 127 of this Act, provided that they are necessary for effective investor protection or proper functioning of the markets, and they shall be maintained for so long as the reason for which they were adopted persists.

The National Securities Market Commission may disclose to the public any measure adopted due to infringement of the applicable provisions, unless such disclosure would seriously jeopardise the securities markets or cause disproportionate damage to the parties involved.

Where the measures referred to in items e), g), j) and n) are applied to firms that are under the supervision of the Bank of Spain, whether as precautionary measures within a disciplinary proceeding or otherwise, that body must be notified beforehand. That body must also be consulted beforehand in the case of the measures envisaged under item f).

3. By virtue of the preceding paragraph, the natural and legal persons listed in article 84 are obliged to supply any books, records and documents, regardless of their format, which the Commission deems pertinent, including computer programs, magnetic and optical disk files and any other type of files.

Natural persons shall be obliged to respond to summonses from the Commission in order to give testimony.

To the extent that is necessary for effective discharge by the Commission of its supervisory and inspection duties, the natural or legal persons providing any type of professional service to the persons covered by the preceding paragraph shall be obliged to supply any data and information requested by the Commission, in accordance with any provisions regulating their profession or activity.

Verification and investigation, including questioning, may take place in any of the following locations, at the discretion of the National Securities Market Commission:

a) In any office, department or premises of the entity or person being inspected or of its representative.

b) At the premises of the National Securities Market Commission or another body of the administration.

When verification and inspection takes place at one of the locations specified in paragraph a) above, the normal working hours at that location shall be observed, without prejudice to mutual agreement about the use of other days or times.

4. The auditors of investment firms shall be bound by the obligation to notify the National Securities Market Commission that is regulated in the final additional provision of the Audit Act (Act 19/1988, of 12 July).

5. The National Securities Market Commission can order, in writing or verbally, the persons and entities listed under article 84 to publish immediately any information that the Commission deems pertinent regarding their activities in the securities market or any activities which might influence the market. Where the persons and entities concerned do not do so directly, the information shall be disclosed by the National Securities Market Commission.

Article 86

1. The individual and consolidated accounts and management reports for each fiscal year of the firms referred to in Article 84.1 shall be approved, within the first four months after the close of the year, by their respective General Meetings, following an audit.

2. Without prejudice to the provisions of Title III, Book I of the Commercial Code, the Minister of Economy and Finance and, by his express authorisation, the National Securities Market Commission are empowered, based on a report from the Institute of Accounting and Auditing (*Instituto de Contabilidad y Auditoría de Cuentas*), to establish and amend the accounting rules applicable to the firms referred to in the preceding paragraph and the standards to which their financial statements must conform, as well as those standards referring to the achievement of established coefficients, providing the intervals and details with which the respective particulars must be furnished to the Commission or generally made public by the companies themselves. This power shall have no restrictions other than the requirement that the disclosure criteria be homogenous for all firms in the same category and similar for the different categories. In addition, the Minister of Economy and Finance and, with his express authorisation, the National Securities Market Commission are empowered to regulate the registers and documents which investment services firms are obliged to keep, as well as those registers and documents concerning securities market operations to be kept by the other firms envisaged in article 65.

3. The Minister of Economy and Finance and, with his express authorisation, the National Securities Market Commission, based on a report from the Institute of Accounting and Auditing, shall have the same powers envisaged in the preceding paragraph in connection with consolidated groups of investment services firms included under paragraph 4 below and with consolidated groups whose parent undertaking is one of those referred to in article 84.1.a) and 84.1.b).

4. In order to fulfil the minimum own funds requirements and restrictions imposed by article 70 or, if applicable, to fulfil the provisions of article 87, investment services firms shall consolidate their financial statements with those of other investment services firms and financial institutions with which they constitute a decision-making unit, as envisaged in article 4. A group of financial institutions shall be considered to constitute a consolidated group of investment services firms in any of the following circumstances:

a) When one investment services firm controls the other firms.

b) When the principal activity of the parent undertaking consists of holding shares in investment services firms.

c)[89] If a company whose core activity consists of having holdings in financial entities, a natural person, a group of persons who act systematically together, or a non-consolidated entity pursuant to this Act, control several entities of those defined in section 6 of this article, when at least one of them is an investment firm, and provided the investment services firms are of greater relative size

[89] Amended by Act 5/2005, of 22 April

amongst the financial entities, in accordance with the criteria established to that effect by the Ministry of Economy and Finance.

The obligation to draw up and approve the consolidated management report and financial statements and to file them lies with the parent undertaking; however, in the case envisaged in item c) of this paragraph, the firm responsible shall be designated by the National Securities Market Commission from among the investment services firms in the group.

The consolidated management report and financial statements of groups of investment services firms must be audited in accordance with the provisions of article 42 of the Commercial Code and other applicable legislation. However, the auditors shall be appointed by the firm responsible for drawing up and approving the financial statements and management report in accordance with the provisions of the preceding paragraph.

5. Regulations shall establish the cases where, owing to the nature of the firms which form the group, to the absence of potential losses to investors, or to the normal operation of the securities market, the consolidation obligation in the previous item is not applicable. In these cases, investment services firms which belong to such groups must use the definition of own funds to be defined by regulation, individually fulfil the requirements and limits for investment services firms, and create systems for the surveillance and control of the sources of capital and financing of the other financial institutions in the group in order to safeguard the financial situation of these firms; the organisation of the aforementioned systems and their results must be reported to the National Securities Market Commission.

In these cases, even if the obligation to consolidate is not applicable, the National Securities Market Commission may ask investment services firms that form part of the group to provide information regarding risks to the group as a whole, such as large risks and holdings in non-financial or other companies, and it may also impose restrictions on capital transfers from investment services firms to other firms in the group. The above is without prejudice to the powers granted to the National Securities Market Commission in point 9 of this article.

In addition, the type of financial institution that must be included in the consolidated group of investment services firms referred to in the previous point shall be established by regulation.

6[90]. The following shall form part of the consolidated group:

a) Investment firms.

b) Credit institutions, without prejudice to the provisions of the second paragraph of article 8.3 of Act 13/1985, of 25 May, on the investment coefficients, own funds and reporting obligations of financial intermediaries.

c) Investment companies in transferable securities.

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[90] Amended by Act 47/2007, of 19 December

d) Collective Investment Schcmes management companies, mortgage and asset securitisation trust management companies and pension fund management companies, whose sole purpose is the administration and management of the aforementioned funds or trusts.

e) Venture capital companies and venture capital fund management companies.

f) Entities whose principal activity consists of holding shares or stakes, except for mixed-activity portfolio holding companies that are supervised at the level of the financial conglomerate.

In addition, instrumentality companies whose main activity involves an extension of the business of any of the entities in the consolidated group or the provision of ancillary services to such entities shall form part of the consolidated group of investment firms.

The National Securities Market Commission may authorise the individual exclusion of an entity from a consolidated group of investment firms:

a) where the entity in question is located in a third country where there are legal obstacles to the provision of the necessary information;

b) where the entity in question is not material, in the opinion of the competent authorities, with respect to the objectives of supervision of investment firms and, in any event, where the total balance sheet of the entity amounts to less than the lower of the following two amounts: 10 million euro or 1 per cent of the balance sheet of the group's controlling entity;

(c) where the consolidation of the entity would be inappropriate or misleading with respect to the objectives of supervision of that group.

Where several companies meet the criterion set out in b) above, they must nevertheless be consolidated if they are material with respect to the objectives when taken together.

7[91]. For the purposes indicated in section 4, the insurance entities shall not form part of the consolidated groups of investment firms.

8. The way in which the rules envisaged in this Act for own funds and supervision of consolidated groups should be applied to subgroups of investment services firms (i.e. groups of investment services firms which are part of a larger consolidated group) may be specified by regulation.

In the same way, the mode of integrating the subgroup in the group and the collaboration between supervisory bodies may also be regulated.

9. The National Securities Market Commission may demand any information it deems necessary from firms subject to consolidation in order to verify the consolidation and analyse the risks assumed by the consolidated group as a whole; it may also inspect their books, documentation and records for the same purposes.

When the economic, financial or management relationships of an investment services firm with other firms lead to the presumption of a control relationship as referred to in

[91] Amended by Act 5/2005, of 22 April

this article, but the firms have not consolidated their accounts, the National Securities Market Commission may request information from those firms or inspect them in order to determine whether consolidation is appropriate.

10. The National Securities Market Commission may request information from individuals and inspect the non-financial institutions with which they have a control relationship in accordance with the provisions of article 4 of this Act for the purposes of determining their impact on the legal, financial and economic situation of investment services firms and their consolidated groups.

11. The compliance by the consolidated group with the provisions of the preceding paragraphs does not exempt the broker-dealers and brokers within the group from fulfilling their individual own funds requirements.

12. When there are foreign firms that can potentially form part of a consolidated group of investment services firms, the scope of supervision of the consolidated group by the National Securities Market Commission shall be governed by regulation, according to, among other criteria, whether the firm is an EU or non-EU entity, its legal nature and the level of control.

13. The consolidation obligation established in article 42 of the Commercial Code shall be understood to be complied with through the consolidation referred to in the preceding numbered items for those groups of companies whose parent undertaking is an investment services firm or a company whose principal activity is the holding of stakes in investment services firms. Additionally, this obligation shall be understood to be complied with by the governing bodies of official secondary markets and the Securities Clearing and Settlement Service.

The above is understood to be without prejudice to the consolidation obligation which may exist between subsidiaries which are not financial institutions in cases where it is required in accordance with the aforementioned article 42 of the Commercial Code.

14. The firms defined in accordance with articles 62 and 65 of this Act which carry out the supplementary activity envisaged in article 63.2.a) are obliged to submit a half-yearly review report on this activity by an independent expert to the National Securities Market Commission. The main objective of this report will be to verify the balances and positions of the firm's customers. The chapter of the report concerning the public debt book-entry market must be submitted with the same frequency to the Bank of Spain.

The Minister of Economy is authorised to implement the obligation envisaged in the preceding paragraph at the proposal by the National Securities Market Commission and based on reports by the Bank of Spain and the Institute of Accounting and Auditing.

15[92]. All the entities or companies that make up a consolidated group of investment firms must ensure that their systems, procedures and mechanisms are coherent, well integrated and appropriate to provide the information that is necessary to comply with the regulations that apply to the group and to provide any type of pertinent data or information for supervisory purposes.

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[92] Amended by Act 47/2007, of 19 December

Article 87[93]. Own funds of consolidated groups and relations with other supervisors

1. Where a consolidated group of investment firms includes other types of entities subject to specific own funds requirements then, in order to ensure sufficient own funds, the group must attain the higher of the following aggregates:

a) The amount necessary to achieve the minimum levels envisaged in article 70.1.a).

b) The sum of the own funds requirements established for each type of entity within the group, calculated on an individual or subconsolidated basis according to the specific regulations.

2. Compliance by the group with the provisions of the preceding item does not exempt the financial institutions within the group, whatever their nature, from fulfilling their individual own funds requirements. To this end, these entities shall be individually supervised by the relevant supervisory body, according to their nature.

3. The conditions under which the National Securities Market Commission may waive full individual compliance with the own funds requirements for Spanish investment firms that are part of a group as set out in article 86.4.a) and 86.4.b) shall be determined by regulation. The National Securities Market Commission may also adopt other measures to ensure appropriate distribution of the own funds and risks among the entities making up the consolidated group and, in any case, it shall supervise the individual solvency situation of each of the entities making up such groups.

4. All regulations implementing the provisions of this Act and which may affect financial institutions subject to supervision by the Bank of Spain or the Spanish insurance regulator (*Dirección General de Seguros*) shall be issued following consultation with those bodies.

5. Whenever entities which are individually supervised by a body other than the National Securities Market Commission form part of a consolidated group of investment firms, the National Securities Market Commission, in exercising the powers attributed to it by this Act regarding such entities, must coordinate its actions with the respective supervisory body in each case. The Minister of Economy and Finance may establish the necessary rules to ensure appropriate coordination.

6. The Minister of Economy and Finance, following a report by the National Securities Market Commission, may, at the request of the Bank of Spain, grant that a group of investment firms which includes one or more credit institutions capable of joining a deposit guarantee fund be considered as a consolidated group of credit institutions and thus be subject to supervision by the Bank of Spain on a consolidated basis.

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[93] Amended by Act 47/2007, of 19 December

Article 87 bis[94]. Supervision of the solvency of investment firms and their consolidated groups.

1. As the authority entrusted with supervision of investment firms and their consolidated groups, the National Securities Market Commission shall have the power to:

a) review the systems, agreements, strategies, procedures or mechanisms of any type used to comply with the solvency rules contained in this Act and its secondary legislation;

b) evaluate the risks to which investment firms or their groups are or may be exposed;

c) based on the review and evaluation referred to in a) and b) above, determine whether the systems referred to in a) and the firms' own funds ensure management and solid coverage, respectively, of their risks.

The National Securities Market Commission may adopt as its own, and transmit as such to investment firms and their groups, any guides for investment firms that are approved by active international bodies or committees in connection with criteria, practices or procedures that are advisable for appropriate assessment of the risks and better compliance with the rules of order and discipline.

The analyses and evaluations referred to in a) and b) above shall be updated at least once per year.

2. The National Securities Market Commission shall accumulate statistical data on fundamental aspects of the application of the rules on solvency of investment firms that are set out in this Act and shall periodically divulge, on its web site at least, the following information in connection with those rules:

a) the text of the legislation, regulations and administrative provisions and any guidance it issues in this respect as the authority with responsibility for oversight and supervision of investment firms and their groups;

b) the way in which the discretionary options allowed to the Member State by the European Union's Directives in connection with the aforementioned regulations have been exercised in Spain;

c) the criteria and methodology applied by the National Securities Market Commission to review the agreements, strategies, procedures and mechanisms applied by investment firms and their groups to comply with the regulations and to evaluate the risks to which they are or may be exposed.

3. Additionally, when an investment firm fails to comply with the requirements of this Act or its secondary legislation that establish minimum own funds requirements or require an appropriate organisation structure or internal control mechanisms or

[94] Added by Act 47/2007, of 19 December

procedures, the National Securities Market Commission may adopt the following measures, among others:

a) Oblige the investment firms and their groups to maintain own funds in excess of the minimum requirements. The National Securities Market Commission must do so at least where it observes serious deficiencies in the investment firm's organisation structure or in its internal control procedures and mechanisms, including in particular those referred to in article 70.3 of this Act, or whenever it determines, in accordance with the provisions of article 87 bis.1.c), that the systems and own funds referred to in that clause are insufficient to ensure solid risk management and coverage. In either case, the measures must be adopted where the National Securities Market Commission considers that the mere application of other measures is unlikely to improve those deficiencies or situations in a reasonable time scale.

b) Require that investment firms and their groups strengthen their procedures, mechanisms and strategies for complying with those requirements.

c) Require that investment firms and their groups apply a specific policy, either to book a provision or distribute a dividend or another form of dealing with the assets that are weighted for the purposes of the own funds requirements, or to reduce the risk inherent to their activities, products or systems.

d) Restrict or limit the investment firms' businesses, operations or network.

The provisions of this section shall be understood without prejudice to the penalties that may be applicable under this Act.

Article 88

Without prejudice to the provisions of this Act, the Bank of Spain shall have powers of surveillance and supervision over all members of the public debt book-entry market, market members and registered dealers and over activities relating to the securities market carried out by the firms entered in the registers for which it is responsible, as referred to in Article 65.

In all cases where the powers of surveillance and supervision of the National Securities Market Commission and the Bank of Spain overlap, both institutions shall coordinate their actions under the principle that it is the duty of the National Securities Market Commission to ensure the orderly working of the securities markets, including the internal organisation issues indicated in article 70 ter.1, whereas the duty to oversee issues of solvency and other matters of internal organisation lies with the body which maintains the corresponding register. In order to coordinate their respective powers of surveillance and supervision, the National Securities Market Commission and the Bank of Spain shall sign agreements specifying their respective responsibilities.[95]

[95] Amended by Act 47/2007, of 19 December

The National Securities Market Commission shall provide such cooperation as may be requested by the Judiciary or the Public Prosecutor's office in order to clarify events relating to the securities markets which may be of a criminal nature.

Article 89

With the exceptions envisaged in the following article, the National Securities Market Commission may order the issuers of securities and any firm connected with the securities markets to immediately disclose any significant information or information that could affect the trading of such securities; in the event of failure to comply, the Commission may disclose such information itself.

Article 90[96]. Professional secrecy.

1. Access by Parliament to information subject to the duty of secrecy shall be provided through the President of the National Securities Market Commission in accordance with the provisions of the parliamentary regulations. For this purpose, the President of the National Securities Market Commission may make a reasoned request to the competent bodies of the Parliament for a closed session or the application of the established procedure for accessing classified information.

Members of a parliamentary investigation committee who receive restricted information are obliged to adopt adequate measures to ensure that the information remains confidential.

2. Confidential information or data that the National Securities Market Commission or other competent authorities receive in the course of their duties in connection with the supervision and inspection envisaged in this or other laws may not be divulged to any person or authority. The duty of confidentiality shall be deemed to be lifted when the interested parties themselves make the information public.

Without prejudice to the provisions of this article and the cases covered by criminal law, no confidential information which they may receive in the course of their duties may be divulged to any person or authority whatsoever, save in summary or aggregate form such that it is not possible to identify any individual investment firm, market governing company, regulated market or other person to which the information refers.

3. All persons which carry out or have carried out business for the National Securities Market Commission and who have had knowledge of restricted information are obliged to keep this information confidential. Breach of this obligation shall entail criminal liabilities and any other liabilities provided by law. Such persons may not give evidence or testify and may not publish, disclose or display restricted information or documents, even after they have left office, without the express consent of the competent body of the National Securities Market Commission. If said consent is not given, the person concerned shall maintain secrecy and shall be exempt from any responsibility arising from such secrecy.

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[96] Amended by Act 47/2007, of 19 December

4. The duty of secrecy governed by this article shall not apply when:

a) When the interested party expressly consents to the dissemination, publication or divulgence of the data.

b) The publication of aggregated data for statistical purposes or communications in summary or aggregated form in such a way that individual firms cannot be identified, not even indirectly.

c) The data is demanded by the competent legal authorities or the public prosecutor in criminal proceedings, or in a civil suit, although in the latter case the duty of secrecy shall be maintained in all matters concerning the prudential requirements of investment firms.

d) The data is demanded by the legal authorities in the context of insolvency proceedings in connection with an investment firm, provided that the data does not concern third parties involved in the relaunch of the firm.

e) The data is demanded by the competent administrative or legal authorities in the context of administrative or legal appeals filed regarding the regulation and discipline of securities markets.

f) The data is to be supplied by the National Securities Market Commission to the following bodies in order for them to fulfil their respective functions: the Autonomous Regions with powers regarding stock exchanges; the Bank of Spain; Spain's Directorate-General of Insurance and Pension Funds; the governing companies of official secondary markets in order to ensure their correct operation; investor guarantee funds; the administrators or receivers of an investment firm or an entity in its group designated by the appropriate administrative or legal proceedings; and the auditors of investment firms and their groups.

g) The data is to be supplied by the National Securities Market Commission to the authorities responsible for preventing money laundering, in accordance with Act 19/1993 of 28 December on specific measures to prevent money laundering, including communications which may exceptionally be made according to the provisions of articles 93 and 94 of the General Taxation Act (Act 58/2003, of 17 December) with the prior authorisation of the Minister of Economy and Finance, which function may not be delegated. For these purposes, the cooperation agreements signed between the National Securities Market Commission and the supervisory authorities of other countries must be taken into account.

h) The data is requested by a parliamentary investigation committee under the terms established in its specific legislation.

i) The data is to be supplied by the National Securities Market Commission to a settlement and clearing system or house of a Spanish market when it is deemed necessary to ensure the correct operation of these systems in the event of non-compliance or possible non-compliance within the market.

j) The data is to be supplied by the National Securities Market Commission, in fulfilment of its functions, to foreign authorities or bodies responsible for the

surveillance of credit institutions, insurance companies, other financial institutions and financial markets, and the management of deposit guarantee or investor protection systems, provided that there is reciprocity and that the authorities and bodies are subject to professional secrecy under conditions which are at least equivalent to those established under Spanish law.

k) The data is to be supplied by the National Securities Market Commission to the Ministry of Finance and Economy or the authorities of the Autonomous Regions with powers regarding securities markets for reasons of prudential supervision or discipline of investment firms or financial institutions and markets subject to this Act.

5. Judicial authorities which receive restricted information from the National Securities Market Commission are obliged to adopt adequate measures to ensure that the information remains confidential for the duration of the relevant proceedings. Other authorities, persons or firms which receive inside information are subject to the professional secrecy governed by this article and cannot use the information except to fulfil their legally established functions.

Article 91[97]. Cooperation between the National Securities Market Commission and the competent authorities of European Union Member States.

1. The National Securities Market Commission shall cooperate with the competent authorities of the Member States whenever necessary for the purpose of carrying out the duties under this Act, making use of all the powers attributed to it by the law.

The National Securities Market Commission shall render assistance to competent authorities of the other Member States. In particular, it shall exchange information and cooperate in any investigation or supervisory activities. The National Securities Market Commission may use its powers for the purpose of cooperation, even in cases where the conduct under investigation does not constitute an infringement of any regulation in force in the Spanish State.

2. When official secondary markets establish mechanisms in other Member States to enable remote access and, taking into account the situation of the securities markets in the host Member State, the operations of a regulated market that has established arrangements in a host Member State have become of substantial importance for the functioning of the securities markets and the protection of the investors in that host Member State, the National Securities Market Commission and host country competent authorities shall establish proportionate cooperation arrangements.

When, taking into account the situation of Spain's securities markets, the operations of a regulated market of another Member State that has established arrangements in Spain to provide remote access have become of substantial importance for the functioning of the securities markets and the protection of the investors in Spain, the National Securities Market Commission and home competent authorities of the regulated market shall establish proportionate cooperation arrangements.

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[97] Amended by Act 47/2007, of 19 December

For the purposes of the provisions of this section, transactions shall be deemed to have become of substantial importance when the provisions of article 16 of Commission Regulation 1287/2006 of 10 August 2006 implementing Directive 2004/39/EC of the European Parliament and of the Council as regards record-keeping obligations for investment firms, transaction reporting, market transparency, admission of financial instruments to trading, and defined terms for the purposes of that Directive are met.

3. Where the National Securities Market Commission has good reasons to suspect that acts contrary to the provisions of the domestic legislation transposing Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments are being or have been carried out in the territory of another Member State by entities not subject to its supervision, it shall notify this in as specific a manner as possible to the competent authority of the other Member State. That communiqué shall be made without prejudice to the powers which the National Securities Market Commission may exercise.

Also, where the National Securities Market Commission receives notice from the competent authority of another Member State which has good reason to suspect that acts contrary to the provisions of this Act and its secondary legislation are being or have been carried out in Spanish territory by entities not subject to its supervision, it must take the appropriate measures to remedy the situation. It must also inform the notifying competent authority of the outcome of the action and, to the extent possible, of significant interim developments.

4. The National Securities Market Commission may request the cooperation of the competent authority of another Member State in a supervisory activity, for an on-the-spot verification, or for an investigation related to matters regulated by the domestic regulation transposing Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments. In the case of investment firms authorised in another Member State that are remote members of an official secondary market, the National Securities Market Commission may choose to address them directly, in which case it must inform the competent authority of the remote member's home Member State accordingly.

Where the National Securities Market Commission receives a request with respect to an on-the-spot verification or an investigation, it shall, within the framework of its powers:

a) carry out the verifications or investigations itself;

b) allow the requesting authority to carry out the verification or investigation; or

c) allow auditors or experts to carry out the verification or investigation.

5. The National Securities Market Commission, in relation to the matters regulated in Chapter II of Title VII or its implementing provisions, may request that the competent authorities of other Member States carry out investigations in their respective territories. It may also request that members of its staff be allowed to accompany staff from the competent authorities of the other Member State in the course of the investigation.

The competent authorities of other Member States may also request that the National Securities Market Commission carry out investigations with regard to the aforementioned matters and under the same conditions.

The National Securities Market Commission may refuse requests to carry out investigations as referred to in this section or refuse to allow its staff to be accompanied by staff from the competent authorities of another member state where this might jeopardise the sovereignty, security or public policy, where legal proceedings have been initiated for the same events or against the same persons before the Spanish authorities or where final judgement has been issued by a Spanish judge or court for the same events and with respect to the same persons. In this case, the Commission must duly notify the requesting authority, providing as much detail as possible regarding such proceedings or legal decision.

All requests for assistance that are made or received under the provisions of this section by Autonomous Regions with powers in these matters shall be processed through the National Securities Market Commission.

If the National Securities Market Commission's request is rejected or no response is obtained in a reasonable period of time, it may refer the matter to the Commission of European Securities Regulators (CESR), where the matter must be debated to find a fast and effective solution.

Article 91 bis[98]. Exchange of information between the National Securities Market Commission and the competent authorities of Member States of the European Union.

1. The National Securities Market Commission shall immediately provide the competent authorities of other Member States of the European Union with the information that they request which is necessary for them to perform their functions.

2. Where the National Securities Market Commission remits information relating to matters regulated in the domestic legislation transposing Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments, it must indicate whether the information may only be divulged with its express consent. Where the National Securities Market Commission receives information from the competent authorities of other Member States and those authorities have indicated that the information may only be divulged with their express consent, the National Securities Market Commission must use the information solely for the purposes that were authorised by that authority.

3. Under section 1 of this article and articles 85.4 and 91 quater, the National Securities Market Commission may transmit information to the Bank of Spain and the Directorate-General of Insurance and Pension Funds. It may not transmit that information to other bodies or natural or legal persons without the express consent of the competent authorities which disclosed it and solely for the purposes for which those authorities gave their agreement, except in duly justified circumstances. In this last case, the

[98] Added by Act 47/2007, of 19 December

National Securities Market Commission must immediately inform the competent authority of the Member State that sent the information.

4. The National Securities Market Commission, and other bodies or natural and legal persons receiving confidential information under paragraph 1 of this Article or under Articles 85.4 and 91 quater may use it only in the course of their duties, in particular:

a) to check that the conditions governing the taking-up of the business of investment firms are met and to facilitate the supervision, on a non-consolidated or consolidated basis, of the conduct of that business, especially with regard to the capital adequacy requirements imposed by the applicable regulations, administrative and accounting procedures and internal-control mechanisms;

b) to monitor the proper functioning of trading venues;

c) to impose sanctions;

d) in administrative appeals against decisions by the competent authorities;

e) in judicial proceedings;

f) in the extra-judicial mechanism for handling investors complaints.

5. The provisions of the foregoing articles shall apply to requests for the supply or exchange of information, as established in article 15 of Commission Regulation 1287/2006 of 10 August 2006 implementing Directive 2004/39/EC of the European Parliament and of the Council as regards record-keeping obligations for investment firms, transaction reporting, market transparency, admission of financial instruments to trading, and defined terms for the purposes of that Directive.

6. The provisions of the foregoing articles shall not prevent the National Securities Market Commission from transferring, to the European System of Central Banks and the European Central Bank, in their capacity as monetary authorities, and to the Bank of Spain, in that same capacity and as the supervisor of the clearing and payment system, such confidential information as may be necessary for them to discharge their duties. Nor shall they prevent the aforementioned authorities from transferring, to the National Securities Market Commission, such information as it may need to discharge its duties under this Act.

7. Upon receipt of a request for an exchange of information in connection with matters regulated in Chapter II of Title VII, the National Securities Market Commission shall provide the requested information immediately. The National Securities Market Commission shall immediately take any necessary measures to gather the requested information. If the National Securities Market Commission cannot immediately supply the requested information, it shall inform the requesting authority of the reasons. The information supplied by the National Securities Market Commission is protected by professional secrecy. The National Securities Market Commission may deny requests for information under article 91 ter.

If the National Securities Market Commission issues a request for information to the competent authority of a Member State and the request is rejected or no response is obtained in a reasonable period of time, it may refer the matter to the Commission of

European Securities Regulators (CESR), where the matter must be debated to find a fast and effective solution.

Information received by the National Securities Market Commission under the provisions of this section may only be used in the framework of administrative or judicial proceedings related specifically to the discharge of its duties, except where the authority which supplied the information has authorised its use for other purposes or its transfer to the competent authorities of other States.

8. With regard to the solvency requirements regulated in this law and its secondary legislation, the National Securities Market Commission shall provide the interested competent authorities of other Member States, at its own initiative, with any information that is essential for the discharge of their supervisory duties and, upon request, all pertinent information for that same purpose.

The information referred to in the preceding paragraph shall be classified as essential where it may have a material influence on the assessment of the financial soundness of an investment firm or financial institution of another Member State of the European Union, including in particular:

a) Identification of the group structure, with subsidiaries and investees in the corresponding Member State, and of the ownership structure of the main investment firms in a group.

b) Procedures for the collection of information from the entities in a group, and for verifying that information.

c) Adverse developments in the solvency of a group or its components that may seriously affect its investment firms.

d) Major sanctions and exceptional measures taken, in particular the request for additional own funds as provided in this law and the imposition of limits on the use of internal methods for measuring operating risk.

Article 91 ter[99]. Refusal to cooperate or exchange information.

The National Securities Market Commission may refuse to act on a request for cooperation in carrying out an investigation, on-the-spot verification or supervisory activity as provided for in Article 91.4 or to exchange information as provided for in Article 91 bis.1 to 91 bis.5 only where:

a) such an investigation, on-the-spot verification, supervisory activity or exchange of information might adversely affect sovereignty, security or public policy;

b) legal proceedings have been initiated for the same events or against the same persons;

c) final judgement has already been delivered in respect of the same persons and the same actions. In the case of such a refusal, the National Securities Market

[99] Added by Act 47/2007, of 19 December

Commission must notify the requesting competent authority accordingly, providing information with the greatest possible detail."

Article 91 quater[100]. Cooperation by the National Securities Market Commission with the competent authorities of third countries.

1. The National Securities Market Commission may conclude cooperation agreements providing for the exchange of information with the competent authorities of third countries only if the information disclosed is subject to guarantees of professional secrecy at least equivalent to those required under Article 90 and there is reciprocity. Such exchange of information must be intended for the discharge of the competent authorities' duties.

The National Securities Market Commission may transfer personal data to a third country in accordance with Title V of Organic Act 15/1999, of 13 December, on the Protection of Personal Data.

The National Securities Market Commission may also conclude cooperation agreements providing for the exchange of information with third country authorities, bodies and natural or legal persons responsible for:

a) the supervision of credit institutions, other financial organisations, insurance undertakings and the supervision of financial markets;

b) the liquidation and bankruptcy of investment firms and other similar procedures;

c) carrying out statutory audits of the accounts of investment firms and other financial institutions, credit institutions and insurance undertakings, in the performance of their supervisory functions, or which administer compensation schemes, in the performance of their functions;

d) overseeing the bodies involved in the liquidation and bankruptcy of investment firms and other similar procedures;

Such exchange of information must be intended for the performance of the tasks of those authorities or bodies or natural or legal persons.

2. Where the information originates in another Member State, it may not be disclosed without the express consent of the competent authorities which have transmitted it and, where appropriate, solely for the purposes for which those authorities gave their consent. The same provision applies to information provided by third country competent authorities."

[100] Added by Act 47/2007, of 19 December

Article 92. Public records in connection with issuers [101]

The National Securities Market Commission must keep the following official registers, to which the public will have free access:

a) A register of the institutions entrusted with keeping the accounting records for each of the security issues represented by book entry.

b) A register containing the prospectuses vetted by the Commission under this Act.

c) A register of the documents referred to in Article 6 and, in general, the documents referred to in Article 26.b) of this Act.

d) A register of investment services firms operating in Spain and, where applicable, of their directors, executives and similar officers.

e) REPEALED BY Act 47/2007, of 19 December, amending Act 24/1988, of 28 July, on the Securities Market

f) A register of agents or authorised representatives who habitually act on behalf of investment services firms.

g) A register of regulated information, which must include the information referred to in articles 35, 35.bis.1, 53, 53.bis, and 82 of this Act. Official demands issued by the Commission for the presentation, amplification or review of the contents of the information referred to in Article 35 will also be included.

h) A register, in accordance with the provisions of article 98.3, of the sanctions imposed in the last five years on natural and legal persons subject to the surveillance, supervision and sanctions envisaged in Title VIII of this Act for serious and very serious infringements.

The filing of the periodic disclosures and prospectuses in the registers of the National Securities Market Commission will only imply acknowledgement that they contain all the information required under the rules governing their content and will in no event signify that the National Securities Market Commission is responsible for any misrepresentations contained therein.

The official register envisaged in g) above will be the central mechanism for storing the information referred to in this article, in the terms to be established by regulation.

i)[102] A register of the official secondary market, whose content and modifications shall be notified to the supervisory authorities of the other Member State of the European Union and to the European Commission.

j) [103] A register of Spanish multilateral trading facilities.

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[101] Article amended twice: Firstly by Royal Decree-Act 5/2005, of 11 March and secondly by Act 6/2007 of 12 April

[102] Added by Act 47/2007, of 19 December

[103] Added by Act 47/2007, of 19 December

k)[104] A register of credit institutions and investment firms that engage in the activity regulated in Chapter III of Title XI of this Act.

Article 93

The Ministry of Economy and Finance shall, without prejudice to the powers of the Autonomous Regional Governments in this matter, regulate the creation by the National Securities Market Commission and, if deemed necessary, by the governing bodies of the official secondary securities markets and by the Securities Clearing and Settlement Service, of departments to deal with complaints that may be made by the public relating to matters under such bodies' powers, and to advise the public on its rights and the legal channels through which it may exercise them.

Article 94

The Minister of Economy and Finance and, by his express delegation, the National Securities Market Commission shall determine those cases in which disclosure of the activities envisaged in this Act shall be subject to authorisation or any other form of administrative control by the National Securities Market Commission and shall in general approve the special rules to which it is to be subject.

The National Securities Market Commission shall take the appropriate action to obtain the discontinuation or amendment of any publicity which is contrary to the provisions referred to in the preceding paragraph or that, generally, is deemed unlawful according to the general publicity regulations, without prejudice to the sanctions that may be applicable in accordance with the next Chapter of this Act.

Chapter II - Infringements and sanctions

Article 95

Individuals and firms subject to which the provisions of this Act and those persons holding *de jure* or *de facto* directorships or executive positions in such corporations that violate the regulations for the organisation or control of the securities markets shall be held liable under administrative law and may be sanctioned pursuant to the provisions of this chapter.

For the purposes of this chapter, the directors or members of the collegiate governing bodies and general managers and similar, i.e. those persons who, *de jure* or *de facto*, perform senior management functions at the firm, are deemed to hold the directorships or executive positions at the firms referred to in the preceding paragraph.

Laws and administrative provisions of a general nature containing precepts referring specifically to the firms covered by Article 84.1 of this Act or to activities relating to the securities market conducted by the persons or firms referred to in Article 84.2, which must compulsorily be observed by those parties shall be deemed to be regulations for the organisation and control of the Securities Market. The provisions of the National

[104] Added by Act 47/2007, of 19 December

Securities Market Commission envisaged in Article 15 of this Act shall be deemed to be included among said administrative provisions.

Article 96

Exercise of the authority to sanction referred to in this Act shall be independent of any possible concurrent liability for criminal offences or misdemeanours. However, when criminal proceedings are being prosecuted for the same events or for other events which cannot rationally be separated from the events punishable under this Act, the proceedings relating to such events shall be suspended pending the court's final decision. On resumption of the proceedings, if applicable, any resolution made must respect the court's findings of fact.

Article 97

1. The power to commence and investigate penalty proceedings referred to in this Chapter and to impose sanctions shall be governed by the following rules:

a) The National Securities Market Commission shall be vested with the power to commence and investigate proceedings. The commencement of proceedings which affect investment services firms authorised by other EU member states shall be notified to the relevant supervisory authorities so that, without prejudice to the adoption of the appropriate precautionary measures and sanctions in accordance with this Act, they may adopt those measures which they deem appropriate to stop the infringement and prevent its recurrence.

b) The imposition of sanctions for serious and minor infringements shall rest with the National Securities Market Commission.

c) The imposition of sanctions for very serious infringements shall rest with the Minister of Economy and Finance based on a proposal by the National Securities Market Commission and following a report by its Advisory Committee, except sanctions involving the withdrawal of authorisation, which shall be imposed by the Cabinet.

When the offending entity is a credit institution or a branch of a credit institution from a third country, a report from the Bank of Spain shall be an obligatory pre-requisite for imposing sanctions.[105]

The National Securities Market Commission shall also be competent to commence and investigate the sanction proceedings referred to in article 89 of the Consolidated text of the Public Limited Companies Act (*Texto Refundido de la Ley de Sociedades Anónimas*), approved by Royal Legislative Decree 1564/1989 of 22 December.

Within one month from evaluation of the deposit, the mercantile registries shall send to the National Securities Market Commission, through the Directorate-General of Registries and Notaries, a certificate of the financial statements and complementary documentation of those companies which have infringed the regulations of the

[105] Amended by Act 47/2007, of 19 December

Consolidated text of the Public Limited Companies Act, approved by Royal Legislative Decree 1564/1989 of 22 December, regarding trading with the company's own shares.

To this end, the company directors who deposit the financial statements must provide a separate document duly itemising transactions with the company's own shares.

2. When the power to impose sanctions rests with the Autonomous Regional Governments, the bodies responsible for the commencement, inspection and imposition of sanctions shall be established in the constitutional regulations which devolve these powers to the respective Autonomous Regional Government.

Article 98

1. Act 30/1992 of 26 November on the Legal Regime of Legal regime of the Public Administrations and the Common Administrative Procedure (*Ley del Régimen Jurídico de las Administraciones Públicas y del Procedimiento Administrativo Común*) and its secondary legislation, with the specific provisions set out in articles 21 to 24 of Act 26/1988 of 29 July on control and supervision of credit institutions (*Ley 26/1988, de 29 de julio, de Disciplina e Intervención de las Entidades de Crédito*), shall be applicable in sanction proceedings.

Likewise the provisions of Articles 7, 14 and 15 of Act 26/1988 of 29 July on control and supervision of credit institutions shall be applicable in the exercise of the authority to sanction attributed to the National Securities Market Commission and the provisions of Article 17 of that Act shall be applicable in relation to the institutions included in Article 84.1 of this Act.

2. Resolutions which impose sanctions in accordance with the provisions of this Act shall only be enforceable when they mark the end of the administrative appeals procedure. Until they become enforceable, any appropriate precautionary provisions required to ensure their enforceability shall be adopted.

3. With the exception of private reprimands, the imposition of sanctions shall be entered in the corresponding administrative register at the National Securities Market Commission. Sanctions involving suspension, dismissal, and dismissal with disqualification, once enforceable, shall also be filed in the Mercantile Register, if applicable.

4. Once sanctions imposed on a legal entity are enforceable, they must be notified to the next General Meeting that is held.

5. REPEALED by the Repealing Provision, item a), of Act 44/2002.

6. The Minister of Economy and Finance may, based on a report by the National Securities Market Commission, partially or fully condone or defer the payment of fines imposed on legal entities when they come under the control of different shareholders following the commission of the infringement, when they are involved in insolvency proceedings or where there are other exceptional circumstances under which enforcement of the penalty in its original terms would be unfair or contrary to the general interest. The foregoing shall in no way include those penalties imposed on

individuals holding directorships or executive positions in the legal entity at the time of the infringement.

There shall be no condonation or deferral under any circumstances if the penalised firm's shares were sold for a price or where the firm might be in a position to comply with the sanction once the situation of insolvency had been surmounted.

Article 99[106]

The following acts or omissions constitute very serious violations by the natural and legal persons referred to in Article 95 of this Act:

a) The conduct, other than on a merely occasional or isolated basis, of activities for which they are not authorised or which are outside their exclusive object by the following: governing companies of the stock exchanges and other official secondary markets, the Sociedad de Bolsas, the Systems Company, central counterparties, the clearing and settlement systems, and investment guarantee fund management companies.

b) The listing of financial instruments for trading on official secondary markets by their governing bodies without the prior vetting envisaged in Article 32 of this Act, and the suspension or exclusion from trading of any security by such bodies in breach of the provisions of articles 33 and 34 of this Act.

c) Breach, other than on a merely occasional or isolated basis, by the governing bodies of official secondary markets, with the exception of Bank of Spain, by multilateral trading facilities, the Systems Company, central counterparties, and the settlement and clearing systems, of the rules governing such markets or systems, including their own regulations, or of the legislation governing their own activities.

d) Breach of the consolidation obligation established in article 86 of this Act.

e) Failure by investment firms, their consolidated groups or the financial conglomerates of which they are part, to keep the accounts and records required by law, or the act of keeping such accounts and records with essential defects or irregularities such as to prevent the capital and financial situation of the firm, the consolidated group or the financial conglomerate to which they belong, or the nature of the transactions they perform or broker, from being ascertained.

e bis) Deficiencies, on the part of investment firms, consolidated groups of investment firms and the financial conglomerates to which they belong, in the administrative and accounting organisation, internal control procedures, including those relating to risk management, or their organisation structure, where such deficiencies compromise the solvency or viability of the firm or that of the consolidated group or financial conglomerate to which it belongs.

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[106] Amended by Act 47/2007, of 19 December

e ter) Breach of the specific policies required directly by the National Securities Market Commission of an investment firm or consolidated group with regard to provisions, dividend distribution, treatment of assets or reduction of the risks inherent to its activities, products or systems, where such breach consists of failure to adopt such policies in the time and conditions established by the National Securities Market Commission and such breach jeopardises the solvency or viability of the investment firm or group.

e quater) Breach of the restrictions or limitations imposed by the National Securities Market Commission with respect to the businesses, transactions or network of a given investment firm or consolidated group.

f) Breach of the prohibition established in paragraph four of Article 12 by the members of official secondary markets, multilateral trading facilities and the entities responsible for their accounting records, as well as the keeping by the latter of accounting records regarding securities represented by book entries which involve delays, inaccuracies or any other significant irregularity.

g) Breach by entities which are members of systems managed by the Systems Company or of other clearing and settlement systems of official secondary markets or multilateral trading facilities of the regulations governing their relationship with the respective central accounting registers.

h) Failure by members of the official secondary markets or multilateral trading facilities to issue the documents evidencing the transactions referred to in Article 44.c) of this Act, failure to deliver such documents to their clients, other than on a merely occasional and isolated basis, and failure to reflect the real terms of such transactions in such documents.

i) Failure to comply with the provisions of article 83 ter of this Act when there is a significant change in the market price.

j) Failure, other than on a merely occasional basis, to comply with the obligations envisaged in Article 41 of this Act.

k) A reduction in own funds of investment firms or the consolidated group or financial conglomerate to which they belong to below 80 per cent of the level which is required by regulation on the basis of the risks assumed, or below that percentage of the level of own funds required by the National Securities Market Commission of a given firm or group, where this situation lasts for at least six consecutive months.

l) The lack of the procedures, policies and measures referred to in articles 70.ter.1 and 70 ter.2 of this Act, or the breach, other than on a merely occasional or isolated basis, of the record-keeping obligation established in article 70 ter.1.e), or keeping of such records with essential defects, and breach of the effective separation obligation set out in article 70 ter.1.f) and article 70 ter.2.c) in the form determined by regulation.

l bis) The failure by investment firms to file with the National Securities Market Commission any data or documents which must be submitted under this Act and

its secondary legislation or which the Commission demands in the course of discharging its duties, or falsehood of such data or documents where it makes it difficult to evaluate the solvency of the firm or consolidated group or the financial conglomerate to which it belongs. For the purposes of this paragraph, such failure shall be deemed to have occurred where the information is not presented by the deadline given by the National Securities Market Commission for this purpose in the written reminder of the obligation or in the second demand for the information.

ll) Repeated failure to present to the National Securities Market Commission the communiqués referred to in article 59 bis.

m) Breach by the entities referred to in articles 35 and 86 of this Act of the obligation to have their parent company and consolidated annual accounts and directors' reports audited as defined in article 35.1; breach of the obligation to present the information regulated in article 35 due to intent to conceal or gross negligence, having regard to the materiality of the missed disclosure and the delay which occurred, and presentation to the National Securities Market Commission of regulated financial information containing data that is incorrect, untrue or misleading, or malicious omissions of material information or data.

n) The launching of public offerings for sale or subscription or listing without complying with the requirements of articles 25.3, 25.4, 26.1, 30 bis or 32, the placement of the issue without regard to the basic conditions set forth in the prospectus, where a prospectus is required, or the omission of material data or the inclusion in the prospectus of inaccuracies or false or misleading information where, in all these situations, the amount of the offering or listing or the number of investors affected is material.

ñ) Failure by securities issuers to comply with the obligation envisaged in article 82 when this implies serious harm to the market, failure to comply with the requirements established by the National Securities Market Commission in accordance with article 89, and the provision to the National Securities Market Commission of inexact or false data, misleading information or the malicious omission of relevant aspects or data.

o) Failure to comply with the obligations established in article 81.2 of this Act when the volume of funds, securities or financial instruments used in committing the infringement was significant, or where the offender acquired the information through membership of the issuer's governing, management or controlling bodies or in the course of exercising his/her profession, work or functions, or appears or should have appeared listed in the record referred to in articles 83 and 83 bis of this Act.

o bis) Failure to adopt the preventive measures imposed by articles 81.4, 83 and 83 bis of this Act where such failure occurred in the case of a specific transaction classified as inside information in accordance with the provisions of article 81 of this Act.

p) Breach of the disclosure duties envisaged in articles 35 bis, 53 and 53 bis of this Act due to intent to conceal or gross negligence, having regard to the materiality of the missed disclosure and the delay which occurred.

q) Failure to comply with the restrictions as to scope of activity envisaged in articles 64, 65 and 65 bis, or the performance by investment firms or another natural or legal person of activities for which they are not authorised, and failure by investment firms or their agents to observe the rules established in accordance with article 65 bis.

q bis) Outsourcing of functions by firms that provide investment services where such outsourcing diminishes internal control or the National Securities Market Commission's ability to exercise oversight.

r) Breach of the obligations established in articles 60 and 61 of this Act and in the regulations issued under this article. In particular:

- Breach of the obligation to present a takeover bid; presentation of such a bid past the established deadline or with essential irregularities that prevent the National Securities Market Commission from deeming it to have been presented or from authorising it; or making a takeover bid without due authorisation.

- Failure to publish or present to the National Securities Market Commission the information and documentation that must be published or presented to the Commission as a result of actions that make it obligatory to present a takeover bid, during such a bid or once it is completed, where the information or documentation in question is material, or the amount of the bid or the number of investors affected is material.

- The publication or supply of information or documentation about a takeover bid which contains omissions, inaccuracies, falsehoods or misleading data, where the information or documentation in question is significant or the amount of the bid or the number of investors affected is siginificant.

r bis) Breach by the governing and management bodies of the obligations established in article 60 bis of this Act and its secondary legislation.

r ter) Breach of the obligations established in Articles 34 and 60 ter of this Act and in its secondary legislation.

s) Performance of fraudulent acts or the use of individuals or legal entities as nominees in order to achieve results which, if obtained directly, would entail, at least, a serious infringement, and participation in, or performance of, transactions in securities involving simulated transfers of ownership.

t) Refusal or resistance by the natural and legal persons referred to in Article 84 of this Act to submit to inspection by the National Securities Market Commission, provided that express written instructions to that effect have been served.

u) Acquisition of a qualifiying holding, or increasing or reducing such a stake without fulfilling the provisions of articles 31.6, 44 bis.3 and 69 of this Act; repeated breach of the provisions of article 69 bis of this Act, and where the holder of a qualifiying holding falls under the case envisaged in article 69.11 of this Act.

v) The performance of corporate transactions without fulfilling the requirements established in article 72.

w) The act of obtaining authorisation as an investment firm through false declarations or other irregular means.

x) Breach by investment firms, other financial institutions or notaries of the obligations, restrictions or prohibitions deriving from article 36 of this Act, or of the provisions or rules issued under articles 43 and 44 of this Act.

y) The creation of an official secondary market or multilateral trading facility or record-keeping, clearing and settlement system for securities or of central counterparties without first obtaining any of the authorisations required by this Act.

z) Any serious infringement committed where the offender has been penalised for an infringement of the same kind in the preceding five years.

z bis) Lack of the means or policies for handling conflicts of interest or failure to apply them, other than on an occasional or isolated basis, by providers of investment services or the groups or financial conglomerates to which investment firms belong, and breach of the reporting obligations set out in article 79 bis of this Act, or lack of the register of contracts regulated in article 79 ter, where the outcome is detrimental to clients.

z ter) Lack of policies for managing and executing client orders, or failure to apply them, other than on an occasional or isolated basis, or their application without the clients' consent, where the outcome is detrimental to clients.

z quater) Breach, by the entities referred to in additional provision seventeen of this Act, of the authorisation rules contained in that provision.

Article 100[107]

The following acts or omissions by the natural and legal persons referred to in Article 95 of this Act constitute serious infringements:

a) The appointment, by the governing companies of the official secondary markets, the Sociedad de Bolsas, the Systems Company, the clearing and settlement systems and by the managing companies of investment guarantee

[107] Amended by Act 47/2007, of 19 December

funds, of members of the Board of Directors and, if applicable, general managers without the prior approval of the National Securities Market Commission or, as the case may be, of the Autonomous Region with powers in matters regarding regional markets.

a bis) The failure to disclose, deposit or publish a significant event subject to disclosure as referred to in article 112.2 of this Act.

b) The failure to file with the National Securities Market Commission, within the proper term, such documents or information as must be filed with it or that are demanded by the Commission in the exercise of its functions, provided that the Commission has issued a written reminder or repeated the demand.

b bis) The failure to draft or publish the annual report on corporate governance referred to in article 116 of this Act, or the existence in that report of omissions or false or misleading data; breach of the obligations set out in articles 113, 114 and 115 of this Act; and failure by issuers of securities listed in official secondary markets to have an Audit Committee in the terms of additional provision fourteen of this Act.

c) Breach by the entities covered by article 86 of the current rules on transaction record-keeping, authorisation of financial statements and the form in which the books and records must be kept, and the rules on consolidation, except where this constitutes a very serious breach.

c bis) Deficiencies, on the part of investment firms, consolidated groups of investment firms and the financial conglomerates to which they belong, in the administrative and accounting procedures; in the internal control mechanisms, including those relating to risk management; or in their organisation structure, after the deadline given to them by the competent authorities to remedy such deficiencies has passed, except where it constitutes a very serious breach.

d) Receipt by providers of investment services of commissions for an amount exceeding the limits established, if any, or without having complied with the requirement of prior publication and notification of the tariffs, where this is mandatory.

e) Failure by parties other than investment firms, financial institutions or notaries to comply with the obligations, restrictions or prohibitions deriving from article 36 of this Act, or with the provisions and regulations under articles 43 and 44 of same.

f) Improper use of the names referred to in article 64.6.

g) Breach by investment firms of the regulations issued under the provisions of article 70.1.b).

g bis) Breach of the disclosure obligations contained in article 70 bis, and publication of information that is incomplete, false, misleading or untruthful.

h) Failure by official secondary market governing companies to respond to demands made by the National Securities Market Commission by virtue of the provisions of articles 33 and 34 of this Act.

i) The unjustified refusal or repeated unjustified delays in the transmission and execution of orders for the subscription, purchase or sale of securities in an official secondary market or multilateral trading facility received by persons legally authorised to carry out such activities.

j) Failure to disclose to the governing bodies of official secondary markets or multilateral trading facilities, or to the National Securities Market Commission in the cases where such disclosure is mandatory under this Act, and breach of the obligations to disclose and publish information set out in articles 35 and 35 bis, where this does not constitute a very serious infringement under the preceding article.

j bis) Failure to file with the National Securities Market Commission the disclosures envisaged in article 59 bis, where this is not a very serious infringement, or repeated disclosure of trades in a deficient form.

k) Failure to comply with the provisions of article 69 bis, where this is not a very serious infringement.

l) Publicity which infringes article 94 of this Act or its secondary legislation.

ll) The launching of public offerings for sale or subscription or listing without complying with the requirements of articles 25.3, 25.4, 26.1, 30 bis or 32, the placement of the issue without regard to the basic conditions set forth in the prospectus, where a prospectus is required, or the omission of material data or the inclusion in the prospectus of inaccuracies or false or misleading information where, in all these situations, it is not a very serious infringement under article 99.n).

m) Failure to have the web site required under article 117.2, and failure to publish on such web site the information indicated in that article and in article 82.5 or their secondary legislation.

n) Breach, by investment firms or the consolidated group or financial conglomerate to which they belong, of the minimum own funds requirements established by regulation or required specifically of a specific firm or group by the National Securities Market Commission, where such situation persists for at least six months, provided that it is not a very serious breach under the preceding article.

ñ) Breach of the specific policies required directly by the National Securities Market Commission of an investment firm or consolidated group with regard to provisions, dividend distribution, treatment of assets or reduction of the risks inherent to its activities, products or systems, where such policies were not adopted by the deadline established by the National Securities Market Commission for this purpose and the breach is not classified as very serious under the preceding article.

o) The infringements envisaged in sections a), c), h) and j) of the preceding article, where they are occasional or isolated.

p) A delay of over four months in the keeping of the obligatory accounting records and registers by the firms referred to in Article 86.

q) Minor infringements where a sanction has been imposed on the offender for an infringement of the same kind within the previous two years.

r) The performance, on an occasional or isolated basis, by persons that provide investment services, of activities for which they are not authorised.

s) The de facto exercise of directorial or managerial powers in the firms referred to in article 84.1.a), 84.1.b), 84.1.c) and 84.1.e) of this Act by persons that do not hold such positions de jure.

t) Infringement by providers of investment services of the obligations, rules and limitations provided in article 70 ter.2 and 70 ter.3 and articles 70 quater, 79, 79 bis, 79 ter, 79 quinquies and 79 sexies, where this does not constitute a very serious infringement.

u) Failure by issuers of securities listed in secondary markets to comply with their obligations regarding the system of record-keeping of such securities.

v) The performance by investment firms or other authorised firms of transactions in an official secondary market or multilateral trading facility for securities or other financial instruments for which they have not obtained the authorisation required by this Act.

w) Breach of the provisions of article 83 ter of this Act, where this does not constitute a very serious infringement in accordance with the preceding article.

x) Breach of the provisions of articles 81 and 82 of this Act, where this does not constitute a very serious infringement under the preceding article.

x bis) Breach of the obligation to report to the National Securities Market Commission transactions that are suspect of constituting market abuse as provided in article 83 quater of this Act.

x ter) Insufficient application of the measures envisaged in articles 81.4, 83 and 83 bis of this Act.

y) Breach of the provisions of article 41 of this Act, where this does not constitute a very serious infringement.

z) Failure to publish or present to the National Securities Market Commission the information and documentation that must be published or sent to the Commission as a result of actions that make it obligatory to present a takeover bid, during such a bid or once it is completed, where this does not constitute a very serious infringement under item r) of the preceding article.

z bis) The publication or supply of information or documentation about a takeover bid which contains omissions, inaccuracies, falsehoods or misleading

data, where this does not constitute a very serious infringement under item r) of the preceding article.

z ter) Failure to disclose, in a listed company's management report, the information required under article 116 bis of this Act, or the existence of omissions or false or misleading data.

The infringement envisaged in item a bis) shall be deemed to apply jointly and severally to all participants in the non-statuary shareholder agreement.

Article 101

Infringements by the firms and persons referred to in Article 95 of obligations envisaged in the regulations concerning organisation and control of the securities market constitute minor infringements when they do not constitute serious or very serious infringements in accordance with the provisions of the previous two articles.

Article 102[108]

One or more of the following sanctions shall be imposed upon any offender committing very serious infringements:

a) A fine of up to the highest of the following amounts: five times the gross profit obtained as a result of the acts or omissions comprising the infringement; 5 per cent of the infringing firm's own funds; five per cent of the total funds, owned by the firm or third parties, that were used in the infringement; or 600,000 euro.

b) Suspension or restriction of the type or volume of transactions which the offender may carry out in the securities markets for a period not longer than five years.

c) Suspension of membership of an official secondary market or multilateral trading facility for a period not longer than five years.

d) Exclusion of a financial instrument from trading on an official secondary market or multilateral trading facility.

e) Withdrawal of authorisation in the case of investment firms, public debt market registered dealers and other firms registered at the National Securities Market Commission. In the case of investment firms authorised by another EU Member State, the sanction involving withdrawal shall be replaced by prohibition from commencing new operations in Spanish territory.

f) Suspension of the offender from directorships or executive posts in a financial institution for a period not longer than five years.

g) Removal of the offender from directorships or executive posts in a financial institution and disqualification from holding directorships or executive posts at the same institution for a period not longer than five years.

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[108] Amended by Act 47/2007, of 19 December

h) Removal of the offender from directorships or executive posts in any financial institution and disqualification from holding directorships or executive posts at any other institution of the type envisaged in articles 84.1, 84.2.b) and 84.2.d) for a period not longer than ten years.

In the case of the infringement envisaged in article 99.o), the sanctions envisaged in item a) of this article shall be imposed in any case, subject to a fine of not less than 30,000 euro in addition to one of the sanctions envisaged in items b), c) or e) of this article, depending on the status of the offender.

Additionally, where the infringement is of the reserved activities under article 99.q), the offender shall suffer the sanction established in item a) of this article, and in this case gross profits shall be deemed to mean the offender's revenues from the reserved activity, and the fine may not be less than 600,000 euro.

Sanctions for very serious infringements shall be published in the Official State Gazette once they have become final in the administrative sphere.

Article 103[109]

One or more of the following sanctions shall be imposed upon any offender committing a serious infringement:

a) A fine of up to the highest of the following amounts: twice the gross profit obtained as a result of the acts or omissions comprising the infringement; 2 per cent of the infringing firm's own funds; 2 per cent of the total funds, owned by the firm or third parties, that were used in the infringement; or 300,000 euro.

b) Suspension or restriction of the type or volume of transactions which the offender may carry out in the securities markets for a period not greater than one year.

c) Suspension of membership of an official secondary market or multilateral trading facility for a period not greater than one year.

d) Suspension, for not more than one year, from the directorship or executive posts held by the offender in a financial institution.

Sanctions for serious infringements shall be published in the Official State Gazette once they have become final in the administrative sphere.

In the case of the infringement envisaged in article 100.x) in connection with breaches of the obligations established in article 81, the penalty envisaged in item a) of this article shall be imposed in any case, in addition to one of the penalties envisaged in items b) or c) of the same article, subject to a fine of not less than 12,000 euro.

The infringement referred to in article 100.g bis) shall, in any event, entail cancellation of the representative's or authorised signatory's inscription in the National Securities Market Commission's registers.

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[109] Amended by Act 47/2007, of 19 December

Article 104[110]

A fine of up to 30,000 euro shall be imposed for minor infringements

Article 105[111]

Where the offender is a legal person, in addition to the penalty imposed on the offender for very serious infringements, one or more of the following penalties may be imposed upon those holding directorships or executive positions therein who are responsible for the infringement:

a) A fine of up to 300,500 euro.

b) Suspension of the offender from directorships or executive posts in the firm for a period not longer than three years.

c) Removal and disqualification of the offender from directorships or executive posts in the same firm for a period not longer than five years.

d) Removal and disqualification of the offender from directorships or executive posts in any firm of the type envisaged in article 84.1 and in credit institutions for a period not longer than ten years.

In any case, sanctions imposed in accordance with the provisions of the first paragraph shall be published in the Official State Gazette once they have become final in the administrative sphere.

In the case of the infringement envisaged in article 99.o), the sanctions envisaged in item a) of this article shall be imposed in any case, subject to a fine of not less than 30,000 euro.

Article 106[112]

Where the offender is a legal person, in addition to the penalty imposed on the offender for serious infringements, one or more of the following sanctions may be imposed upon those holding directorships or executive positions therein who are responsible for the infringement:

a) A fine of up to 150,250 euro.

b) Suspension of the offender from all directorships or executive posts in the firm for a period not longer than one year.

In any case, sanctions imposed in accordance with the provisions of the first paragraph shall be published in the Official State Gazette once they have become final in the administrative sphere.

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[110] Amended by Act 47/2007, of 19 December

[111] Amended by Act 47/2007, of 19 December

[112] Amended by Act 47/2007, of 19 December

In the case of the infringement envisaged in article 100.x) in connection with breaches of the obligations established in article 81, the penalty envisaged in item a) of this article shall be imposed in any case, subject to a fine of not less than 12,000 euro.

Article 106 bis [113]

When the breaches stipulated in articles 99, 100 and 101 refer to obligations of the consolidated groups of investment firms, the entity under obligation, and, if applicable, the administrators and directors thereof, shall be sanctioned.

Furthermore, when such breaches refer to the obligations of financial conglomerates, the measures of sanction set forth in this Act shall be applied to the entity under obligation when it is an investment firm or a mixed financial portfolio holding company, provided that in the latter case the National Stock Market Commission is held responsible as coordinator of additional supervision of said financial conglomerate. The aforementioned measures of sanction may be extended, if applicable, to the directors and managers of the entity under obligation

Article 107

The provisions for credit institutions in Title III of the Act on the Control and Supervision of Credit Institutions shall be applicable to the firms listed in items a), b), c), d), e) and f) of Article 84.1. Responsibility for establishing the intervention or removal measures shall rest with the National Securities Market Commission.

Resolutions by the National Securities Market Commission which mark the end of proceedings may be subject to ordinary appeal before the Minister of Economy and Finance.

TITLE IX - TAXATION OF SECURITIES TRANSACTIONS

ART.108

1. Securities transactions listed or not on an official secondary market shall be exempt from Transfer/Stamp Tax (Impuesto sobre Transmisiones Patrimoniales y Actos Jurídicos Documentados) and from Value Added Tax (Impuesto sobre el Valor Añadido).

2. The preceding paragraph will not be applicable to the transactions on official secondary markets, and also to acquisitions in primary markets carried out as a consequence of the exercise of the pre-emptive subscription rights or bond conversion rights into shares or others securities, that will be subject to the purchases section of the Transfer/Stamp Tax in the following circumstances:

a) When the securities or others participations acquired or transmitted represent aliquot parts of the share capital or own funds of companies, funds, associations and other firms when at least 50% of their assets consist of real estate located in Spain, provided that as a result of the said transfer or acquisition, the purchaser obtains such a position

[113] Added by Act 5/2005, of 22 April

allowing to exercise control over such firms or, once the control is obtained, increases the participation on those companies.

In order to calculate the 50% of the assets that consist of real estate, it is necessary to apply the next rules:

1ª. To calculate the value of the assets, the accounting net value will be substituted by the real value on the date of the transfer or acquisition.

2ª. The real estate, except for lands and sites, that are part of the current assets of firms whose sole corporate purpose is to conduct business activities relating to the construction or development of real estate, shall not be taken into account.

3ª. The calculation will have to be done on the date of the transaction or acquisition of the securities or participations so that the taxpayer will be obliged to make a detailed account of the assets on that date an to disclose it to the Inland Revenue Administration when required.

4ª. The total assets to include will be diminished in the amount of the external financing with maturity equal or lower to twelve months, provided that the financing has been obtained in the twelve months previous to the transmission date.

In the case of Trading Companies, such control shall be deemed to be obtained when a holding exceeds directly or indirectly 50% of the capital stock. To these effects, we will have to include in the acquirer´s holding the securities held from other entities of the same group of companies.

When a securities transaction takes place in favour of the entity that is holder of the real estate assets for its subsequent redemption, it will be understood to these effects that the taxable fact mentioned in a) takes place. In this case, the shareholder as taxpayer that, as a consequence of the said transactions, obtains the control of the company, will be obliged to the payment in the same terms stated above.

b) When the securities have been received in return for contributions of real estate on the occasion of incorporating companies or increasing their capital, provided that less than three years has elapsed between the date of contributions and that of the transaction.

3. In the transactions or acquisitions referred to in paragraph 2, the rate corresponding to transfers of real estate for consideration shall apply to the real value to the said assets calculated according to the rules contained in the current Transfer/Stamp Tax Act. The taxable income, with this aim in view, will be:

> a) In those cases related in a) of the paragraph 2 above, the proportional part of the real value of the total amounts of the assets that, for this rule application, must be computed as real estate, that corresponds to the total percentage at the moment of obtaining the control or, once it has been obtained free or for consideration such control, the percentage of increase of the participation.
>
> When the securities transmitted are aliquot parts of the capital stock or own funds of companies in which their assets include such a participation that allows to exercise the control in other companies, in order to calculate the taxable

income, it will only be computed the real estate of those whose assets are integrated at least in 50% by real estate.

b) In the cases referred to in b) of the paragraph 2 above, the proportional part of the real value of the real estate that were incorporated corresponding to the shares or bonds issued or transmitted.

4. The exceptions related to in paragraph 2 of this article, will not be applicable to the transmissions of securities listed on an official secondary market, provided that the transaction takes place after the term of one year since the date of admission to listing of the securities. To this end, for calculating the year term, those periods in where the securities have been suspended from trading will not be taken into account.

However, when the transactions take place within the limits of public offers for sales or take over bids, it will not be necessary to comply with the term of one year indicated in the previous paragraph.

TITLE X - Listed Companies

Chapter I - General provisions

Article 111. Scope of application.

1. The provisions of this Title shall apply to public limited companies whose shares are listed on an official securities market, without prejudice to the provisions of Article 112.4.

2. In all matters not contemplated in this Title, the companies envisaged in the preceding paragraph shall be governed by the provisions that apply to public limited companies apart from the other regulations that apply thereto.

ART. 111 bis

The maximum amount for issuing bonds mentioned in the article 282 of the consolidated text of the Public Limited Companies Act approved by Royal Decree 1564/1989, of 22 of December, will not be applicable to the listed public limited companies.

Chapter II – Non-statuary Shareholder agreements subject to disclosure

Article 112. Disclosure of non-statuary shareholder agreements and other agreements that affect a listed company.

1. For the purposes of the provisions of this Title, non-statuary shareholder agreements shall be understood to be those agreements which include regulating the exercise of voting rights in Shareholders' Meetings, or which restrict or condition the free transferability of listed companies' shares. The provisions of this Article regarding non-statuary shareholder agreements shall also apply to agreements which, with the same objective, refer to convertible or exchangeable bonds issued by a listed company.

2. The signing, extension, modification of a non-statuary shareholder agreement which addresses the exercise of voting rights in Shareholders' Meetings, or which restricts or conditions the free transferability of shares or convertible or exchangeable bonds of listed companies, must be disclosed immediately to the company in question and to the National Securities Market Commission, accompanied by a copy of the clauses of the er agreement itself which affect the voting right or which restrict or condition the free transferability of the shares or convertible or exchangeable bonds. Once these disclosures have been made, the document containing the non-statuary shareholder agreement must be recorded in the Mercantile Registry in which the company is registered.

The shareholder agreement must be published as a significant event subject to disclosure.

Until the disclosure, deposit and publication as a significant event occur, the non-statuary shareholder agreement shall have no effect on the aforementioned matters, without prejudice to the remaining applicable regulations.

3. Any signatories of a non-statuary shareholder agreement shall be authorised to make the disclosures and deposit contemplated in the preceding paragraph, even if the agreement itself envisages that they are to be performed by one of the signatories or a third party.

In the case of usufruct and pledge of shares, the authorisation shall correspond to whoever holds the voting right.

4. The provisions of the preceding paragraphs shall apply to agreements between shareholders or members of a firm which exercises control over a listed company.

5. At the request of the interested parties, when disclosure may be serious detrimental to the company, the National Securities Market Commission may decide, while placing the reasons on record, not to disclose the non-statuary shareholders agreement of which it has been informed, or to disclose part of it, and to dispense the company itself of the deposit of the document on which it appears in the Mercantile Registry, and of its publication as a significant event subject to disclosure, determining the time in which it can be kept secret among the interested parties.

Chapter III - Corporate bodies

Article 113. Shareholders' Meeting.

1. The Shareholders' Meeting of a company with shares listed on the official securities market, constituted with the quorum envisaged in Article 102 of the Public Limited Companies Act, or a higher quorum as envisaged for this purpose in the bylaws, shall approve a specific Regulation for the Shareholders' Meeting, which may address any matter relating to the Shareholders' Meeting in connection with the matters treated in the laws or in its bylaws.

2. That Regulation shall be notified to the National Market Commission, accompanied by a copy of the Regulation itself. Once said notification has been given, it shall be recorded in the Mercantile Registry in accordance with the general regulations.

Article 114. Duties of the directors.

In the event that the directors of a listed company, or any other person, has formulated a public solicitation of proxy, the director who obtains it may not exercise the proxies in those points of the agenda in which a conflict of interests arises and, in any case, regarding the following resolutions:

His appointment or ratification as director.

His dismissal, removal or cessation as director.

The exercise of the class action of liability directed against him.

The approval or ratification, as appropriate, of the company's transactions with the director in question, companies controlled by him, and companies that he represents or persons who act on his behalf.

The proxy may also cover business which, although not contained in the agenda of the call to meeting, may legitimately be transacted in the Shareholders' Meeting; in these cases, the provisions of the preceding paragraphs shall also apply.

2. Without prejudice to the provisions of Article 35 of this Act, the company's annual report must disclose the transactions performed by directors, or persons acting on their behalf, during the year which the annual report covers, with the listed company or a company belonging to the same group, when the fall outside they company's ordinary activities or are not conducted on an arm's-length basis.

3.- Without prejudice to the provisions of Title VII of this Act, directors must refrain from performing, or from suggesting that any other persons perform, a transaction with securities of the company itself or of subsidiaries or associated or related companies on which the directors hold restricted or reserved information due to their office, until such time as this information becomes public knowledge.

4[114]. The provisions stated in this article will be applied to the members of the Internal Board of Control of the European public limited companies based in Spain which have chosen the dual system.

Article 115. Board of Directors.

1. In listed companies, the Board of Directors, in a report to the Shareholders' Meeting, shall issue a regulation governing the internal system and the functioning of the Board itself, in accordance with the Act and the bylaws, which shall contain the specific measures intended to guarantee optimum management of the company.

2. That regulation shall be notified to the National Securities Market Commission, accompanied by a copy of the regulation itself. Once that notice has been given, it shall be recorded in Mercantile Registry in accordance with the general regulations.

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[114] Item 4 added by the 4th Additional Provision of the Act 19/2005, of 14 November, on the European public company based in Spain

Chapter IV - Company information

Article 116. Annual Report on Corporate Governance.

Listed companies must publish a corporate governance report on a yearly basis.

The annual report on corporate governance must be notified to the National Securities Market Commission, accompanied by a copy of the report itself. The National Securities Market Commission must forward a copy of said report to the respective supervisory authorities when the company in question is a listed company within the scope of its competencies. The report must be published as a significant event subject to disclosure.

4. The content and structure of the corporate governance report shall be determined by the Ministry of Economy or, with its express authorisation, the National Securities Market Commission.

The report must provide a detailed explanation of the structure of the company's system of governance and how it functions in practice.

In any case, the corporate governance report shall contain at least:

a) The company's ownership structure, with information relating to shareholders with major holdings, indicating the percentage of these holdings and any family, commercial, contractual or corporate relationships, and their representation on the Board; holdings held by members of the Board of Directors that must be disclosed to the company, and the existence of non-statuary shareholder agreements disclosed to the company itself and to the National Securities Market Commission and, as appropriate, recorded in the Mercantile Register. The report must also provide information on the company's own shares and significant variations therein.

b) The company's administrative structure, with information relating to the composition and the organisation and functioning rules of the Board of Directors and its commissions, the identity and remuneration of its members, their functions and offices within the company, their relationships with shareholders with major holdings, indicating the existence of cross directorships or related-party directorships and the selection, removal and re-election processes.

c) Related-party transactions between company and its shareholders and directors and executives and intragroup transactions.

d) Risk control systems.

e) Functioning of the Shareholders' Meeting, with information relating to the business transacted at the meetings that are held.

f) The extent to which corporate governance recommendations are followed and, where appropriate, an explanation of why they have not been followed.

5. Without prejudice to the sanctions that are imposed due to failure to supply the documentation or the corporate governance report, or due to omissions or misleading or incorrect data, it is the National Securities Market Commission's responsibility to monitor the corporate governance regulations, to which end it may gather any necessary

information and publish any information it considers to be significant about the extent of actual compliance.

6[115]. When a listed company is an European public limited company based in Spain which has chosen the dual system, besides the Annual Corporate Governance report issued by the executive Management, there will be a report issued by the Internal Board of Control about its executed functions.

Article 116.bis. Additional information to be included in the management report.

The companies referred to in this Title must disclose the following in their management report:

a) The capital structure, including securities not traded in a regulated market of the European Union, stating the various classes of shares and, for each class of shares, the rights and obligations that they confer and the percentage of capital stock which they represent;

b) Any restriction on the transfer of securities;

c) Major holdings in capital, both direct and indirect;

d) Any restriction on voting rights;

e) Non- statuary shareholders' agreements;

f) The rules governing the appointment and replacement of members of the governing body and the amendment of the company's bylaws.

g) The powers of the members of the Board of Directors and, in particular, those relating to the possibility of issuing or repurchasing shares;

h) Significant agreements entered into by the company which come into force, are amended or terminate in the event of a change of control of the company due to a takeover bid, and their effects, except where disclosure would be seriously detrimental to the company. This exception will not apply where the company is legally obliged to publish such information;

i) Agreements between the company and its officers, executives and employees that provide indemnities for the event of unfair dismissal or of termination as a result of a takeover bid.

Each year, the Board of Directors will present a report to the Shareholders' Meeting on the matters envisaged in this article

Article 117. Reporting instruments.

Listed companies must comply with the disclosure requirements imposed on them by the Public Companies Act by any technical, computerised or telematic means, without

[115] Item 6 added by the 4th Additional Provision of the Act 19/2005, of 14 November, on the European public company based in Spain

prejudice to shareholders' rights, in accordance with the applicable legislation, to request the information in print.

Listed companies must have a website for shareholders to exercise the right to information, and to disseminate the significant information, in accordance with the provisions of Article 82.5 of this Act.

The Board of Directors is responsible for establishing the contents of the information to be supplied, as established by the Ministry of Economy or, with its express authorisation, the National Securities Market Commission.

The Minister of Economy and, with his express authorisation, the National Securities Market Commission, is entrusted with implementing the necessary technical and legal specifications with regard to the provisions established in this Article.

TITLE XI[116]. OTHER TRADING SYSTEMS: MULTILATERAL TRADING FACILITIES AND SYSTEMATIC INTERNALISERS

CHAPTER I[117]. Multilateral trading facilities

Article 118[118]. Definition of a multilateral trading facility.

Any system operated by an investment firm, a governing company of an official secondary market or an entity constituted for this purpose by one or more governing companies, which must have as sole object the management of the system and must be owned 100% by one or more governing companies, that brings together or facilitates the bringing together of multiple third-party buying and selling interests in financial instruments – in the system and in accordance with its nondiscretionary rules – in a way that results in a contract, in accordance with the provisions of this Act, shall be deemed to be a multilateral trading facility.

Article 119[119]. Creation of multilateral trading facilities.

The creation of multilateral trading facility shall be unrestricted, subject to prior vetting and supervision by the National Securities Market Commission. In particular, the National Securities Market Commission shall verify that the investment firm has the corresponding authorisation in accordance with the provisions of article 66 of this Act and that, consequently, it fulfils the requirements of article 67, and that the governing company of the official secondary market or the company created for this purpose by one or some governing companies, which must have as sole object the management of the system and must be owned 100% by one or more governing companies, meets the requirements of the aforementioned articles 66 and 67.

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[116] Added by Act 47/2007, of 19 December

[117] Added by Act 47/2007, of 19 December

[118] Added by Act 47/2007, of 19 December

[119] Added by Act 47/2007, of 19 December

Article 120[120]. Governing companies and rules of operation.

1. Every multilateral trading facility must be governed by a governing company, which shall be responsible for its internal organisation and functioning, and shall own the necessary resources for such ends.

That governing company may be an entity authorised to provide investment services under article 63.1.h), a governing company of an official secondary market or an entity constituted for that purpose by one or more governing companies, whose sole object is the management of the system and which is owned 100% by one or more governing companies, in accordance with the requirements and conditions established in this Act and its secondary legislation.

2. The entities envisaged in the preceding section shall draw up a regulation of operations specifically for the management of the multilateral trading facility, which must be authorised by the National Securities Market Commission, and they must submit to the rules on publicity to be determined by regulation, which shall include registration in the corresponding register of the National Securities Market Commission.

3. The Regulation, which shall be public, must be based on transparent, objective, non-discriminatory criteria and must regulate the following:

i) General features:

a) Financial instruments that may be traded.

b) Public information that must be available with respect to the securities that are listed, to provide investors with a basis for their decisions.

The scope of the information must be based on the nature of the securities and of the investors whose orders can be executed in the system.

c) Types of members, in accordance with the provisions of article 37.2 and 37·3·

d) System of collateral.

ii) Trading:

a) Attainment of membership.

b) Forms of trades.

c) Events of interruption, suspension and exclusion of listed securities from trading.

d) Content and rules for pre-trade transparency.

e) Contents and rules for post-trade transparency.

iii) Record-keeping, clearing and settlement of trades.

[120] Added by Act 47/2007, of 19 December

a) Existence of any central counterparties or other trade novation mechanisms.

b) Methods envisaged or admissible for settling and clearing trades.

iv) Supervision and discipline of the market.

a) Methods of supervision and oversight by the governing body to ensure effective compliance with the Market Regulation and with the provisions of this Act and other applicable legislation, particularly with regard to market abuse.

b) Disciplinary regime that the governing body can apply, independently of the administrative santions that may be applicable under the provisions of this Act, to the members who breach the Market Regulation.

c) Procedure to be used by the managing body to inform the National Securities Market Commission of any incidents or behaviour by its members that may constitute a breach of this Act or its secondary legislation or of the rules contained in the MTF's Regulation."

Article 121[121]. Process of trading and concluding trades in a multilateral trading facility.

1. Articles 79 bis, 79 ter and 79 sexies of this Act shall not apply to transactions concluded under the rules governing an MTF between its members or participants or between the MTF and its members or participants in relation to the use of the MTF. The members shall comply with the obligations provided in articles 79 bis, ter and sexies with respect to their clients when, acting on behalf of their clients, they execute their orders through the systems of an MTF.

2. Where applicable, governing bodies of a multilateral trading facility must provide, or satisfy themselves that there is, publicly available information to enable its users to form an investment judgement, taking into account both the nature of the users and the types of instruments traded in the multilateral trading facility.

3. Where a transferable security which has been admitted to trading on a regulated market is also traded on an MTF without the consent of the issuer, the issuer shall not be subject to any obligation relating to initial, ongoing or ad hoc financial disclosure with regard to that MTF.

4. The governing body of a multilateral trading facility must take the necessary measures to facilitate efficient settlement of the trades conducted in the MTF, and must clearly inform users of the responsibilities that the body assumes in the settlement of trades executed in the MTF.

5.Chapter II of Title VII is applicable to trading on multilateral trading facilities.

[121] Added by Act 47/2007, of 19 December

Article 122[122]. Monitoring of compliance with the rules of the MTF and with other legal obligations

1. The governing bodies of multilateral trading facilities shall establish effective measures and procedures that correspond to the needs of the MTF in order to provide regular oversight of compliance with the rules by users and the transactions they perform in the system in order to detect breaches of the rules, disorderly trading conditions or conduct that may constitute market abuse.

2. The bodies referred to in the preceding section must notify National Securities Market Commission of any significant breach of their rules and any anomaly in trading conditions that may involve market abuse.

Article 123[123]. Pre-trade transparency requirements

1. In order to provide the system with transparency and to foster efficient price discovery, the multilateral trading facilities shall be obliged to disseminate public information about the trades in shares listed in the system that are also listed in regulated markets, in connection with the buy and sell positions existing at any given time. The Minister of Economy and Finance may, if he considers it necessary, extend the transparency requirements contained in this article to financial instruments other than shares or to shares are traded only in the MTF.

2.Multilateral trading facilities must publish the following pre-trade information with respect to shares listed in them which are also traded in regulated markets:

a) bid and offer prices existing at any given time; and

b) the depth of the trading positions at those prices that are broadcast through their systems.

That information must be made available to the public on reasonable commercial terms and on a continuous basis during normal trading hours.

3. The National Securities Market Commission may waive the obligation for multilateral trading facilities to make public the information referred to in section 2 of this article based on the MTF model or the type and volume of orders. In particular, the National Securities Market Commission may waive the obligation in respect of transactions that are large in scale compared with normal market size for the share or type of share in question.

Article 124[124]. Post-trade transparency requirements.

1. In order to provide the MTF with transparency and to foster efficient price discovery, MTFs shall be obliged to disseminate public information about the trades in shares listed in them that are also listed in regulated markets which have been concluded in the MTF

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[122] Added by Act 47/2007, of 19 December

[123] Added by Act 47/2007, of 19 December

[124] Added by Act 47/2007, of 19 December

in accordance with the provisions of this article. The Minister of Economy and Finance may, if he considers it necessary, extend the transparency requirements contained in this article to financial instruments other than shares or to shares that are traded only in the MTF.

2. Multilateral trading facilities must publish the following post-trade information with respect to shares listed in them which are also traded in regulated markets: the price, size and time of execution. That information must be made public on a reasonable commercial basis and as close to real-time as possible.

This requirement shall not apply to details of trades executed on an MTF that are made public under the systems of a regulated market.

3. The National Securities Market Commission may authorise multilateral trading facilities to provide for deferred publication of the details of transactions based on their type or size. In particular, they may authorise deferred publication in respect of transactions that are large in scale compared with the normal market size for those shares or that class of shares. Multilateral trading facilities must, in these cases, obtain the National Securities Market Commission's prior approval of proposed arrangements for deferred trade-publication, and these arrangements must be clearly disclosed to market participants and the investing public.

4. The provisions of this article and the preceding one must be applied in accordance with the provisions of Commission Regulation 1287/2006 implementing Directive 2004/39/EC as regards record-keeping obligations for investment firms, transaction reporting, market transparency, admission of financial instruments to trading, and defined terms for the purposes of that Directive.

5. Without prejudice to the public information envisaged in this and the preceding article, the Autonomous Regions with powers in the matter may establish any other disclosure requirement relating to transactions performed in their territory.

Article 125[125]. Central counterparty, clearing and settlement agreements.

1. The Systems Company may perform the activities referred to in article 44 bis of this Act in the conditions established in that clause with respect to the instruments listed in a multilateral trading facility.

2. The governing company of a multilateral trading facility may, subject to prior notification to the National Securities Market Commission, enter into arrangements with a central counterparty and clearing and settlement systems of another Member State with a view to providing for the clearing or settlement of some or all trades concluded by market participants under their systems.

3. The National Securities Market Commission may oppose such arrangements only where it considers that they may be detrimental to the orderly operation of the multilateral trading facility or, in the case of a settlement system, where the technical conditions do not guarantee effective and economical settlement of transactions.

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[125] Added by Act 47/2007, of 19 December

4. The National Securities Market Commission shall take into account the oversight of the clearing and settlement system already exercised by the Bank of Spain and the other authorities with powers in the area in order to avoid undue duplication of control.

Article 126[126]. Remote access to multilateral trading facilities.

1. Governing companies of Spanish multilateral trading facilities may establish appropriate mechanisms to facilitate access to and use of their systems by users or participants established in other Member States. To that end, it must notify the name of the Member State where it plans to establish such arrangements to the National Securities Market Commission. Within one month, the National Securities Market Commission shall communicate that information to the Member State where such arrangements are to be established. On the request of the competent authority of the host Member State and within a reasonable time, the National Securities Market Commission shall provide the identities of the members of the multilateral trading facility established in that Member State.

2. The governing companies of an MTF from other Member State of the European Union may provide arrangements in Spanish territory for users or members established in Spanish territory to have access and use their systems on a remote basis. To that end, the National Securities Market Commission must receive a communiqué from the competent authority of the home Member State indicating the intention to establish such arrangements in Spanish territory. The National Securities Market Commission may request that the notifying competent authority disclose the identity of the members of the multilateral trading facility within a reasonable time.

CHAPTER II[127]. Provisions common to official secondary markets and multilateral trading facilities

Article 127[128]. Coercive measures.

1. Where Spain is the host Member State of a regulated market or multilateral trading facility and the National Securities Market Commission has clear and demonstrable grounds for believing that such regulated market or MTF is in breach of the obligations arising from the provisions adopted pursuant to Directive 2004/39/EC, it shall refer those findings to the competent authority of the home Member State of the regulated market or MTF.

If, despite the measures taken by the competent authority of the home Member State, the regulated market or MTF persists in acting in a manner that is clearly detrimental to the interests of investors in Spain or the orderly functioning of markets, the National Securities Market Commission, after informing the competent authority of the home Member State, shall take the appropriate measures for their protection. This shall

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[126] Added by Act 47/2007, of 19 December

[127] Added by Act 47/2007, of 19 December

[128] Added by Act 47/2007, of 19 December

include the possibility of preventing the regulated market or MTF from making their arrangements available to remote members or participants established in the Spain. The National Securities Market Commission shall notify the European Commission promptly of such measures.

2. Any measure adopted pursuant to this article involving sanctions or restrictions on the activities of a regulated market or MTF shall be properly justified and communicated to the regulated market or MTF concerned.

CHAPTER III[129]. Systematic internalisers

Article 128[130]. Scope.

1. The provisions of this chapter shall apply to credit institutions and investment firms subject to this Act that execute, outside a regulated market or MTF, for their own account, clients' orders on shares listed in regulated markets provided that this is done frequently, systematically and in an organised fashion and refers to orders that are equal to or less than the standard market size for the security concerned, based on the provisions of the next section.

2. The standard market size for a category of shares shall be a size representative of the arithmetic average value of the orders executed in the market for the shares included in that class of shares.

3. Shares shall be grouped in classes on the basis of the arithmetic average value of the orders executed in the market for that share. At least once per year, the National Securities Market Commission shall publish a circular indicating the class to which each share belongs.

4. The market for each share shall be comprised of all orders executed in the European Union in respect of that share excluding those large in scale compared to the normal market size for that share.

5. The National Securities Market Commission shall regularly publish a list of the shares in which there is a liquid market for the purposes of this article, the category of shares to which each share belongs in accordance with the provisions of section 3 above and the other information that is necessary to enable credit institutions and investment firms to comply with their obligations under this article.

Article 129[131]. Reporting obligations.

1. Where there is a liquid market in the shares, systematic internalisers shall publish general firm quotes, on reasonable commercial terms, so that interested parties may obtain them readily. In the case of shares for which there is not a liquid market,

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[129] Added by Act 47/2007, of 19 December

[130] Added by Act 47/2007, of 19 December

[131] Added by Act 47/2007, of 19 December

systematic internalisers may confine themselves to disclosing firm quotes to their clients on request.

Systematic internalisers may decide the size or sizes at which they will quote. For a particular share, each quote shall include a firm bid and/or offer price or prices for a size or sizes less than the standard market size for the class of shares to which the share belongs. The price or prices shall also reflect the prevailing market conditions for that share.

Those prices shall be made public on a regular and continuous basis during normal trading hours. Systematic internalisers shall be entitled to update their quotes at any time. They shall also be allowed, under exceptional market conditions, to withdraw their quotes.

2. Systematic internalisers must publish the size, price and time of the transactions they perform outside regulated markets or multilateral trading facilities in shares that are listed in regulated markets. That information shall be made public as soon as possible in a readily-accessible manner and in reasonable conditions to interested parties, and the provisions of article 43.4 shall apply with regard to the post-trading transparency requirements and the deferrals of publication authorised by the National Securities Market Commission under article 43.5.

3. The National Securities Market Commission shall exercise oversight to ensure that systematic internalisers regularly update the bid and offer prices that they publish under section 1 of this article and that such prices reflect prevailing market conditions.

4. The provisions of this article must be applied in accordance with the provisions of Commission Regulation 1287/2006 implementing Directive 2004/39/EC as regards record-keeping obligations for investment firms, transaction reporting, market transparency, admission of financial instruments to trading, and defined terms for the purposes of that Directive.

Article 130[132]. Order execution.

1. Systematic internalisers shall execute the orders they receive from their retail clients at the quoted price at the time of reception of the order while respecting the best-execution obligation established in article 79 sexies.

2. They shall also execute the orders they receive from their professional clients at the quoted price at the time of reception of the order. However, they may execute those orders at a better price than their published firm quote in justified cases provided that this price falls within a public range close to market conditions and provided that the orders are of a size bigger than the size customarily undertaken by a retail investor.

The National Securities Market Commission shall exercise oversight to ensure that the systematic internalisers fulfil the conditions on better prices established in this section.

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[132] Added by Act 47/2007, of 19 December

3. Furthermore, systematic internalisers may execute orders they receive from their professional clients at prices different than their quoted ones without having to comply with the conditions established in the preceding section in respect of transactions where execution in several securities is part of one transaction or in respect of orders that are subject to conditions other than the current market price.

4. Where a systematic internaliser who quotes only one quote or whose highest quote is lower than the standard market size receives an order from a client of a size bigger than its quotation size, but lower than the standard market size, it may decide to execute that part of the order which exceeds its quotation size, provided that it is executed at the quoted price, except where otherwise permitted under the conditions of the previous two paragraphs. Where the systematic internaliser is quoting in different sizes and receives an order between those sizes, which it chooses to execute, it shall execute the order at one of the quoted prices in compliance with the provisions of Article 79 sexies, except where otherwise permitted under the conditions of the previous two paragraphs of this article.

5. The provisions of this article must be applied in accordance with the provisions of Commission Regulation 1287/2006 implementing Directive 2004/39/EC as regards record-keeping obligations for investment firms, transaction reporting, market transparency, admission of financial instruments to trading, and defined terms for the purposes of that Directive.

Article 131[133]. Treatment of clients.

1. Systematic internalisers shall be able to decide, on the basis of their commercial policy and in an objective non-discriminatory way, the investors to whom they give access to their quotes. To that end there shall be clear standards governing access to their quotes. Systematic internalisers may refuse to enter into, or discontinue, business relationships with a specific investor on the basis of commercial considerations such as the investor's credit status, the counterparty risk and the transaction's final settlement risk.

2. Systematic internalisers may limit, in a non-discriminatory way, the number of transactions from the same client which they undertake to execute at the published quotes so as to limit the risk of exposure to multiple transactions of a single client.

They shall also be allowed, in a non-discriminatory way and in accordance with the provisions of Article 79 sexies.1 on order processing, to limit the total number of transactions from different clients at the same time, where the number or volume of orders sought by clients considerably exceeds the norm.

3. The provisions of this article must be applied in accordance with the provisions of Commission Regulation 1287/2006 implementing Directive 2004/39/EC as regards record-keeping obligations for investment firms, transaction reporting, market transparency, admission of financial instruments to trading, and defined terms for the purposes of that Directive.

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[133] Added by Act 47/2007, of 19 December

ADDITIONAL PROVISIONS OF THE SECURITIES MARKET ACT 24/1988, OF 28 JULY (amended by Act 53/2002, of 30 December, on taxation, administration and labour matters)

One.

Once the provisions of this Act referring to Stock Exchanges are in force, the "Madrid Official Stock Exchange" (*Bolsa Oficial de Comercio de Madrid*) shall be named the "Madrid Stock Exchange" (*Bolsa de Valores de Madrid*), whereas the Barcelona, Bilbao and Valencia stock markets shall retain the name "Official Stock Exchanges" (*Bolsas Oficiales de Comercio*) until their respective Autonomous Regional Governments with competencies in the matter change this name. They shall all be considered Stock Exchanges for all intents and purposes, and they shall be bound by the relevant provisions of this Act.

(.....) ¿y la segunda?

Three.

In order to be valid, the subscription for, or transfer of, securities shall only require the intervention of a notary when such securities, not listed on an official secondary market, are represented by bearer notes, and the subscription or transfer is not performed with the participation or intermediation of a Broker-dealer or Broker, or a credit institution.

Four.

Book II, Title V, Section 2 of the Code of Commerce is amended to read as follows:

> "Loans collateralised by securities
>
> Article 320. Loans collateralised by securities listed on an official secondary market and expressed in the form of a contract executed before a Collegiate Commercial Broker or of a public instrument shall always be deemed to be mercantile contracts.
>
> In accordance with the provisions of this section, and with regard to pledged securities, the lender shall have the right to collect his debt-claim with preference over other creditors, who may not dispose of such securities unless the debt-claim granted on the basis thereof has been paid.
>
> Article 321. The contract must set out the necessary particulars and circumstances for the proper identification of the securities given in pledge.
>
> Article 322. On maturity of the loan, unless otherwise agreed and without the need to notify the debtor, the creditor shall be authorized to request the disposal of the securities given in pledge, for which purpose he shall deliver the loan contract or instrument to the governing bodies of the corresponding official secondary market, with the pledged certificates or the certificate evidencing the registration of the collateral that was issued by the institution entrusted with keeping the corresponding accounting records.

Once the appropriate verifications have been made, the governing body shall adopt the necessary measures to dispose of the pledged securities on the same day on which it receives the notice from the creditor, or, if this is not possible, on the next day, through a member of the corresponding official secondary market.

The pledgee may only make use of the special seizure procedure regulated by this Article during the three working days following maturity of the loan.

Article 323. The provisions of this section shall also apply to current credit accounts opened by credit institutions when it has been agreed that the amount payable in the event of seizure shall be the amount specified in the certificate issued by the credit institution, in which case, in addition to the documents envisaged in the preceding Article, that certificate, together with the duly attested document referred to in Article 1.435 of the Civil Procedure Act (*Ley de Enjuiciamiento Civil*), shall be delivered.

Article 324. Securities pledged in accordance with the provisions of the preceding Articles may not be reclaimed until the lender has been repaid, without prejudice to the rights and actions to which the dispossessed holder is entitled against those persons responsible by Act for the acts that deprived him of the securities given in guarantee."

(.....) 5ª?6ª?7ª?8ª?

Nine.

1. Article 545 of the Code of Commerce is amended to read as follows:

"Securities in the form of bearer notes may be transferred by delivering the document. A certificate obtained by a third party in good faith and without gross malice shall not be claimable. The legitimate owner shall keep his rights and actions against those responsible for acts which deprive him of ownership."

2. This additional provision shall take effect on the day after publication of this Act in the Official State Gazette, notwithstanding the stipulations of final provision 1.

Ten

The Ministry of Economy and Finance shall provide the funding required to comply with the provisions of the first paragraph of Article 24 of this Act.

Eleven.

The Minister of Economy and Finance shall publish the Resolution which, in accordance with the provisions of Article 31 of this Act, recognises the markets which have the status of official secondary markets.

The publication referred to in the preceding paragraph shall be the responsibility of the Autonomous Regional Governments with competencies in the matter with regard to the official secondary markets that they authorise in accordance with the provisions of Article 31.2.d) of this Act.

Twelve.

The interbank deposit market shall not be bound by the regulations of this Act. The Bank of Spain shall be responsible for regulating and supervising the functioning of that market.

Thirteen.

The references to investment services firms and authorities of European Union Member States include those of other states in the European Economic Area.

Fourteen.

For all intents and purposes, and taking account of the special characteristics of Basque Provincial Treasuries, issues of securities by the Basque Regional Government shall be deemed to be equivalent to those issued by an Autonomous Regional Government

Fifteen.

Executives of companies whose shares are listed on a Stock Exchange must inform the National Securities Market Commission of any deliveries of shares and stock options that they receive in the execution of a remuneration system of that company. They must also disclose the remuneration systems referenced to the shares which are established in that respect, and any amendments thereto. That disclosure shall be subject to the system governing the disclosure of significant events laid down in Article 82 of this Act.

For the purposes of this provision, executives shall be understood to be general managers or similar who perform senior executive functions reporting directly to the governing bodies, executive committees or managing directors of listed companies.

The provisions of the first paragraph of this provision regarding companies whose shares are listed on a Stock Exchange shall also apply to the delivery of shares and stock options received by directors in the execution of remuneration systems of such companies and to the remuneration systems referenced to the share price, established for such directors, and any amendments thereto.

The Government shall implement this provision, with special reference to the period, form and scope of compliance with the reporting obligation.

Sixteen.

Listed companies which, at the time of entry into force of this provision, have, for their directors or executives, a remuneration system that consists of the delivery of shares or stock options or any other remuneration system referenced to the share price must, prior to executing or cancelling the remuneration system, register with the National Securities Market Commission a supplement to the prospectus currently in force, or a specific new prospectus, providing detailed itemised information on the shares and options or settlements corresponding to directors and executives. In the case of those who are only executives, that information may be presented in aggregate form. As the supporting documentation envisaged in Article 10 of Royal Decree 291/1992, of 27 March, on issues and public offerings of securities, the Shareholders' Meeting resolution approving or ratifying the remuneration system must be presented for registration.

For the purposes of this provision, executives shall be understood to be general managers or similar who perform senior management functions reporting directly to the governing bodies, executive committees or managing directors of listed companies.

Seventeen[134]

1. Without prejudice to the powers of the Autonomous Regional Governments with regard to securities record-keeping, clearing and settlement systems and secondary markets, the Government may, based on a report by the National Securities Market Commission, and after consultation with the Autonomous Regional Governments with powers in this area, at the proposal of the Minister of Economy and Finance, grant permission to one or more entities to acquire, directly or indirectly, all of the capital, or a stake that gives the buyer(s) direct or indirect control, of any or all of the companies that manage Spanish securities record-keeping, clearing and settlement systems and secondary markets, and allow such entities to own that capital after such acquisition.

A controlling stake is one which, as provided in Chapter V of Title IV and its implementing regulations, requires a takeover bid to be made for all of the company's capital.

Apart from the exceptions to be established by regulation, the corporate by-laws of these entities and any amendments to them shall require prior approval by the National Securities Market Commission, as shall the appointment of members of their Boards of Directors and of their General Managers, who must meet the requirements set out in articles 67.2.f), 67.2.g) and 67.2.h) of this Act. If the buyers' corporate domicile is not located in Spain, and their bylaws, amendments thereto and members of the Board of Directors and General Managers require authorisation by the competent authority of another Member State of the European Union or by the supervisory authority of a non-Member State of the European Union whose form of organisation and operation is similar to that of the National Securities Market Commission, then that authority shall be responsible for those verifications.

The Government shall determine, by Royal Decree, the regime applicable to offers to acquire the shares representing the capital of the aforementioned entities, the form of disclosure of their shares, the system governing such entities so that their bylaws reflect any limitation or special feature of the rights deriving from their shares, and any other aspect that may be necessary so as to apply this provision and to ensure proper supervision of such entities.

2. Authorisation from the Government shall be required for the entity or entities directly or indirectly owning all of the capital or a controlling stake in some or all of the companies referred to above to perform any act of disposition whereby they cease directly or indirectly to own all of the capital that they hold in those companies or whereby they lose direct or indirect control of those companies. That authorisation shall be issued after consultation with the Autonomous Regional Governments with powers in

[134] Amended by Act 12/2006, of 16 May amending the drafting given by Act 24/2001

this area, following a report by the National Securities Market Commission and at the proposal of the Minister of Economy and Finance.

3. The rules governing qualifiying holdings contained in articles 31.6 and 44.bis.3 of this Act shall not apply to the transfers subject to the administrative authorisations contained in this provision.

4. The National Securities Market Commission is vested with the power to supervise those entities.

Seventeen (sic).

Specific references to the "Securities Clearing and Settlement Service" and to the Bank of Spain's Book-Entry System (*Central de Anotaciones*) in Articles of this or other provisions shall be understood to refer to the *Sociedad de Gestión de los Sistemas de Registro, Compensación y Liquidación de Valores*.

General references made in this Act to clearing and settlement services, processes or bodies shall be understood to refer to the clearing and settlement systems.

Eighteen

Audit Committee

Issuing companies whose shares or bonds are listed on official secondary securities markets must have an Audit Committee, which must consist of a majority of non-executive directors appointed by the Board of Directors, and which must appoint its Chairperson from among those non-executive directors. The Chairperson must be replaced every four years and may be reappointed one year after termination of his period of office. The number of members, the competencies and the working rules of that Committee shall be laid down by the company's bylaws and must foster its independence. Its powers shall include at least the following:

1. Inform the Shareholders' Meeting on questions raised by shareholders regarding matters under its competence.

2. Make proposals to the Board of Directors to be submitted to the Shareholders' Meeting regarding the appointment of external auditors as envisaged in Article 204 of the Consolidated Text of the Public Limited Companies Act approved by Legislative Royal Decree 1564/1989, of 22 December.

3. Supervise the internal audit unit if such a body exists within the company's organisation.

4. Be informed of the company's financial reporting process and internal control systems.

5. Liaise with the external auditors in order to receive information on any matters that may jeopardise their independence and any other matters relating to the audit process and any other communications provided for in the audit legislation and audit technical regulations.

Nineteen

1. Portfolio Management Companies must become members of the Investor Compensation Scheme in accordance with the current provisions on the matter; they are exempt from the obligation to arrange third-party liability insurance.

2. The references to Broker-dealers and Brokers in the provisions referred to in the preceding paragraph shall be deemed to refer to all investment services firms.

3. Portfolio Management Companies must become members of the Investor Compensation Scheme before 1 February 2003.

ADDITIONAL PROVISIONS OF ACT 37/1998, OF 16 NOVEMBER, AMENDING SECURITIES MARKET ACT 24/1988, OF 28 JULY

Additional provision one

Act 46/1984, of 26 December, governing Collective Investment Schemes is hereby amended in the following terms:

One. Article 8.1 of Act 46/1984 shall be worded as follows:

> "1. Prior to commencing activities, all collective investment schemes, must obtain prior approval of their incorporation plan from the Ministry of Economy and Finance, at the proposal of the National Securities Market Commission, be incorporated as a company or as an investment fund, as appropriate, and be registered in the appropriate Register of the National Securities Market Commission.
>
> Such approval may only be withheld in the event of failure to comply with the requirements contained in this Act and in its secondary legislation. Applications for approval shall be resolved by a reasoned resolution, within three months from receipt or from the time when all documents required have been furnished and, in any event, within six months from receipt of the application".

Two. Paragraph three of article 8.3 shall be worded as follows:

> "Changes in the deed of incorporation, in the bylaws or regulations of Collective Investment Schemes shall be subject to the provisions contained in this and in the two preceding sections, with the exceptions to be laid down in the regulations".

Three. The last paragraph of article 10.2 is amended to read as follows:

> "The Ministry of Economy and Finance, based on a report by the National Securities Market Commission, shall establish the cases and conditions in which closed-end or open-end investment companies in transferable securities, investment funds in transferable securities and money market investment funds may use derivatives instruments and other techniques aimed at ensuring adequate coverage of the risks assumed by part or all of their portfolio, as an investment to manage their portfolio more efficiently or to meet a specific profitability target, in accordance with the management objectives contained in the prospectus and in the bylaws or regulations of the institution".

Four. Article 12.4 is amended to read as follows:

> "4. Assets shall be managed by the company's governing bodies. If the bylaws contain a provision to this effect, the Shareholders' Meeting, or the Board of Directors by delegation, may resolve to entrust part or all of the company's asset management to a third party which is qualified as a manager, in accordance with the provisions of this Act. This resolution must be registered in the Mercantile Register and in the appropriate special Register.

Five. Article 27.1.c shall be worded as follows:

"Their sole corporate purpose shall be the management and representation of collective investment schemes. Nevertheless, they may also manage, on behalf of investment funds that they manage, the subscription and reimbursement of their shares; in this case, additional solvency requirements may be imposed. The latter activity may be performed directly or through agents or authorised signatories of the firm and, in both cases, it must conform to the requirements to be established in the regulations".

Six. Article 23 bis shall be worded as follows:

"One.

1. Investment companies in transferable securities that invest in funds, open-end investment companies in transferable securities that invest in funds, and funds of securities funds are collective investment schemes characterised by investing the bulk of their assets in shares or interests of one or several financial collective investment schemes.

2. In any case, the corporate names of open-end investment companies in transferable securities must be followed by "*Sociedad de Inversión Mobiliaria de fondos*" or its abbreviation "SIMF", those of open-end investment companies in transferable securities that invest in funds by "*Sociedad de Inversión Mobiliaria de Capital Variable de Fondos*" or "SIMCAV", and those of funds of funds by "*Fondo de Inversión Mobiliaria de Fondos*" or "FIMF". In the case of schemes that invest in a single institution, the corporate names of feeder security investment companies shall be followed by "*Sociedad de Inversión Mobiliaria Subordinada*" or its abbreviation "SIMS", those of feeder open-end investment companies in transferable securities by "*Sociedad de Inversión Mobiliaria de Capital Variable Subordinada*" or "SIMCAVS", and those of feeder funds by "*Fondo de Inversión Mobiliaria de Fondos*" or "FIMF".

Regarding the collective investment schemes in which the institutions listed in the last item of the preceding paragraph invest, the corporate names of master investment companies intransferable securities shall be followed by "*Sociedad de Inversión Mobiliaria Principal*" or its abbreviation "SIMP", of master open-end investment companies intransferable securities by "*Sociedad de Inversión Mobiliaria de Capital Variable Principal*" or "SIMCAVP", and of master security investment funds by "*Fondo de Inversión Mobiliaria Principal*" or "FIMP".

3. Regulations shall be enacted to establish, inter alia, rules about investments in shares or units of one or several collective investment schemes and about risk diversification, the minimum liquidity coefficient, valuation and accounting rules, and subscription and reimbursements of shares.

4. Investment companies in transferable securities, open-end investment companies intrasnferable securities and funds of funds, and masters and feeders shall be governed by the previous sections and by the provisions to be established by regulations and, subsidiarily, with the necessary adaptations, by the rules governing SIM, SIMCAV and FIM.

5. The sanction system envisaged in articles 32.2.b), 32.3.c), 32.3.h) and 32.4.e) of this Act shall be applicable to collective investment schemes of funds, as well as master and feeder funds, with the adaptations to be established by regulation."

Two.

"Investment funds may merge through either absorption or the creation of a new fund.

This procedure shall require a prior decision by the management company and the depositary of the funds that are to merge.

The merger must first be authorised by the Minister of Economy and Finance, at the proposal of the National Securities Market Commission.

Merger processes must be disclosed to investors so that, within one month, they can exercise the right to withdraw, and be reimbursed, without any costs, the net asset value determined in accordance with article 20.2 corresponding to the deadline for exercising the right to withdraw."

Seven. A new article 23 ter is introduced, worded as follows:

"1. Under the aegis of this Act, the following may be created: open-end security investment companies, and security investment funds, that invest the bulk of their assets in securities not traded in secondary securities markets.

2. Regulations shall be issued establishing, inter alia, special rules applicable to these schemes in terms of investments, risk diversification, investment coefficients, the liquidity coefficient, valuation and accounting rules, and subscription and reimbursements of shares.

Additionally, with the necessary adaptations, they shall be governed by the provisions envisaged for SIM, SIMCAV and FIM".

Eight. A new article 23 quater is introduced, worded as follows:

"1. FIM, FIAMM and any financial collective investment scheme may be created as an investment fund whose participants are exclusively institutional or professional investors.

2. Regulations shall be issued establishing, inter alia, special rules for the institutions envisaged in this article governing the minimum number of participants and the subscription and reimbursement of shares".

Nine. A new article 31 bis is introduced, worded as follows:

"The provisions of article 90 of Securities Market Act 24/1998, of 28 July, with the necessary adaptations regarding collective investment schemes within the scope of this Act, shall be applicable to the supervisory functions of the National Securities Market Commission contained in this Act".

Ten. Article 27.2 of Collective Investment Scheme Act 46/1984, of 26 December, is amended to read as follows:

"2. Regulations shall be enacted to determine the conditions for outsourcing the management of foreign assets to other firms".

Additional provision two Derogada

The rules for investment services firms contained in Securities Market Act 24/1988, of 28 July, that deal with the following matters shall be applicable to open-end security investment companies and collective investment scheme operators regulated by Act 46/1984, of 26 December, with the regulatory adaptations required by their specific nature:

1. Withdrawal of authorisation due to the reasons set out in articles 73.b), 73.d), 73.e), 73.g), 73.h), 73.k) or 73.l).

2. Suspension of authorisation due to the reasons set out in articles 76.1.a) and 76.1.b), where applicable, and 76.1.c).

The rules for investment services firms contained in articles 67.1.2, 67.2.g) and 69 of Securities Market Act 24/1988, of 28 July, regarding the suitability of shareholders owning a qualifying interest shall also be applicable to collective investment scheme operators, with the necessary adaptations as required by their specific nature. (*sic*)

The power to resolve the suspension shall rest with the National Securities Market Commission.

Additional provision three

In the event of bankruptcy or suspension of payments by a securities issuer or firm registered with the National Securities Market Commission, the obligation of directors and executives to file information with the Commission, as established by Securities Market Act 24/1998, of 28 July, and other laws, shall be applicable to administrators, depositories and official receivers, as appropriate.

Additional provision four

1. Mortgage securitisation funds, as referred to by Act 19/1992, of 7 July, which comprise holdings in past-due mortgage loans, may be created provided that those loans and the mortgages constituted as collateral conform to all the other requirements established in the mortgage market legislation and that credit enhancement mechanisms or instruments have been established.

2. During the procedure of supervising the incorporation of those funds, the National Securities Market Commission may establish specific obligations as regards reporting and controlling their correct operation.

Additional provision five

1. Article 9.d) of Corporate Income Tax Act 43/1995, of 27 December, shall be reworded as follows:

"d) The Bank of Spain, Deposit Compensation Schemes and Investor Compensation Schemes".

2. Investor Compensation Schemes shall be exempt from the indirect taxes that might accrue as a result of their incorporation, functioning, and the acts and operations they perform in pursuit of their purposes. The exemption shall also include operations subject to indirect taxes, whose amount must be charged to them depending on the provisions regulating the taxes.

Additional provision six Derogado por el RD Ley 5/2005

1. When securities listed in secondary markets under the book-entry system are pledged to guarantee general obligations vis-à-vis a secondary market or its clearing and settlement systems or to guarantee compliance with the obligations acquired by virtue of transactions performed in one of those markets, those pledges may be created through a contract arranged before a notary.

2. The pledges referred to in item 1 above may also be arranged, without the documents referred to therein, but under the provisions of article 10 of the Securities Market Act:

a) Through a private document; the firm that maintains the accounting records must register the pledge when it has evidence of the consent of the owner of record and of the firm to which the pledge is made.

b) Through a unilateral statement of the owner of record, including statements via telematic means, in which case acceptance by the firm to whom the pledge is made is understood to be given when that statement has been unilaterally reported to the firm that maintains the accounting records of the securities, provided that this is envisaged in the regulation of the market or clearing and settlement system involved or that this type of acceptance has expressly been agreed upon previously by the interested parties. Nevertheless, this type of pledge acceptance does not imply sufficiency of the collateral; therefore, if the collateral is insufficient, the parties must proceed as regulated for these cases.

The firm in charge of maintaining the accounting records of the pledged securities shall inform the firm to which the pledge is made of the registration of the pledge and of any incidents or circumstances that may arise.

The pledge made in accordance with the provisions of this section shall be effective vis-à-vis third parties from the date on which it is entered in the accounting records.

3. The pledges referred to in the preceding sections shall be executed in accordance with the provisions of articles 322 to 324 of the Code of Commerce, although, to accredit the existence of the collateral and the amount owed, it shall be sufficient to accredit the documents envisaged by the market's rules and regulations governing the creation of pledges.

4. The governing bodies of the secondary markets and of their clearing and settlement systems shall enjoy the same privileges that article 1.926 of the Civil Code (*Código Civil*) grants to the pledgee in connection with the goods, securities or rights comprising the collateral provided or created in their favour by the members or investors of those markets, regardless of the nature of those goods, securities and rights and how the pledge was arranged, provided that such arrangement conforms to the applicable legislation and each market's own rules.

5. When the collateral referred to in section 1 of this provision comprises cash deposits, with or without a management mandate, the collateral shall be seized simply by offsetting. In other cases, when the law does not envisage a special seizure procedure, the collateral shall be seized through an auction involving a notary or registered commercial broker, with a citation to the debtor and to the owner of the pledged good, security or right, if they are not the same person, with all other aspects of the procedure being as envisaged in paragraph one of article 1.872 of the Civil Code; the aforementioned seizure procedure can only be suspended or interrupted by a court order, in which case the judge must require that the person who requested the suspension provide a sufficient specific guarantee to cover any damages that might arise.

6. (REPEALED by the repealing provision, section c), of Act 44/2002).

Additional provision seven

Article 48.1.a) of Act 18/1991 is amended and the following paragraph is added:

> "For the purposes of the provisions of the preceding paragraph, it is understood that official secondary securities markets are those expressly envisaged in the Securities Market Act 24/1988, of 28 July, as well as the Second Markets that already exist or are created in the future for small and mid-sized companies in the Spanish stock exchanges".

Additional provision eight

The last paragraph of final provision one of Audit Act 19/1988, of 12 July, is amended to read as follows:

> "The auditors of the annual accounts of the firms subject to supervision under Act 13/1992, on consolidated basis own funds and supervision of financial institutions, or of the financial firms or firms regulated by Private Insurance Supervision Act 30/1995, of 8 November, or firms and institutions regulated by Collective Investment Scheme Act 46/1984, of 26 December, are obliged to inform the Bank of Spain, the National Securities Market Commission, or the General Directorate of Insurance, as appropriate, immediately in writing of any event or decision about the audited firm or institution of which they become aware during the exercise of their functions that may:
>
> a) Constitute a serious infringement of the content of the legal, regulatory or administrative provisions that establish the conditions of their authorisation or that specifically regulate the exercise of their activity.
>
> b) Jeopardise the continuity of their operations or seriously affect their stability or solvency.
>
> c) Force them to withhold an opinion or to provide an adverse or qualified opinion or prevent them from issuing an auditors' report.
>
> Without prejudice to the preceding obligation, the audited firm is obliged to send a copy of the auditors' report on the annual accounts to the aforementioned competent supervisory bodies. If the auditor does not have certifiable evidence

that such copy has been filed within one week from the delivery of the report, he must file the report directly with the aforementioned authorities.

The preceding obligation also applies to auditors of annual accounts of the companies that have a control relationship, as defined by article 4 of the Securities Market Act 24/1988, with one of the firms or institutions referred to in paragraph one.

Auditors of subsidiaries subject to supervision shall report to the auditors of the parent undertaking, in addition to reporting to the competent supervisory bodies, as established in paragraph one.

Reporting the aforementioned events or decisions to the competent supervisory authorities in good faith does not constitute a breach of the duty of secrecy established in article 13 of this Act or of any such duty that may be imposed contractually on auditors, nor shall it entail any liability for them."

Additional provision nine

1. The following paragraph is added to article 2 of the Exchange and Cheque Act 19/1985, of 16 July:

"All the statements in the bill of exchange other than those included in the preceding article shall be considered as optional clauses".

2. Paragraphs two, three and four of article 51 of Act 19/1985, of 16 July, are amended to read as follows:

"The statement included in the bill of exchange itself, signed and dated by the drawee rejecting acceptance or payment, and the statement, subject to the same requirements, of the drawee or, if appropriate, the Clearing House, rejecting payment shall have all the effects of the protest, unless the drawer has expressly required the use of notarial protest on the bill of exchange in the space reserved by the applicable regulation for optional clauses. The statement by the drawee or Clearing House must always be made within the deadlines established for the notarial protest in the next article.

Notarial protest due to non-acceptance must be made within the deadlines established for presenting the acceptance or within the following eight business days.

Protest for non-payment of a bill of exchange payable on a fixed date or from its date or from sight must be made within eight business days from maturity of the bill of exchange. If the bill of exchange is payable on sight, the protest must be made within the period indicated in the preceding paragraph for protest in the event of non-acceptance".

3. The following paragraph is added to article 95 of Act 19/1985, of 16 July:

"All the statements on the promissory note other than those referred to in the preceding article shall be considered as optional clauses".

4. Paragraph one of article 96 of Act 19/1985, of 16 July, shall be worded as follows:

"Provided that they are not incompatible with this type of security, there shall be applicable to bills of exchange the provisions relating to bills of exchange and those relating to:

Endorsements (articles 14 to 24).

Maturity (articles 38 to 42).

Payment (articles 43 and 45 to 48).

Remedies for non-payment (articles 49 to 60 and 62 to 68). Nevertheless, to be valid, optional clauses added to promissory notes must be signed expressly by the person authorised to insert them, without prejudice to the signatures required by this Act for valid title.

Payment for intervention (articles 70 and 74 to 78).

Copies (articles 82 and 83).

Loss, theft or destruction (articles 84 to 87).

Expiration (articles 88 and 89).

Calculation of deadlines and prohibition of grace periods (articles 90 and 91).

Location and domicile (article 92).

Alterations (article 93).

5. The following paragraph is added to article 107 of Act 19/1985:

"All the statements in the cheque other than those referred to in the preceding article shall be considered as optional clauses".

6. Paragraph one of article 147 of Act 19/1985 is reworded and a new paragraph is added, as follows:

"The protest or equivalent statement must be made before the deadline for presentation. If the presentation takes place in the last eight days before the deadline, the protest or equivalent statement may be made in the eight business days after the presentation."

Nevertheless, optional clauses added to a cheque shall be valid when they are signed expressly by the person authorised to insert them, without prejudice to the signatures required by this Act for valid title."

Additional provision ten Derogada por el RD Ley 5/2005

1. The rules of this Provision shall apply to the financial transactions performed in the framework of a contractual clearing agreement or in relation to it, provided that:

a) At least one of the parties to the agreement is a credit institution or an investment services firm, or a non-resident firm authorised to perform the activities reserved for such institutions or firms by Spanish law.

b) The agreement envisages the creation of a single legal obligation that covers all the financial transactions included in same and by virtue of which, in the event of early

maturity, the parties shall only be entitled to claim from each other the net balance from the settlement of those transactions. The net balance must be calculated in accordance with the provisions of the contractual clearing agreement or related agreements.

2. For the purposes of this Provision, the following are considered to be financial transactions:

a) Transactions with the financial instruments envisaged in paragraph two of article 2 of Securities Market Act 24/1988, of 28 July, including credit derivatives.

b) Double transactions or transactions with repurchase agreements as defined in Additional Provision Twelve of this Act, regardless of the assets involved, and, generally, repurchase agreements (repos).

c) Securities loans.

d) Guarantees and assignments in guarantee, or other operations with the direct or indirect purpose of guarantee related to the contractual clearing agreement itself, relating to public debt, other transferable securities or cash. Where applicable, the transactions included in this section d) shall be performed in accordance with the contractual clearing agreement or agreements related thereto.

The financial transactions referred to in this section are valid and effective against third parties, regardless of the law that governs them, provided only that they are expressed in a private document, the securities are delivered or transferred or the appropriate book entry is made, as the case may be, and the cash is deposited or transferred, in accordance with Additional Provision Six of Act 37/1998, of 16 November, amending Securities Market Act 24/1988, of 28 July.

3. The declaration of early maturity, conclusion, termination, execution or equivalent effects of the financial transactions defined in the preceding sections made in the framework of a contractual clearing agreement or in relation to it cannot be limited, restricted or affected in any way by a state of, or application for, bankruptcy, suspension of payments, liquidation, administration, intervention or arrangement with creditors that affects any of the parties to the agreement, their subsidiaries or branches.

In the event that one party to the contractual clearing agreement finds itself in one of the aforementioned situations of insolvency, only the net amount of the financial transactions addressed by the agreement, calculated in accordance with the rules established in same or in agreements related to it, shall be included as credit or debt of the party involved in that situation.

4. The financial transactions or the contractual clearing agreement that governs them can only be contested in accordance with paragraph two of article 878 of the Code of Commerce by the receivers, proving that the contract was fraudulent.

Additional provision eleven

Article 6 of Legislative Royal Decree 1298/1986, of 28 June, which adapts the legal regulations regarding credit institutions to European Economic Community law, is amended to read as follows:

"1. In the exercise of its duty to supervise and inspect credit institutions, the Bank of Spain shall collaborate with authorities in foreign States that have similar duties and may report information about the management and ownership of those institutions and information that may enable them to ascertain the solvency of those institutions, to supervise them, or to prevent, pursue or penalise misconduct; it may also sign memoranda of understanding for this purpose. In the event that the competent authorities do not belong to a member State of the European Union, that information may only be supplied if there is reciprocity and the competent authorities are subject to requirements of professional secrecy that are at least as strict as in Spanish law.

2. Data, documents and information in the hands of the Bank of Spain by virtue of the duties entrusted to it by law shall be confidential and cannot be divulged to any person or authority. The confidentiality shall be deemed to have been lifted when the interested parties make public the facts to which it refers.

Parliament may gain access to information subject to the duty of secrecy through the Governor of the Bank of Spain, in accordance with parliamentary regulations. For this purpose, the Governor may, while citing the reasons, apply to the Chamber's competent bodies to hold a closed session or to apply the procedure established for access to classified material.

3. Any current or former employee of the Bank of Spain who has knowledge of restricted data is obliged to keep it secret. Failure to comply with this obligation shall lead to the criminal and other liabilities envisaged in law. These persons may not make a statement, provide testimony, or publish, report or show restricted data or documents, even if they have ceased to hold office, unless a competent body of the Bank of Spain has granted express permission for them to do so. If this permission is not granted, the person affected must maintain the secret and shall be exempt from any liability resulting therefrom.

4. The duty of secrecy regulated in this article does not apply in the following cases:

a) When the interested party expressly consents to the dissemination, publication or communication of the data.

b) The publication of aggregated data for statistical purposes, or publication in summarised or aggregated form such that the individual firms cannot be identified, not even indirectly.

c) Disclosures required by the competent judicial authorities in the course of a criminal proceeding.

d) Disclosures required by the judicial authorities in the framework of mercantile law proceedings arising from suspension of payments, bankruptcy or forced liquidation of a credit institution, provided that the information does not relate to the third parties involved in relaunching the institution.

e) Disclosures required by the competent administrative or judicial authorities in the framework of administrative or legal appeals against administrative resolutions issued regarding the control and discipline of credit institutions.

f) Disclosures that the Bank of Spain must make, in the course of its duties, to the National Securities Market Commission, the Spanish Insurance Authority, the Deposit Compensation Schemes, the receivers of a credit institution or of a firm of its group appointed in the corresponding administrative or legal proceeding, and the auditors of credit institutions and their groups.

g) Disclosure by the Bank of Spain, as a monetary authority, to the European Central Bank, to the central banks, to bodies with a similar function of the European Union and to other public authorities entrusted with supervising the payment systems.

h) Disclosures required of the Bank of Spain, in the discharge of its duties, to the public bodies or authorities of other countries in charge of supervising investment services firms, insurance companies, other financial institutions and financial markets, or of managing deposit guarantee systems or systems for indemnifying investors in credit institutions, provided that there is reciprocity and that the bodies and authorities are subject to requirements of professional secrecy that are at least as strict as in Spanish law.

i) Disclosures which the Bank of Spain decides to make to a clearing house or similar firm legally authorised to provide clearing or settlement services in the Spanish markets when it deems this is necessary to guarantee the correct functioning of those bodies in the event of any non-compliance or possible non-compliance arising in the market.

j) Disclosures by the Bank of Spain to the authorities in charge of combating money laundering and the communications that may be made exceptionally by virtue of articles 111 and 112 of the General Taxation Act, after first obtaining authorisation from the Minister of Economy and Finance, which power may not be delegated. For these purposes, the memoranda of understanding signed by the Bank of Spain with the supervisory authorities of other countries must be considered.

k) Disclosures by the Bank of Spain to the Ministry of Economy and Finance or to the authorities of the Autonomous Regional Governments with power over credit institutions for reasons of prudential supervision of credit institutions or for the purpose of penalising such institutions.

l) Disclosures demanded by a Parliamentary Investigating Commission in the terms established in its specific legislation.

5. The judicial authorities that receive confidential information from the Bank of Spain are obliged to adopt the pertinent measures to guarantee confidentiality

during the proceeding in question. The other authorities, persons or firms that receive confidential information are subject to professional secrecy as regulated in this article and may not use it outside the framework of compliance with the duties legally established for them.

Members of a Parliamentary Investigating Commission who receive confidential information are obliged to adopt the pertinent measures to guarantee confidentiality.

6. Divulgence of confidential information originating in another Member State to bodies and authorities of countries that are not members of the European Economic Area as referred to in paragraph two of section 1 and in section 4.h) is conditional upon express consent by the originating authority and may only be made to the parties for the purposes for which the originating authority has given its consent. The same limitation is applied to disclosures to the clearing houses and bodies referred to in section 4.i)."

Additional provision twelve Derogada por RD Ley 5/2005

1. In accordance with the provisions of article 36 of Securities Market Act 24/1988, of 28 July, double transactions and transactions with repurchase agreement may be recognised as secondary market operations. For those purposes:

Double (or simultaneous) transactions are understood to be those where two counterposed securities sale/purchase contracts are entered into; both use securities with identical features and are for the same nominal amount, but their execution date differs, and both may be spot transactions with different settlement dates, or forward transactions, or one spot and the other forward.

Transactions with repurchase agreement are understood to be those where the owner of the securities sells them up until the date of their redemption, simultaneously agreeing to repurchase securities of identical features and for the same nominal amount on a specific date between the date of sale and the date of the nearest redemption, even if such redemption is partial or voluntary.

2. (REPEALED by section c of the Repealing Provision of Act 44/2002).

3. In the operations referred to in section 1 above, if the first seller does not pay the price of the second purchase/sale or fails to comply with the repurchase agreement, the first buyer shall be vested with irrevocable ownership of the sold securities.

The declaration of bankruptcy or the admission of an application for suspension of payments of the first seller shall wholly eliminate the possibility of performing the second purchase/sale, or the repurchase agreement, with the same effects as stated in the preceding paragraph.

4. The provisions of section 3 and 4 of Additional Provision Ten of this Act shall apply to the operations envisaged in section 1 of this Provision performed on other financial assets to guarantee the general obligations contracted vis-à-vis the Bank of Spain in the exercise of its monetary policy operations.

Additional provision thirteen

Royal Decree-Act 18/1982, of 24 September, is amended as follows:

One. A new article 2 ter is created with the following wording:

> "Article 2 ter.
>
> The Deposit Compensation Schemes at banks, saving banks and credit cooperatives shall indemnify investors who have entrusted their cash, securities or financial instruments to a credit institution that is a member of such schemes for deposit and administration or for the provision of an investment service as envisaged in Securities Market Act 24/1988, of 28 July, in the cases stated in articles 5.1 and 5.1 bis of this Royal Decree-Act. The limit, form, duration and scope of that coverage shall be determined by regulation."

Two. The following paragraph is added to article 3.1:

"When a scheme's assets are negative, the Management Commission may resolve, by a majority of two-thirds, to call upon the member institutions for an additional contribution. Such additional contributions shall be assessed using the same basis of calculation as the ordinary contributions, and their total amount cannot exceed the amount required to eliminate the deficit."

Three. The following section is added to article 5:

> "1 bis. Regardless of the amount established as the deposit guarantee by virtue of article 1.2 of Royal Decree-Act 4/1980, of 28 March, and articles 1.2 and 2.2 of this Royal Decree-Act, the Deposit Compensation Schemes shall pay the guaranteed amounts to the owners of the securities or financial instruments entrusted to a credit institution when any of the following events occurs:
>
> > a) When the credit institution is declared bankrupt or a court has accepted an application for suspension of payments, and those situations lead to the suspension of the restitution of the securities or financial instruments; nevertheless, those amounts shall not be paid if that suspension is lifted during the regulated period for commencing restitution.
> >
> > b) If, once the securities or financial instruments have not been restored, the Bank of Spain determines that the credit institution is unable to restore them in the immediate future for reasons directly related to its financial situation. The Bank of Spain shall have a period of twenty-one days to ascertain the existence of this event and to resolve as to whether the indemnity is payable".

Four. The last paragraph of article 5.1 is eliminated and the following section is added:

> "1 ter. All the payments by the Deposit Compensation Schemes by virtue of the two preceding sections shall be made in cash, the securities or other financial instruments being valued as determined by regulation.
>
> By the simple event of payment, the Deposit Compensation Schemes shall subrograte, as determined by law, to the rights of the creditor or investor

corresponding to the paid amount, the document accrediting payment being sufficient for this purpose.

If the securities or other financial instruments entrusted to the institution are restored by it after the payment of an amount guaranteed by virtue of section 1 bis, the Deposit Compensation Schemes may recover part or all of the paid amount if the value of restitution is greater than the difference between the amount entrusted to the institution and the amount paid to the investor; for that purpose, they are empowered to dispose of the appropriate number of securities and instruments in accordance with the procedure and the allocation and valuation method to be established by regulation."

Additional provision fourteen

The requirement of expression in a public instrument envisaged in article 6 of Securities Market Act 24/1988, of 28 July, is not necessary in the case of issuance of commercial paper to be traded on a secondary market, provided that their features are detailed in a prospectus.

Additional provision fifteen

The following provisions of the consolidated Public Limited Companies Act, approved by Legislative Royal Decree 1564/1989, of 22 March, are amended.

1. The following section 3 is added to article 50:

"3. When the privilege consists of the right to obtain a preferential dividend, the company is obliged to declare the dividend if there is distributable profit.

The bylaws shall establish the consequences of not paying part or all of the preferential dividend, indicating whether or not unpaid dividends are accumulative, and any rights of the owners of those preference shares in relation to the dividends that may be payable to the ordinary shares. Ordinary dividends cannot be paid out of the profit of a given year if the preferential dividends corresponding to that year have not been paid.

The same regime established in paragraph one of this section shall apply to unlisted companies, unless their bylaws establish otherwise".

2. Article 91.1 is amended to read as follows:

"Article 91. Preferent rights of non-voting shares

1. The owners of non-voting shares shall be entitled to receive the minimum fixed or variable annual dividend established by the bylaws. Once the minimum dividend has been declared, the owners of non-voting shares are entitled to the same dividend as the ordinary shares.

If there is distributable profit, the company is obliged to declare the minimum dividend referred to in the preceding paragraph. If there is no distributable profit or if it is insufficient, the unpaid part of the minimum dividend must be paid in subsequent years.

At unlisted companies, until the minimum dividend is paid, non-voting shares are entitled to vote in the same conditions as ordinary shares while retaining their economic advantages at all events".

3. A new article 91.4 is introduced which reads as follows:

"4. In connection with the pre-emptive subscription right of non-voting shares of listed companies, the provisions of their bylaws shall apply."

4. Article 92.1 is amended to read as follows:

"Article 92. Other rights.

1. Non-voting shares shall give their owners the other rights of ordinary shares, except as provided in the preceding article".

5. A new section 6 is created in Chapter IV, entitled "Redeemable shares", comprising the following articles:

"Article 92 bis. Issuance of redeemable shares.

1. Listed companies (*sociedades anónimas*) may issue shares that are redeemable at the election of the issuer, the holder of such shares, or both, for a nominal amount not exceeding one-quarter of share capital. The issue resolution shall determine the conditions for exercising the redemption right.

2. Redeemable shares must be fully paid upon subscription.

3. If the right to redeem is attributed exclusively to the company, it cannot be exercised before three years have elapsed from the issuance.

Article 92 ter. Redemption of redeemable shares.

1. The redemption of redeemable shares must be charged to profit or unrestricted reserves or to the proceeds from a new issue of shares resolved by the Shareholders' Meeting to finance the redemption.

2. If those shares are redeemed out of profit or unrestricted reserves, the company must book a reserve for the nominal amount of the redeemed shares.

3. If profit or unrestricted reserves are insufficient and no new shares are issued to finance the operation, the redemption can only be performed in accordance with the requirements established for the reduction of share capital through a refund of contributions."

6. Article 158.1 is amended to read as follows:

"1. When share capital is increased through the issuance of new ordinary or preference shares, the pre-existing shareholders and owners of convertible bonds may, within the period granted to them by the Company's governing body for that purpose, which must not be less than fifteen days from the publication of the announcement of the offer for subscription of the new issue in the Official Bulletin of the Mercantile Register, in the case of listed companies, and one month in the other cases, exercise the right to subscribe for a number of shares proportional to the nominal value of the shares they own or the number of shares

that would correspond to the owners of the convertible bonds if they were to exercise the right to convert at that time."

7. Article 159 is amended to read as follows:

"Article 159. Suppression of the pre-emptive subscription right.

1. When the Shareholders' Meeting resolves to increase capital, it may, if it is in the company's interest, resolve to partially or fully suppress the pre-emptive subscription right. For this resolution, which must respect the provisions of article 144, to be valid, the following is indispensable:

a) The notice of the Shareholders' Meeting must include the proposal to suppress the pre-emptive subscription right and state the type of the new share issue.

b) With the notice of the Shareholders' Meeting, in accordance with article 144.1.c, shareholders must also receive a report drafted by the directors that justifies in detail the proposal and type of share issue, indicating the persons to whom they are to be allocated, and an appraisal by the company's auditor, under his responsibility, of the actual value of the company's shares and of the accuracy of the data contained in the directors' report. If the company is not obliged to be audited, the auditor shall be designated for the aforementioned purposes by the directors.

c) The nominal value of the shares to be issued plus any issue premium must match the actual value stated in the report by the company's auditors. Nevertheless, the Shareholders' Meetings of listed companies may resolve to issue new shares at any price, provided that it is higher than their nominal value, although the meeting may confine itself to establishing the method for determining the price.

2. When the Shareholders' Meetings of listed companies delegate to directors the power to increase share capital in accordance with article 153.1.b, they may also empower them to suppress the pre-emptive subscription right in connection with the share issue covered by this delegation when the circumstances described in section 1 of this article arise, provided that the nominal value of the shares to be issued plus any issue premium matches the actual value stated in the report by the company's auditors.

3. If the company has issued convertible bonds at a fixed conversion rate and those bondholders are affected by the suppression of the pre-emptive subscription right, a formula must be provided to adjust that ratio in order to offset the possible dilution of the amount of the conversion right.

4. There shall be no pre-emptive subscription right when the capital increase is due to the conversion of bonds into shares or to the absorption of another company or a spin-off from another company".

8. Article 162.2 is amended to read as follows:

"2. As an exception to the provisions of the preceding article, the resolution to increase share capital may be registered at the Mercantile Register before that resolution is executed when the following two circumstances occur:

1. The issue of new shares has been authorised or vetted by the National Securities Market Commission.

2. The resolution to increase share capital expressly envisaged incomplete subscription.

Once the resolution has been executed, the directors must amend the Articles of Association in order to include the new share capital figure, and they shall be deemed to have been empowered for this purpose by the capital increase resolution.

9. The former article 162.2 becomes 162.3 with the same text.

10. Two new sections 4 and 5 are added to article 162:

> "4. In the case of listed companies, if the new share issue has been authorised or vetted by the National Securities Market Commission and one year has elapsed from the end of the subscription period without the public instrument expressing execution of the resolution being registered at the Mercantile Register, the registrar, acting ex-officio or at the request of any interested party, shall cancel the registration of the resolution to increase share capital and send a certificate to this effect to the company itself and the National Securities Market Commission.

5. Once the capital increase registration has been cancelled, the owners of the new issued shares are entitled to the right referred to in section 3 of this article".

11. Article 194.2 is amended to read as follows:

> "2. Goodwill can only be recorded on the asset side of the balance sheet when the company has acquired an asset for a consideration.
>
> Goodwill amortisation, which must be done systematically, may not be done on a rising-balance basis and it may not extend for longer than the period during which the goodwill contributes to the company obtaining revenues, and never more than twenty years.
>
> When amortisation exceeds five years, the annual report must include the justification for this and state the amount of revenues that it is likely to generate during the amortisation period".

12. The following new section 3 is added to article 194:

> "3. The goodwill amortisation periods shall apply to the annual accounts drafted after 31 December 1998, with no modification to the amortisation accounted for in previous years".

ADDITIONAL PROVISIONS OF ACT 44/2002, OF 22 NOVEMBER, ON MEASURES TO REFORM THE FINANCIAL SYSTEM

Additional provision one. Securities Clearing and Settlement Services of the Autonomous Regional Governments.

With respect to the functions performed by the Securities Clearing and Settlement Services of the Autonomous Regional Governments, these functions may only be assumed by the Systems Company, if applicable, subject to the provisions of the current legislation of the relevant Autonomous Regional Government.

Additional provision two. Measures to improve the efficiency, efficacy and quality of supervisory procedures.

1. The National Energy Commission, the Telecommunications Market Commission, the National Securities Market Commission and the Bank of Spain must have internal control bodies whose functional dependency and reporting capacity shall be governed by the principles of impartiality, objectivity and the avoidance of conflicts of interest.

2. The National Energy Commission, the Telecommunications Market Commission, the National Securities Market Commission and the Bank of Spain shall produce a yearly report on their supervisory function in relation to the actions and procedures undertaken in this regard and from which information can be obtained on the efficacy and efficiency of those actions and procedures. The aforementioned reports shall include a report by the respective internal control bodies regarding the conformity of the decisions adopted by the respective governing bodies to the applicable procedural regulations in each case. The reports must be approved by the respective governing bodies and sent to the Parliament and the Government of the Nation.

3. The Bank of Spain, the National Securities Market Commission and the Ministry of Finance, within their respective legal powers regarding the control and supervision of financial institutions, shall cooperate closely to harmonise appropriately and improve, based on their mutual experience, the criteria and programmes which support the supervisory techniques and practices used in the exercise of the aforementioned powers. To this end, the aforementioned bodies shall periodically exchange significant information, particularly that which ensures improved quality of the techniques employed, and may sign one or more agreements aimed at normalising such exchanges, standardising concrete procedures or practices and, if applicable, establishing instruments which will enable the monitoring of the aforementioned objectives.

Additional provision three. Restrictions regarding short-term financial investments by non-profit-making entities.

The National Securities Market Commission, the Bank of Spain and the Ministry of Finance, each within its respective sphere of supervision, shall approve conduct of business codes containing specific rules to be complied with by short-term financial investments made by non-profit-making foundations, establishments, institutions and associations, professional associations (*colegios profesionales*), employment

development funds (*fondos de promoción del empleo*), mutual insurance companies, mutual providential funds, social security mutual funds for industrial accidents and occupational illnesses, and any other entities subject to reduced corporate income tax which do not have a specific investment diversification rules, the aim being to optimise the returns on the cash they hold and may use to obtain returns in accordance with their operating regulations.

The governing bodies, Boards of Directors or executive bodies of such entities must publish an annual report on the level of compliance with the aforementioned codes in order to inform the protectorate, their affiliates and members.

Additional provision four. Filing the internal regulation of conduct of business with the National Securities Market Commission.

The firms to which the provisions of articles 82 to 83 bis of Securities Market Act 24/1988, of 28 July, apply must file their internal regulation of conduct of business, which must include the provisions of the aforementioned articles as well as the provisions of other secondary legislation of that Act, with the National Securities Market Commission within a period of nine months. They must also file a written commitment to update those internal regulation of conduct of business and a statement that their content is known, understood and accepted by all persons to whom they apply within the organisation.

In those cases where the content of such regulations fails to comply with the aforementioned provisions or is inappropriate to the nature of the firm or to the combination of activities undertaken by the firm or group, the National Securities Market Commission may demand that such amendments or additions as it deems necessary be incorporated into those regulations.

(.....)

TRANSITORY PROVISIONS OF ACT 24/1988

Transitory provision one.

Within two months following the publication of this Act, the members of the first Board of the National Securities Market Commission shall be appointed and the Commission shall be constituted.

From its constitution, the National Securities Market Commission shall cooperate in the preparation of the secondary legislation under this Act and in the study and proposal of the measures necessary for the introduction of the new regime established therein.

The National Securities Market Commission shall assume the powers attributed to it under the provisions of this Act as and when such provisions come into effect.

Transitory provision two.

One of the Commissioners appointed under article 17.c) of this Act to the first Board of the National Securities Market Commission shall be replaced one year after his appointment, another shall be replaced two years after his appointment and a third shall be replaced three years after his appointment. The order of such replacements shall be determined by lot.

The limit envisaged in Article 19 shall not be applicable to those Commissioners subject to replacement after one- or two-year terms, and they may be re-appointed twice.

(.....)

Transitory provision eight.

The Stock Exchange Company envisaged in Article 50 of this Act must be constituted within three months from the date on which the provisions of this Act referring to Stock Exchanges come into effect.

Transitory provision nine.

Within three months from the publication of this Act, the Minister of Economy and Finance, at the proposal of the National Securities Market Commission, shall appoint a delegate responsible for the constitution of the Securities Clearing and Settlement Service.

Until the corporation referred to in article 54 has been created, the securities clearing and settlement system shall be managed using the currently existing organisation, personnel and facilities.

(.....)

Transitory provision eleven.

Those persons who, either directly or indirectly, hold the percentages of subscribed capital laid down for the implementation of Article 53 shall be obligated, once only, with reference to the date and within the term established by regulation, to file a notice, with conditions and effects similar to those envisaged in the aforementioned article, referring to the effective percentage of the subscribed capital in their possession.

TRANSITORY PROVISIONS OF ACT 37/1998

Transitory provision one.

Transferable securities represented by notes listed on an official secondary market may continue to be represented in that way provided that the implementing regulation of this Act does not require that they are represented by book entries.

Transitory provision two.

Issues of securities by public entities and companies other than those envisaged in Article 55 of this Act that are traded on the Public-Debt Market Represented by Book Entries shall continue to be traded on that market until their maturity.

Transitory provision three.

Brokers, broker-dealers and portfolio management companies must adapt their bylaws and programmes of operations to the provisions of this Act and its secondary legislation within six months after this Act and its secondary legislation come into force.

Transitory provision four.

The acts and documents that are required by law so that companies incorporated in accordance with the previous legislation may comply with the provisions of this Act within the period envisaged in these transitory provisions shall be exempt from all types of taxation and levies.

The Government, at the proposal of the Ministry of Justice, shall establish a reduction in the fees that notaries and mercantile registrars apply on the execution and registration of the acts and documents required to adapt existing companies to the provisions of this Act.

Transitory provision five.

Until the provisions of Act 24/1988 on the Public-Debt Market Represented by Book Entries, as amended by this Act, are implemented by regulation, and the Market Regulation envisaged in Article 55.4 of that law is approved, the provisions that currently regulate that market shall remain in force.

Transitory provision six.

1. When this Act comes into effect, official secondary markets shall be deemed to be those recognised in the past as being organised in accordance with paragraph three of Article 77 of this Act.

2. The first resolution which is published, in accordance with the precepts of additional provision eleven of the Securities Market Act 24/1988, of 28 July, acknowledging those markets that have the status of official secondary markets shall include those markets that have such status on the date of publication of this Act, and those which have already been authorised under paragraph three of Article 77 of the Securities Market Act 24/1988, of 28 July, as amended by Article 58 of the General Budget Act 4/1990, of 29 July.

Transitory provision seven.

When this Act comes into effect, the incorporation of investment companies in transferable securities(*sociedades de inversión mobiliaria-SIM*), open-ended investment companies in transferable securities(*sociedades de inversión mobiliaria de capital variable-SIMCAV*) and funds of funds (*fondos de inversión mobiliaria de fondos*), as well as funds and companies which invest in unlisted securities, and those funds whose shareholders are institutional or professional investors, may be authorised. To this end, the regulations envisaged in additional provision one and any other regulations included in current legislation which may apply to SIM, SIMCAV and FIM shall be taken into account.

TRANSITORY PROVISIONS OF ACT 44/2002

Transitory provision one. Transitory regime for the management of securities clearing and settlement systems.

One. Until the new company referred to in Article 44 bis.1 of the Securities Market Act 24/1988, of 28 July, effectively assumes the functions attributed to it by that Act, the Securities Clearing and Settlement Service and the Bank of Spain shall retain the powers entrusted to them regarding managers of the listed securities registration, clearing and settlement systems that they held when this Act came into effect.

Two. The Systems Company shall be created by converting the company "*Promotora para la Sociedad de Gestión de los Sistemas Españoles de Liquidación, S.A.*" which was incorporated with the Securities Clearing and Settlement Service and the Bank of Spain as shareholders.

Three. The Systems Company shall effectively assume the functions entrusted to it by this Act in accordance with the following:

a) The company "Promotora para la Sociedad de Gestión de los Sistemas Españoles de Liquidación, S.A." shall amend its corporate purpose and name, adapting them to the provisions of Article 44 bis.1 of the Securities Market Act, and shall become the *Sociedad de Gestión de los Sistemas de Registro, Compensación y Liquidación de Valores* regulated in the aforementioned Article 44 bis.1.

b) The modification of corporate status envisaged in the preceding paragraph a) shall also consist of the distribution of the Systems Company's capital among the shareholders of Servicio de Compensación y Liquidación de Valores, S.A. and the Bank of Spain, without prejudice to the subsequent modifications in this ownership structure in accordance with the legal regime applicable to the Systems Company.

In order to enable the above-mentioned initial distribution of capital among the shareholders of Servicio de Compensación y Liquidación de Valores, S.A. and the Bank of Spain, the Systems Company shall increase or reduce capital as necessary. Without prejudice to other potential contributions, the shares shall be subscribed and paid for by means of the following non-monetary contributions: The Bank of Spain shall contribute to the Systems Company the resources required for it to perform the functions relating to the Public-Debt Market Represented by Book Entries that are attributed to the Systems Company by this Act, and the shareholders of Servicio de Compensación y Liquidación de Valores, S.A. shall contribute their shares in the latter to the Systems Company.

Those non-monetary contributions shall be appraised by an expert designated for that purpose by mutual consent by Servicio de Compensación y Liquidación de Valores, S.A. and the Bank of Spain. The appraisal performed by that expert shall produce the effects envisaged in Article 38 of the Public Limited Companies Act.

The aforementioned corporate transactions shall be subject to the provisions of Article 158, Article 166 and paragraph two of Article 169.1 of the Public Limited Companies Act.

c) Once the transactions referred to in the preceding paragraph have been performed and registered in the Mercantile Registry, and subject to first obtaining authorisation from the National Securities Market Commission and the Bank of Spain, the Systems Company shall assume the functions attributed to it by this Act on the date to be determined in those authorisations, which shall be published in the Official State Gazette, without prejudice to the potential absorption by the Systems Company of Servicio de Compensación y Liquidación de Valores, S.A.

d) In any case, the Systems Company shall assume the functions referred to in the previous paragraph within a maximum of six months after this Act comes into effect.

Four. The appointment of members of the Systems Company' Board of Directors, General Managers and similar shall be subject to approval by the National Securities Market Commission.

Five. Until the Systems Company establishes other provisions and resolutions in exercising the management, administrative and regulation functions attributed to it by the Securities Market Act, the provisions and resolutions which, on the date on which the Systems Company effectively assumes its functions, govern the securities registration, clearing and settlement systems which had hitherto been managed by the Servicio de Compensación y Liquidación de Valores, S.A. and the Bank of Spain shall continue to apply.

The Systems Company and the Bank of Spain shall coordinate appropriately with the aim of replacing the current regulations with the regulations of the Systems Company which are approved in the future.

Six. The acts and documents that are legally required for the company transactions referred to in section three above shall be exempt from all types of taxation and levies. Likewise those acts and documents shall not accrue notarial or registration fees.

Transitory provision two. Transitory regime for the functions taken on by the Systems Company.

Article 54 of the Securities Market Act 24/1988, of 28 July, shall be repealed once the functions attributed to the Systems Company by Article 44 bis of that Act are effectively taken on, in accordance with the provisions of transitory provision one, without prejudice to maintaining the provisions of Article 44 bis.2 of that Act with regard to the services created in the Autonomous Regional Governments with competencies in the matter.

(.....)

Transitory provision six. Transitory regime for the creation and functioning of multilateral trading facilities.

Until the Royal Decree provided for in Article 4 is approved, the authorisation of the unofficial markets and alternative trading systems in securities or financial instruments shall be governed by the regulations applicable before this Act came into force.

(.....)

Transitory provision nine

Until the financial services ombudsmen are appointed, in accordance with Article 22 of this Act, the complaint services or the equivalent administrative units of the Bank of Spain, the National Securities Market Commission and the Spanish Insurance and Pension Fund Authority (*Dirección General de Seguros y Fondos de Pensiones*) shall continue to perform the functions entrusted to them before this Act came into force, in accordance with the applicable regulations.

(.....)

TRANSITORY PROVISIONS OF ROYAL DECREE - ACT 5/2005

Single transitory provision. Transitory regime of approval of prospectuses

Until the effective implementation of article 27.4 of the Securities Market Act 24/1988, of 28 July, the National Securities Market Commission shall be entitled to approve and record, pursuant to article 26.1c) of the Securities Market Act 24/1988, of 28 July, those prospectuses the contents of which meet the stipulations of Royal Decree 291/1992, of 27 March, on public issues and offers of sale of securities, and in the provisions implementing it, or pursuant to regulation (CE) no. 809/2004, of 29 April 2004, of the European Commission.

REPEALING PROVISION OF THE SECURITIES MARKET ACT 24/1998, OF 28 JULY

When this Act takes effect, the following provisions shall be repealed:

Articles 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 100, 101, 102, 103, 104, and 105 of the existing Code of Commerce.

The Act of December 27, 1910.

Article 23 of Act 2/1981, of March 25, on the mortgage market.

The Act of 23 February 1940 on the reopening of the Stock Exchanges, prohibition of fixed-term transactions, closing of the free securities market of Barcelona and assignment of doubles to the State.

Decree-Act 7/1964, of April 30.

The following articles of Act 46/1984 of December 26, governing Collective Investment Schemes: 32.2.e), 32.3.i), 32.4.j). and paragraph two of Article 32.5.

Additional provision one.

All provisions of an equal or lower rank that are contrary to the provisions of this Act shall also be repealed.

REPEALING PROVISIONS OF ACT 37/1998, OF 16 NOVEMBER, REFORMING THE SECURITIES MARKET ACT 24/1988, OF 28 JULY

Article 86 bis of Act 24/1988 is hereby repealed, as well as all provisions of an equal or lower rank that are contrary to the provisions of this Act.

Notwithstanding the provisions of the preceding paragraph, the special features provided for in the regime governing the Canary Island Special Zone in Act 19/1994, of 6 July, Modifying the Canary Island Economic and Taxation Regime, shall remain in force.

Additional provision seven of Act 3/1994, of 14 April, adapting Spanish legislation on credit institutions to the 2nd Banking Coordination Directive are also repealed, and other amendments shall be introduced relating to the Financial System.

Single repealing provision of Act 44/2002

All provisions of an equal or lower rank that are contrary to, contradict, or are incompatible with the provisions of this Act are hereby repealed, including in particular the following:

a) Articles 55.3, 58.6, 58.7, 98.5, 100.n) and 100.r) of the Securities Market Act 24/1988, of 28 July.

b) Article 54 of the Securities Market Act 24/1988, of 28 July, in the terms laid down by transitory provision two of this Act.

c) Paragraph 6 of additional provision six and paragraph 2 of additional provision twelve of Act 37/1998, of 16 November, reforming the Securities Market Act 24/1988, of 28 July.

(.....)

Single repealing provision of Royal Decree - Act 5/2005

All provisions of an equal or lower rank that are contrary to with the provisions of this Royal Decree - Act are hereby repealed, including in particular the following:

a) Article 61 of the Securities Market Act 24/1988, of 28 July

b) Additional provisions sixth, tenth and twelfth of Act 37/1998, of 16 November, reforming the Securities Market Act 24/1988, of 28 July

c) Article 68 of Act 14/2000, of 29 December

d) The Transitory provisions fifth and fifteenth of Act 34/1998 of 7 October, on Hydrocarbon sector

FINAL PROVISIONS OF THE SECURITIES MARKET ACT 24/1998, OF 28 JULY

One.

This Act shall take effect six months after its publication in the Official State Gazette. Nevertheless, the provisions of this Act referring specifically to Stock Exchanges, and

other provisions, to the extent that they apply to Stock Exchanges, shall not take effect until one year has elapsed from the date of publication; meanwhile, the existing Official Stock Exchanges and Stockbrokers shall be governed by current legislation. Nevertheless, the provisions of Article 42 shall not take effect until 1 January 1992 and, during the interim period, broker-dealers and brokers shall apply the commissions approved by the Government.

Two.

Within one year from the enactment of this Act, the Government shall approve the necessary provisions for the due implementation of, and compliance with, this Act.

FINAL PROVISIONS OF ACT 37/1998, OF 16 NOVEMBER, REFORMING THE SECURITIES MARKET ACT 24/1998, OF 28 JULY

One.

This Act shall take effect the day after its publication in the Official State Gazette. Nevertheless, the provision allowing credit institutions, regardless of their nationality, to become members of the Stock Exchanges shall not take effect until 1 January 2000.

b) The provisions of Article 77 of Title VI of the Act, relating to Investor Compensation Schemes, shall come into force with regard to the events to which it applies on the date of entry into force of Directive 93/22/EEC, of 10 May 1993, on investment services in the securities field.