



THE ROLE OF THE COMPLIANCE OFFICER

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Good afternoon everyone. I would like to begin this brief presentation by thanking the Vice-chancellor of the Universidad Antonio Nebrija university for his warm welcome and by congratulating the Institute of Compliance Officers on its recent establishment. Furthermore, I would like to thank Antonio del Campo for kindly inviting CNMV to attend this event. I wholeheartedly wish the Institute all the success in the world.

I would also like to thank all the attendees for their presence here today.

The figure of Compliance Officer, for which, incidentally, I am glad there is now a term in Spanish, has increasingly more relevance in our market.

Originally a somewhat vague task, nowadays nobody doubts that this position is needed in institutions, especially in those related to financial markets.

Regulations have progressively given more substance to the Compliance Officer's role and at the same time have assigned new functions to it, and as we all know, functions entail responsibilities.

The Compliance Officer, together with other internal figures such as the Internal Auditor and, of course, the External Auditor, establish control mechanisms that must be fully exploited to ensure that entities function properly.

The scope of the Compliance Officer is very broad; it not only has to cover the matters related to the securities market, but it also encompasses other fields such as money laundering, the regulation of which is also exhaustive.

For my part, I am going to centre my attention only on the first of these aspects, for obvious reasons.

Focusing, therefore, on securities market issues, and more specifically, those relating to the provision of investment services, with the entry into force of MiFID I, the requirements that

must be met by the compliance verification function are established in Article 6 of Directive 2006/73/EC, of 10 August 2006. This precept was transposed into Spanish legislation through Articles 28 and 31 of Royal Decree 217/2008, of 15 February, and they establish authority and independence as governing principles of that function.

In order to ensure that the compliance verification function is performed adequately and independently, the following conditions must be met:

1. This unit must be endowed with the necessary authority, resources and experience and must have access to all the relevant information.
2. It is necessary to appoint a person in charge of this unit, who must prepare an annual report and present it to senior management.
3. The persons working in that unit cannot participate in the provision of services and activities that they, in turn, control.
4. The system for setting their remuneration must not compromise, either actually or potentially, their objectivity.

This figure must necessarily have sufficient authority to carry out his or her tasks with full guarantees; hence the regulation emphasises this concept.

Upon the entry into force of MiFID II, Article 6 of the aforementioned Directive 2006 will be replaced by Article 22 of Delegated Regulation (EU) 217/565, of 25 April 2016. This represents a reinforcement of the principles of authority and independence of the compliance verification function.

Such amendment gives rise to the following changes:

1. The obligation for the person in charge of the compliance verification function to be appointed and dismissed by the Board of Directors (as I have previously indicated, the regulations currently in force only cover the need to have a person responsible for such function, without specifying the body that should appoint him or her).
2. The obligation for the latter to report directly and at least annually to the Board, facilitating direct and swift access for this body so that he or she can inform it "ad hoc" in the event that he or she detects any relevant shortcomings. As you know, the current regulations only establish the need to report, at least on a yearly basis, to senior management, and not to the Board of Directors.
3. They also reinforce the role that the person discharging this function must assume in dealing with customer complaints when it is expressly mentioned that he or she must

take the information obtained in this regard into consideration in his or her review activity.

4. The principle that the compliance verification function should not entail carrying out activities that the person who performs such function supervises and have adequate remuneration policies to prevent potential conflict of interest scenarios, is maintained, as has been the case hitherto.

In small entities, regulations provide for the possibility of applying the principle of proportionality, specifically to the requirements for non-involvement in supervised activities and to remuneration policies, provided that the effectiveness of the compliance verification function is maintained and evaluated regularly, and that this effectiveness is maintained.

However, considering recent legislative developments in very large, complex entities, CNMV considers that the ideal scenario would be for the compliance officer to report to the Board of Directors, either directly or through a Committee Delegated by the latter since, in this way, his or her authority and independence would be maximised and free access to said body would be facilitated for him or her.

In any case, MiFID II and MiFIR establish a series of obligations that directly affect the compliance task which must be taken into account by the entities that operate or wish to operate in this field.

There is another area where compliance is relevant. I am referring to the interaction of entities with the securities markets from the point of view of the operator or from the perspective of the issuer where, in some cases, they may coincide.

We are also talking here about MiFID/MiFIR, but the regulation that affects them most is the MAR (Market Abuse Regulation).

There are several articles that I would like to comment on:

- i) Firstly, article 19 regarding the transactions carried out by Senior Managers whose obligations are summarised as follows:
 - 1. Definition of the obligations of senior managers and closely related persons, terms and thresholds:
 - o Obligation: to communicate to the Competent Authority and the issuer the transactions conducted with Shares, Debt, Derivatives and Related Financial Instruments.
 - o Term: three business days from the transaction.
 - o Threshold: €5,000, unless the Competent Authority decides to raise it to €20,000.

- 2. It establishes certain obligations for Issuing Companies, such as:
 - o Communicating to senior managers their obligations in terms of transaction reporting and the prohibition on operating in closed markets.
 - o Drawing up a list of senior managers and closely related persons.

- ii) For its part, article 11 of the MAR on market research whose functions would apply not only to intermediaries but also to issuers if they conduct the research directly, ranging from the clarification of the concept, disclosure to one or more potential investors prior to the announcement of a transaction in order to evaluate their interest in a possible transaction and the conditions related to it, to the establishment of obligations such as:
 - Assess whether or not inside information should be disclosed for the purposes of the research.
 - Obtain the consent of the relevant persons to receive inside information.
 - Inform as to the prohibition on its use.
 - Confidentiality requirement.
 - Finally, the obligation to keep records for five years.

- iii) The obligations regarding public disclosure of inside information are summarised as follows:
 - The obligation to make inside information public as soon as possible.
 - The obligation for issuers (Equity, Fixed Income, Derivatives), Market Participants of Issuance Rights and Issuers in the Commodity Derivatives Market.
 - The obligation to keep the information published on the website for five years.
 - The possibility of delaying publication if the following conditions are met:
 - o (I) The legitimate interest of the issuer may be damaged.
 - o (II) The investor is not deceived or misled.
 - o (III) Confidentiality is guaranteed.
 - The delay must be reported to the competent authority once the information is made public.

- iv) There are also other more formal obligations that must be taken into account by entities such as the insider list. These must be prepared in accordance with the

provisions of implementing regulation 2016/347, which establishes the different information fields that must be completed.

In the insider lists it is envisaged that issuers can draw up and maintain a supplementary section containing the persons who have permanent access at all times to all the insider information. If an issuer chooses to generate this section, those included in it must not carry out transactions in the issuer's financial instruments while any section of the insiders list is open.

Consequently, compliance officers must assess whether it is worth having this supplementary section, as it may make it impossible to carry out transactions if there are always sections open in the insiders list and, in the event that this supplementary section is drawn up, to design the specific procedures for performing transactions by those included on it.

We must also be aware that the MAR creates a new regulation that contains certain differences with respect to the Consolidated Securities Market Law (TRLMV) in terms of the obligations of securities issuers vis-a-vis market abuse. The Consolidated Securities Market Law expressly obliges securities issuers, and the MAR expressly obliges them not, to:

- Prepare and comply with an Internal Code of Conduct (ICC) with the rules of conduct on market abuse, which must be submitted to CNMV and kept up to date. All those obliged to comply with the ICC must know, understand and accept its rules. CNMV has the power to order the modification of the rules of any ICC.
- Limit the number of insiders.
- Establish security measures to maintain the confidentiality of information.
- Monitor the progress of the trading of the securities issued and the news circulated about them.

This situation, once the Consolidated Securities Market Law is drafted in accordance with the Regulation, will present a challenge for the compliance officers of the issuers. One solution may be for their organisations to have an ICC in place, even when it is no longer mandatory, which contains some, or all, of the previous obligations, in order to control inside information.

Otherwise, the compliance officers must consider the generation of internal procedures that could establish some of those obligations.

Finally, I do not want to pass up this opportunity to also comment on some notions on the figure of the compliance officer and his or her role in the preparation of financial information that entities are required to submit to CNMV.

One could probably be forgiven for thinking that this function should correspond more to the Internal Auditor, but I think the two roles are not incompatible and, if you would just allow me to make a few brief comments given the function of assurance or compliance body that the Compliance unit has, which will result in an improvement in the quality and reliability of issuers' financial and non-financial information.

- It is necessary for there to be thorough coordination with the rest of the assurance bodies, such as internal auditors and personnel of the risk units, including the Chief Risk Officer.
- They should be involved in internal audit and with those ultimately responsible for designing and implementing whistleblowing channels, ensuring that their processing preserves the confidentiality of the persons reporting cases of non-compliance and that no negative incentives are generated for their use for fear of potential negative consequences.
- They must be involved in ensuring that public information on legal and compliance risks is adequately detailed and useful, and that reliable and relevant information is provided to stakeholders.
- In order to maintain their independence, it seems important to highlight the need for management bodies to assume the relevance of their role and strive to ensure their effectiveness, to this end preserving their independence, allowing access to the board or to some of its Committees, as I mentioned earlier.

I would like to finish by saying that I hope that I have not scared you and, if I have, that it has merely served to appeal to your responsibility, which is increasingly greater. However, I am sure that, knowing many of those present as I do, the responsibility of Compliance Officers is guaranteed.

Thank you very much for your attention.