



## **ANNUAL CONVENTION OF THE INSTITUTE OF DIRECTORS/MANAGERS (INSTITUTO DE CONSEJEROS-ADMINISTRADORES, ICA)**

**SEBASTIÁN ALBELLA, PRESIDENTE DE LA CNMV**

Madrid, 15 November 2017

Good morning,

Members of the Institute of Directors/Managers, Mr. Chairman, Jesús Cainzos, Mr. Fernando Igartua Arregi and Mr. Juan Álvarez Vijande.

I would like to tell you that it is a pleasure for me to participate, for the first time since my appointment as Chairman of CNMV, in the annual Convention of the Institute.

I must start by highlighting the importance that we attribute at CNMV to the quality of the corporate governance of listed companies. For us, it is a priority to promote the improvement of the corporate governance of our companies, and to ensure that our market is at all times perceived as being of a high level from this perspective.

The first thing I would like to emphasize is that, in my opinion, these are not times of major additional reforms.

The 2014 reform of the Companies Law, one of the most important in the history of our company law, which is largely focused on corporate governance issues, is all too recent. As you know, in particular, the reform provided our law with a large part of the content of the non-binding code in force at that time.

And the good governance code for listed companies approved in 2015 is still very recent.

I have always thought that regulatory stability is an important value, that we must allow standards, those which are strict rules and those which are mere recommendations (be they the product of self-regulation or of authorities such as CNMV), to be appropriately assimilated by the people for whom they are intended and applied for sufficiently long periods, make it possible to draw conclusions and, in addition, allow them to achieve the intended objective of shaping reality and even mentalities.

This does not mean that we should stop encouraging tweaks or modifications in the details, particularly to improve aspects of transparency. In fact, we are already working on some modifications of this kind.

And this appeal to regulatory stability must also be understood without prejudice to the need to incorporate into Spanish law the recent 2017 Directive on the

encouragement of long-term shareholder engagement, which could be exploited to introduce some improvements. I am going to refer this shortly.

I would like to refer, secondly, to the role and responsibilities of CNMV in terms of corporate governance, a role and responsibilities that have acquired increasingly more relevance over the years.

It is no coincidence that, unlike the Olivencia Code of 1998 and the Aldama Code of 2003, both the Unified Code of 2006 and the current Good Governance Code of 2015 were prepared by committees of experts presided by the CNMV Chairs at the time: my predecessors Manuel Conthe and Elvira Rodríguez.

And the law, specifically the Companies Law, today expressly attributes to CNMV clear competence in this area. We are entrusted with following the rules of corporate governance, enabling us to gather as much information as we deem necessary and to make public the information we consistent relevant to enforce compliance.

But the scope of the Law is broader. The Spanish Limited Liability Companies Law itself, in its seventh additional provision, attributes to many of the provisions on corporate governance contained in it the nature of rules of order and discipline of the securities market. And, consistent with this, the Securities Market Law provides that its breach constitutes an infringement.

In any case, regardless of the functions that legally correspond to CNMV, I would like to point out two issues:

- It is an area that concerns us greatly and to which we attach the utmost importance.
- We are certain that companies must have ample room to organize themselves, in relation to their system of government, in whatever way they deem most appropriate and convenient. And we will always adhere to the "comply or explain" rule.

I would simply like to refer briefly to three issues to which we are currently paying special attention in terms of good corporate governance: Audit Committees, the remuneration of board members and the desirable greater involvement of institutional investors in relation to the companies in which they invest.

Firstly, let us take a look at **Audit Committees**.

As you know, a few months ago, at the end of June 2017, we published a Technical Guide on Audit Committees, an initiative which is the outcome, so to speak, of our obsession with promoting the quality of the financial information published by listed companies and to foster in them an effective culture of internal control.

There can always be problems and disappointments related to financial information or internal control shortcomings. But the aim is to ensure that as few as possible arise and that their effects are as small as possible, and we are convinced that the proper functioning of Audit Committees can contribute significantly in this respect.

The experience accumulated regarding the functioning of the Audit Committees in practice and the dialogue held by CNMV with listed companies, auditors and other interested parties had revealed a considerable dispersion in terms of their method

of operation and some doubts about the scope of their functions and responsibilities.

Bearing this in mind, we thought it advisable to make certain criteria and recommendations public through the Technical Guide instrument, contained in the Securities Market Law since 2015, an instrument that helps us to publish the criteria, practices and procedures that the Commission considers appropriate for compliance with the regulations which we will apply in our supervisory activities.

The Technical Guide, which as you know is quite detailed, is based on five basic principles related to Audit Committees:

- Responsibility
- Sceptical stance
- Constructive dialogue among its members
- Ongoing dialogue with the internal audit unit, the statutory auditor and management
- Adequate analytical capacity

While all these principles are relevant, I would highlight two of them:

- Sceptical stance, which implies that all the members of the Committee must have a critical attitude and question the data, evaluation processes and previous conclusions reached by executives and managers of the entity;
- And a constructive dialogue, which means that the members of the Audit Committee should be encouraged to express themselves freely and that a diversity of opinions should be promoted. All in order to enrich the analyses that the Committee must carry out in the performance of its functions.

Another aspect to which we are paying particular attention is the **remuneration of board members**, regardless of whether they are executive directors or not. And we are paying special attention to it with regard to two aspects:

- On the one hand, we want to improve the information that is provided on this matter by listed companies.

I shall give you two examples: the first one is the information on certain special forms of remuneration such as the termed long term pension schemes and savings schemes.

We have warned that the information in this respect is not always clear and that on many occasions entities follow criteria that are not homogeneous. We also have the concern that at least the part of the remuneration of this type that is consolidated each year should be added to the rest of the remuneration items for the purposes of reporting on the total remuneration received over the year.

The second example is the information contained in the annual remuneration reports on how the criteria and metrics used to determine

the variable part of the remuneration of executive directors are applied in each case. This is an aspect in which the level of detail of the information provided in our market is far from what is usual in others, particularly in the United Kingdom and the United States.

- On the other hand, we are making an effort to follow the initiatives that are being adopted in terms of remuneration of board members and senior managers in different countries and the active debate that is currently taking place at international level in this area.

One of the clear trends, as you know, points towards a more substantial or invasive approach in this field from public bodies and from self-regulation. The fundamental issue is still transparency and ensuring that shareholders and the general shareholders' meetings have a relevant role, but more and more demands are emerging such as the existence of coherence between the policies and remuneration levels of the Board and senior management and those applied in general to managers, or even more broadly, to employees of companies.

It is significant, in this respect, that the recent European Union Directive of 2017, which I have already mentioned, concerning the encouragement of long-term shareholder engagement, requires the inclusion in the annual report on directors' remuneration of information on the annual changes during the last five years in board members' remuneration, comparing it with the annual changes in the average remuneration of the company's employees.

I would just like to conclude by referring to the main purpose of the 2017 Directive of the European Union that I have just mentioned: **the encouragement of the engagement of institutional investors in the governance of listed companies.**

At CNMV we are also following closely the international movement and the debate that is ongoing in this field, and we are going to get involved as much as possible in the work related to the incorporation into our legislation of the provisions contained in the aforementioned Directive on the matter.

As you know, its focus is not limited to recommending that institutional investors (insurance companies, investment funds, pension funds, etc.) exercise their right to vote in companies. What is intended goes beyond this, that is for these investors to be actively involved, establish relationships with management and cooperate with each other to positively influence the governance of listed companies and their strategy, and act for the benefit of stakeholders as a whole.

This is a matter that has given rise in recent years to numerous codes promoted by the industry itself or sponsored to a greater or lesser extent by public bodies, the famous "stewardship codes", some of which are particularly well known.

- The British one, whose first version, adopted in 2010, was the immediate consequence of one of the reflections caused by the financial crisis; someone wondered about the whereabouts of the institutional investors, who could have influenced companies in developing more prudent policies, oriented to the long term and more respectful towards

the various stakeholders. A code that was revised in 2012 and that has served as a guide to most of those who have observed it.

The code is voluntary and based on the "comply or explain" principle, although investors can register with the UK regulator, the Financial Reporting Council, and declare their adherence to the code and their commitment to following it publicly on their website.

Since 2016, in order to encourage compliance, the Financial Reporting Council has classified investors into two groups, tier 1 and 2, depending on the degree of code adherence, and publishes the results on its own website, making them available to all investors and shareholders.

- Also noteworthy in this regard is the Japanese code of 2014, the inspiration for which was, curiously, somewhat different. According to our information, it was promoted by government bodies as part of their policies to boost and revitalize the Japanese industry and economy, one of the objectives of the famous "abonomics". The code has not only been an appeal to the fiduciary responsibility of institutional investors, but also a call for the encouragement of activism for economic policy purposes.
- I should also cite the 2016 Principles of the International Corporate Governance Network, of which the Institute of Directors/Managers is a prominent member, and the North American Framework for US Stewardship and Governance of January 2017, of the Investor Stewardship Group, of which a good number of relevant American institutional investors, including the great world champions of passive investment, are part.

As you will be aware, in Spain we have some regulations, in the field of pension funds and especially, since 2005, in collective investment schemes, which are directly related to these issues, although their focus is far removed from that of these stewardship codes.

In such regulations, for example, the corresponding CIS management company is required to exercise the political rights provided that the issuer is a Spanish company and that the shareholding is more than twelve months old and represents at least one percent of the investee's share capital, unless there are reasons that justify the non-exercise and it is reported in the annual report.

Management companies must also have a policy regarding the exercise of voting rights and include information in the annual report on it and its application.

I would not rule out CNMV adopting an initiative in the near future for the purpose of promoting the dissemination among our institutional investors of a code or catalogue of principles in this area.

The matter is, in any case, probably more complicated than it seems. It would be sufficient just to highlight some aspects to illustrate this information:

- The implications of cooperation between significant investors from the point of view of the concept of joint action, an important concept for the purposes of mandatory takeover bids (in 2014, ESMA even published an opinion on the matter in order to clear up some doubts).

- The possible implications of the desired active relationship between institutional investors and companies, including management, from the perspective of the management and possible use of confidential or privileged information.
- And, on the other hand, the different profile that institutional investors can have from the point of view of incentives to be active and become involved.

I am thinking, in particular, of the impressively growing international development of passive investors, index funds and ETFs, which are without doubted particularly affected by the "rational apathy" effect (although, as they say, "do not vote with your feet").

It is true that some of the great passive managers present themselves as being determined to get involved by following the philosophy and recommendations of codes such as those mentioned, but, given the lack of financial incentives to do so, it is reasonable to think that behind this there may be more objectives in terms of presenting a certain image or moral considerations than a real interest in fostering improvements in the management and business of companies.

Incidentally, the proliferation of these types of investors, to the extent that this particular lack of incentives determines a more passive or compliant approach (less dependent on the analysis of the circumstances and the specific reasons for or against each decision subject to vote) can produce a neutralizing effect on initiatives that can encourage more active investors, but that is another issue.

My purpose, today, in any case, was simply to inform you that we are paying special attention to and reflecting on this issue and that it is on our agenda.

I just want to thank you all for your attention and encourage the Institute of Directors/Managers to continue with its important work with intensity and with the utmost determination.

Thank you very much.