



**Procedure for registration of issues, public offers for the sale or subscription of securities and listings, incorporation of securitization and banking asset funds, and registration and reversion of book-entry securities (P04)**

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## 1. SCOPE

This internal procedure has been prepared in accordance with article 39 of the Internal Regulations of the National Securities Market Commission (CNMV in the Spanish acronym), and its terms apply to all actions taken by the CNMV in the discharge of the following public functions:

1. Registration of documents supporting the issue of book-entry securities.
2. Verification and registration of listings on regulated secondary markets and public offers for sale or subscription of securities, and approval and registration of the prospectus where applicable.
3. Verification and registration of securitization funds and banking assets funds.
4. Authorization for reversion of book-entry securities.

## 2. APPLICABLE LEGISLATION

The regulatory framework applicable to this procedure is defined, inter alia, by the following legislation:

### 2.1 BOOK-ENTRY SECURITIES ISSUES

The procedure refers to filing of the documents mentioned in article 7 of the consolidated Spanish Securities Market Act in the register of book-entry securities. Applicable legislation is as follows:

- Consolidated text of the Spanish Securities Market Act approved by Royal Legislative Decree 4/2015, of 23 October. Title I, Chapter II.
- Royal Decree 878/2015, of 2 October, on clearing, settlement and registration of marketable securities represented by book entries, on the legal regime governing central securities depositories and central counterparty entities, and on transparency requirements applicable to issuers of marketable securities traded on an official secondary market.

### 2.2 SECURITIES LISTINGS ON OFFICIAL SECONDARY MARKETS AND PUBLIC OFFERS FOR THE SALE OR SUBSCRIPTION OF SECURITIES

- Consolidated text of the Securities Market Act approved by Royal Legislative Decree 4/2015, of 23 October. Title III, Chapters I and II, and article 238.
- Royal Decree 1310/2005, of 4 November, partially implementing the Securities Market Act (Law 24/1988, of 28 July) in matters affecting securities listings on official secondary markets, public offers for sale or subscription of securities, and the required prospectus to such purposes.
- Ministry of Economy and Finance Order EHA/3537/2005, of 10 November, implementing article 27.4 of the Securities Market Act (Law 24/1988, of 28 July).
- Ministry of Economy and Finance Order EHA/1717/2010, of 11 June, of regulation and control of investment services and investment products advertising.
- Ministry of Economy and Competitiveness Order ECC/2515/2013, of 26 December, implementing article 86.2 of the Securities Market Act (Law 24/1988, of 28 July).
- Commission Regulation (EC) No. 809/2004, of 29 April 2004, implementing Directive 2003/71/EC of the European Parliament and of the Council as regards information contained in prospectuses as well as the format, inclusion by reference and publication of such prospectuses

and dissemination of advertisements (hereinafter the Prospectus Regulation).

- Commission Delegated Regulation (EU) No. 382/2014, of 7 March 2014, supplementing Directive 2003/71/EC of the European Parliament and of the Council with regard to regulatory technical standards for publication of supplements to the prospectus.
- Commission Delegated Regulation (EU) No. 2016/301, of 30 November 2015, supplementing Directive 2003/71/EC of the European Parliament and of the Council with regard to regulatory technical standards for approval and publication of the prospectus and dissemination of advertisements and amending Commission Regulation (EC) No 809/2004.
- Directive 2001/34/EC of the European Parliament and of the Council, of 28 May 2001, on the admission of securities to official stock exchange listing and on information to be published on those securities.
- Directive 2003/71/EC of the European Parliament and of the Council, of 4 November 2003, on the prospectus to be published when securities are offered to the public or admitted to trading and amending Directive 2001/34/EC (hereinafter the Prospectus Directive).

### **2.3 SECURITIZATION FUNDS**

- Promotion of Business Financing Act (Law 5/2015, of 27 April). Title III.
- Ministry of Economy Order EHA/3536/2005, of 10 November, on the definition of future financial rights eligible for inclusion in asset securitization funds and the National Securities Market Commission qualification to establish specific rules on accounting and reporting obligations applicable to securitization funds and their asset management companies.

### **2.4 BANKING ASSET FUNDS**

- Bank Restructuring and Resolution Act (Law 9/2012, of 14 November).
- Royal Decree 1559/2012, of 15 November, establishing the legal framework governing asset management firms.

### **2.5 REVERSION OF BOOK-ENTRY SECURITIES**

- Royal Decree 878/2015, of 2 October, on clearing, settlement and registration of marketable securities represented by book entries, on the legal regime governing central securities depositories and central counterparty entities, and on transparency requirements applicable to issuers of marketable securities traded on an official secondary market. Article 5.

### **2.6 OTHER LEGISLATION**

Guidelines and recommendations issued by the European Securities and Markets Authority (ESMA) under article 16 of Regulation (EU) No. 1095/2010 of the European Parliament and of the Council, of 24 November 2010, establishing a European Supervisory Authority, will be incorporated into this procedure, provided the CNMV confirms that it complies, or intends to comply, within the meaning of paragraph 3 of the aforementioned article 16.

The following will also apply to this procedure:

- Ordinary Administrative Procedure of Public Administrations Act (Law 30/1992, of 26 November).<sup>1</sup>
- Resolution of the National Securities Market Commission Board of 11 March 2015 on the delegation of competences.

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<sup>1</sup> The Ordinary Administrative Procedures Act, 2015 (Law 39/2015, of 1 October) will apply as of 2 October 2016.

- Decision of the National Securities Market Commission of 16 November 2011 creating and regulating the CNMV Electronic Registry.

### 3. PROCESSING DEPARTMENTS

The Primary Markets Department of the Markets Directorate-General will be responsible for this internal procedure, except as regards reversion of book-entry securities, which will fall within the remit of the Legal Affairs Directorate-General's Legal Affairs Department.

### 4. INITIATION

1. The procedure will be initiated when an interested party files an application accompanied by the mandatory supporting documentation, by electronic means.
2. The standard application forms for this procedure are available to the public on the CNMV website. The list documents needed to process applications will be included in the guides for procedures of this kind published online on the CNMV website.
3. In certain special cases, applications for the approval of prospectuses shall be accompanied by the following supporting documents:
  - The cross reference list mentioned in article 25.4 of the Prospectus Regulation when the order of the items presented in a prospectus does not follow the order of information provided for in the schedules of the Prospectus Regulation. Said cross reference list shall identify the pages where each item can be found in the prospectus and any information items not included in the prospectus as "not applicable".
  - Where applicable, reasoned application for the omission of information in accordance with section four of Ministry of Economy Order EHA/3537/2005.
  - Where applicable, application for notification of approval of the prospectus (passport) to any other competent European authority, in accordance with article 29 of Royal Decree 1310/2005.
  - Any document which it is intended to include by reference in the prospectus, except such as may already have been filed in the CNMV.
  - Documents which the CNMV considers necessary for its review of the prospectus.

### 5. CONFIRMATION

1. The CNMV will electronically confirm the applicant the initiation of the procedure within a maximum of 2 business days of the filing of documentation in the CNMV. Such confirmation will not be issued in procedures relating to the registration of book-entry securities.
2. If the documentation provided does not meet the conditions established in the preceding point, or if it is incomplete, the CNMV will electronically require the Issuer to proceed with its rectification in accordance with point 4.2 of the *Procedure for the issue of demands and requests for data or reports to persons and firms operating in the securities markets*. ("Po2", also available on the CNMV website).

### 6. EXAMINATION

#### 6.1 REGISTRATION OF BOOK-ENTRY SECURITIES

1. In order to register book-entry securities, issuers will be required to draw up a document

providing the information needed to identify the securities forming part of the issue. Said document may be executed in a public instrument at the discretion of the issuer in the case of non-equity securities. This document may be substituted by a prospectus previously approved by the CNMV or, in the case of issues supported by a base prospectus, by the final terms and conditions of the issue in question.

2. Where an issuer is required to publish a prospectus to list securities for trading in a regulated market, the documentation mentioned in the preceding paragraph may consist of such prospectus or the final terms and conditions of the issue. In any event, neither of these documents may be published by the issuer until they have been approved and registered in the CNMV.
3. In the specific case of promissory notes and warrants, registration in the registration will be made with the base prospectus once approved. Where a notes programme is to be listed on the Alternative Debt Market (MARF in the Spanish acronym) or any other multilateral trading system, the issue agreements will be entered in the CNMV register mentioned in art. 238 b) of the Securities Market Act. Specific issues of promissory notes and warrants will be registered as an extension of the initial registry entry by means of supplementary certifications in the case of promissory notes and final terms and conditions of the issue in the case of warrants.
4. The CNMV will complete the registration of book-entry securities within the following deadlines:
  - a) Where the document utilized to register book-entry securities is either a prospectus previously approved by the CNMV or the previously registered final terms and conditions in the case of issues supported by base prospectuses, the CNMV will complete the registration process within a maximum deadline of two business days of approval or registration, as applicable.
  - b) Where the issuer is obliged to publish a prospectus or the final terms and conditions of the issue to list securities on a regulated market, the CNMV will complete the registration process within a deadline of 2 business days of filing of the application.
  - c) Other cases: 5 business days.
5. Where subsequent verification of the listing requirements for the securities reveals the existence of material shortcomings in automatically registered documents, the CNMV will require the issuer to correct the shortcomings observed.

## **6.2 VERIFICATION OF LISTINGS ON REGULATED SECONDARY MARKETS AND PUBLIC OFFERS FOR THE SALE OR SUBSCRIPTION OF SECURITIES**

### **6.2.1 Verification requirements**

1. The CNMV will verify compliance with the listing requirements established in Royal Decree 1310/2005.

The CNMV will review compliance with issuer suitability requirements (article 8 of Royal Decree 1310/2005) and securities suitability requirements (article 9 of Royal Decree 1310/2005). The CNMV will likewise verify compliance with the information requirements provided in Title I, Chapter III of the aforementioned Royal Decree.
2. Listing of securities on a regulated secondary market will be subject to prior compliance with the following requirements:
  - a) Filing and registration in the CNMV of documents attesting the legal framework applicable

to the issuer and the securities.

- b) Filing and registration in the CNMV of the issuer's financial statements prepared and audited in accordance with the legislation applicable to said issuer.
  - c) Filing, approval and registration in the National Securities Market Commission of an information prospectus, and publication thereof.
3. Submission of the pertinent supplementary certifications will be verified in the case of listings in the AIAF Debt Market for promissory notes issued under a base prospectus previously approved by the CNMV.
  4. Where an issuer fails to provide a prospectus or final terms and conditions, where applicable, the CNMV will examine the information contained in the documentation submitted to verify whether any of the exceptions to the obligation to publish a prospectus applies, as established in articles 26 and 41 of Royal Decree 1310/2005.
  5. With regard to the verification of public offers for sale or subscription of securities, the CNMV will review compliance with the issuer suitability requirements established in article 8.2 of Royal Decree 1310/2005 and the securities suitability requirements established in article 9.2 of Royal Decree 1310/2005. Compliance with the information requirements for public offers established in Title I, Chapter III of Royal Decree 1310/2005) will likewise be verified.
  6. The CNMV approves the prospectus as part of the verification procedure for securities listings in regulated markets and public offers for sale or subscription. This approval constitutes a separate act in the listing verification process and it is defined in legislation in the following terms:
    - The CNMV may demand that the information contained in the draft prospectus be completed in relation to any of the information items required in the relevant schedules of the Prospectus Regulation, where deemed necessary to assure the integrity, consistency and comprehensibility of the prospectus, in accordance with section 5.2 above.
    - Examination of a prospectus' integrity will consist of ensuring that its format and content are in line with the relevant provisions of the Prospectus Regulation or, where applicable, with other legislation concerning the specific type of security referred to in the prospectus.
    - Examination of a prospectus' consistency will consist of ensuring that it is internally coherent and the consistency of said prospectus with the supporting documentation filed by the issuer in the course of the procedure.
    - Examination of a prospectus' comprehensibility will consist of ensuring that the information contained in the prospectus is presented in a clear and understandable form.
    - The language of the prospectus will be reviewed to ensure compliance with article 23 of Royal Decree 1310/2005.
    - Article 24 of Royal Decree 1310/2005 defines approval of a prospectus as an express act of the CNMV based on its analysis and concluding that the information contained in the prospectus is complete, comprehensible and consistent. Under no circumstances will approval imply an opinion as to the quality of the issuer requesting the admission to trading for its securities or the approval of a public offering, or as to the quality of the securities themselves.

### **6.2.2 Verification deadlines**

1. The verification deadlines for securities listings and public offers for sale after filing of the draft

prospectus are as established in articles 6, 22, 24 and 40 of Royal Decree 1310/2005, as follows:

- Where listing requires the prior publication of a prospectus: 10 business days.
  - Where listing does not require the prior publication of a prospectus: 5 business days.
  - Where a public offering refers to securities issued by an organization which has not issued any securities listed on a regulated secondary market, or any other regulated market established in the European Union, or previously offered any securities for sale to the public: 20 business days.
  - Other public offerings: 10 business days.
  - In the case of prospectus supplements: 5 business days.
2. The CNMV may establish shorter deadlines based on the format of the prospectus, the type of security or the nature of the issuer.
  3. Applications will be deemed tacitly rejected in the absence of any express decision of the CNMV within the aforementioned deadlines, in accordance with article 36.4 of the Securities Market Act.

### **6.2.3 Notifications to interested parties**

1. Where a prospectus or any documentation delivered does not meet the conditions required or it is incomplete, the CNMV shall seek the information needed and, where applicable, will notify the interested party of its observations regarding the prospectus within the deadlines established in the preceding paragraph. In such case, the deadline for the issue of a decision will be suspended in accordance with the *Procedure for the issue of demands and requests for data or reports to persons and firms operating in the securities markets*.
2. The CNMV will send all communications mentioned in this procedure in writing, preferably by electronic means, in accordance with the *Procedure for the issue of demands and requests for data or reports to persons and firms operating in the securities markets*.
3. Where the CNMV may deem it necessary to include any warning in the prospectus, it will notify the corresponding instruction to those responsible for the prospectus.

### **6.2.4 Advertising of public offers for sale or subscription of securities and listings**

1. The CNMV may require an offeror or a party seeking a listing to provide copies of advertising materials.
2. Where advertising materials have been submitted, the CNMV will review the conformity of said materials with the provisions of Ministry of Economy Order EHA/1717/2010. If any shortcomings are observed in the advertising materials submitted, the offeror or the party seeking a listing will be duly informed and requested to amend the matter concerned.
3. At the proposal of the General Director of Markets, the CNMV Executive Committee may, at any time and by reasoned agreement, require issuers to rectify or desist from advertising where the actions or materials concerned are not in compliance with the provisions of applicable legislation.

## **6.3 VERIFICATION AND REGISTRATION OF SECURITIZATION FUNDS**

1. The scope of Securitization Funds (SF) review comprises verification of compliance with all requirements for the incorporation of securitization funds established in article 22.1 of the



Business Financing Act (Law 5/2015, of 27 April) and other applicable legislation.

2. Prospectuses will be approved in accordance with section 6.2.1 above (*Verification Requirements*).
3. After approval of the prospectus, the asset management firm may proceed to make the deed of incorporation of the securitization fund, which shall be duly attested by a public notary.
4. Where the securities issued by an asset securitization fund are to be marketed exclusively to qualified investors and will not be listed on any regulated secondary market, only a prior application to the CNMV and filing and registration of the deed of incorporation will be required for the purposes of constitution.
5. The asset management company will provide the CNMV with a notarized copy of the deed of incorporation of the securitization fund.
6. Sections 6.2.2 (*Verification deadlines*) and 6.2.3 (*Notifications to interested parties*) will apply to the periods allowed for interested parties to complete information and to notifications issued by the CNMV to interested parties under the same terms as for the verification of applications for listings and public offers for sale or subscription of securities.

#### **6.4 VERIFICATION AND REGISTRATION OF BANKING ASSET FUNDS**

1. The scope of Banking Asset Funds (BAF) review comprises verification of compliance with all requirements for the incorporation of banking asset funds established in article 35 of Royal Decree 1559/2012 and other applicable legislation. The deed of incorporation of a fund will be examined to verify that it contains the information mentioned in article 36 of the aforementioned Royal Decree.
2. In those cases where publication of a prospectus is mandatory, the provisions of section 6.2.1 (*Verification Requirements*) will apply to the review process.
3. After approval of the prospectus, the asset management firm may proceed to make the deed of incorporation of the banking asset fund, which shall be duly attested by a public notary.
4. The asset management company will provide the CNMV with a notarized copy of the deed of incorporation of the banking asset fund.
5. Sections 6.2.2 (*Verification deadlines*) and 6.2.3 (*Notifications to interested parties*) will apply to the periods allowed for interested parties to complete information and to notifications issued by the CNMV to interested payments under the same terms as for the verification of applications for listings and public offers for sale or subscription of securities.

#### **7. FINALIZATION**

1. The President or Vice-President of the CNMV will have the power to solve, at the proposal of the General Director of Markets, on the verification of the concurrence of statutory requirements and, where applicable, on the approval of the prospectus referred to in this procedure, except in the case of shares of any company seeking a stock market listing for the first time, or in the case of public offers for sale or subscription of shares prior to their admission to trading on the stock market for the first time.

First-time listings of shares on a regulated secondary market will fall within the remit of the CNMV Executive Committee.

2. The CNMV Executive Committee may, at the proposal of the General Director of Markets and by reasoned agreement, refuse registration of the documentation filed in accordance with article 6.2

of Royal Decree 1310/2005, wherever a) in its judgment, the situation of the issuer is such that listing would be contrary to the interests of investors, or b) the securities referred to in the listing application are already traded on any other regulated market established in the European Union and the issuer is not in compliance with its obligations in respect of listing on such market. The foregoing shall apply even in cases where the CNMV judges the documentation to be in conformity with applicable legislation.

3. Withdrawal or expiration of an application will also result in termination of the procedure. The party seeking verification may withdraw the application in writing at any time. Applications will expire when a period of three months elapses without the applicant's taking any action. The CNMV will notify the applicant that the procedure has been shelved.
4. After the issue of a favourable decision in the procedure, the appropriate steps will be taken for entry in the CNMV's official registries and the issuer will be notified by electronic means as soon as possible.
5. Upon the completion of the pertinent verifications by the CNMV in the case of listings on the MARF of promissory notes issued under a previously approved base prospectus, the issuer and the markets will be notified without the need for any further decision.
6. Documents relating to issues of book-entry securities will only require entry in the CNMV's official registers. The following will also be included in the register:
  - Documents containing information on the subscription and payment of securities.
  - Documents containing amendments of the terms and conditions of the issue or, where appropriate, partial or final redemption of securities..
7. The CNMV will remit information and documentation required by ESMA in accordance with the Prospectus Directive within the deadlines and in the form stipulated in applicable legislation using the means and formats established by ESMA for such purpose where appropriate.

## **8. REGISTRIES AND PUBLICITY**

1. Once information has been duly entered in the Official Registry, it will be disclosed on the CNMV web page which will also display the verified listings and public offers, and the registered issues of book-entry securities.
2. The CNMV website will also publish a list of approved prospectuses in accordance with article 25.4 of Royal Decree 1310/2005. Publication will not release the responsible party of the prospectus from its obligation to ensure it is available to the public at each and any of the sites for valid electronic publication of the prospectus mentioned in the applicable legislation in conformity with the requirements of the Prospectus Directive and Prospectus Regulation.

## **9. REVERSION OF BOOK-ENTRY SECURITIES**

1. The CNMV may authorize physical reversion of book-entry securities that are not listed on any regulated secondary market where their circulation is limited.
2. Interested parties will be required to file the following documents to commence the reversion process:
  - Application.
  - Certification of social agreements supporting the amendment of by-laws and the procedure established by the issuer for the delivery of physical securities, bearing the authenticated

signatures of the duly empowered corporate officers or formalized in a public deed.

- Certificate of limited circulation issued by the bookkeeping entity.
  - Certification of the organization's prevailing by-laws signed by the Secretary.
3. Upon due filing of the documentation, the CNMV will verify the following two conditions:
    - a) that the securities are not listed on any official secondary market or multilateral trading system; and
    - b) that the circulation of the securities is limited, i.e. that there are few holders of the securities.
  4. The procedure will be terminated by decision of the CNMV's President or Vice-President at the proposal of the General Director of Legal Affairs.

## **10. INSTRUCTION MANUALS**

1. The General Director of Markets and the General Director of Legal Affairs will, within the scope of their respective remits, approve the necessary "Instruction Manuals" to ensure compliance with and practical application of the provisions contained in this procedure .
2. The criteria, rules and standards set forth in the "Instruction Manuals" constitute the basic operational guidelines and specific rules to ensure the proper and efficient completion of work.
3. The "Instruction Manuals" will contain such controls as may be deemed necessary under the CNMV Risk Management System to ensure effective compliance with relevant legal provisions and with this procedure.
4. The "Instruction Manuals" will be prepared following the criteria and standards issued by ESMA to promote common supervisory practices in accordance with article 29.2 of Regulation (EU) No. 1095/2010, and any guides the CNMV may publish in connection with this procedure.
5. The "Instruction Manuals" will be submitted to the Executive Committee of the CNMV.

## **11. EFFECT**

This procedure will apply as of 21 September 2016, and it will be revised annually or wherever its contents are materially affected by any regulatory change.