



## Procedure for suspension and removal of financial instruments from trading in regulated secondary markets

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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. Suspension from trading of financial instruments in regulated secondary markets
2. Removal of financial instruments from trading in regulated secondary markets

## 2. APPLICABLE LEGISLATION

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

- Consolidated text of the Securities Market Act approved by Royal Legislative Decree 4/2015, of 23 October. Articles 80, 81 and 82.
- Royal Decree 726/1989, of 23 June, on stock exchange management companies and members, the Stock Exchange Company and the collective guarantee.
- Royal Decree 1066/2007, of 27 July, governing tender offers.
- Royal Decree 1282/2010, of 15 October, governing regulated secondary markets in futures and options and other financial derivatives.
- Ministry of Economy Order ECO/3235/2002, of 5 December, establishing special rules applicable to regulated secondary markets in olive oil futures and options.
- Protocol of the European Securities and Markets Authority (ESMA) on the operation of notifications of MiFID Article 41 suspensions and removals of financial instruments from trading.

Guidelines and/or recommendations issued by the 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:

- Public Administration and Ordinary Administrative Procedures 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.
- Decision of the National Securities Market Commission of 16 November 2016 creating and regulating the CNMV Electronic Registry.

## 3. COMPETENT DEPARTMENT

1. The Secondary Markets Department of the General Markets Division will be responsible for the procedure provided for herein.

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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.

2. After the pertinent investigations and verifications are completed, the General Director of Markets will propose the pertinent suspension or delisting decision to the pertinent body.

#### **4. SUSPENSION FROM TRADING OF FINANCIAL INSTRUMENTS**

1. The CNMV may suspend a security from trading in regulated secondary markets in the following cases:
  - a. Where special circumstances could upset the normal course of trading in the securities affected.
  - b. Where such measure appears advisable for reasons of investor protection.
2. Suspensions will apply for as short a time as possible, and they will be proportional in view of the objectives pursued in the cases mentioned in the preceding paragraph.
3. The suspension procedure may be initiated *ex officio*, at the request of an issuer, or on the initiative of the management companies responsible for the regulated secondary markets concerned.
4. The rules governing requests for information, notices, verifications and analyses contained in the Procedure for Reporting of Relevant Information will likewise apply to this procedure.
5. Either the President or Vice-President of the CNMV may decide to suspend trading at the proposal of the General Director of Markets.
6. In urgent cases, the President or Vice-President of the CNMV may adopt the decision to suspend trading and notify the General Director of Markets verbally. Said General Director will then sign off on the decision, which will state the body responsible for its adoption.

In such cases, the decision adopted will be formalized in writing as soon as possible.

7. Any decision to suspend a financial instrument from trading or to lift such suspension will be treated as relevant information requiring inclusion in the CNMV's Special Register and publication on its website.
8. Either the President or Vice-President of the CNMV may decide to lift suspension at the proposal of the General Director of Markets.
9. The CNMV will notify ESMA and the competent authorities in the other member States in which a financial instrument is traded of suspensions from trading and the lifting of suspensions via the appropriate channels.

#### **5. REMOVAL OF FINANCIAL INSTRUMENTS FROM TRADING IN REGULATED SECONDARY MARKETS**

1. The CNMV may remove financial instruments from trading in any of the following circumstances:
  - a. Where financial instruments do not meet regulatory standards referring to diffusion, and frequency or volume of trading.
  - b. Where the issuer is not in compliance with legal obligations, particularly as regards reporting and publication of information.
  - c. Where the issuer is placed in liquidation in accordance with the Insolvency Act (Law

22/2003, of 9 July) or is in the process of winding-up in accordance with the provisions of the Limited Companies Act approved by Royal Legislative Decree 1/2010, of 2 July.

- d. Where the issuer seeks voluntary delisting of its stock from regulated secondary markets in accordance with paragraph 3 below.
2. In the cases mentioned in paragraphs a, b and c of paragraph 1 above, delisting may be decided *ex officio* by the CNMV or where moved by the stock exchange management companies organizing regulated secondary markets.
3. Applications for the removal of shares from trading by means of a delisting tender as provided in article 82 of the Securities Market Act and article 10 of Royal Decree 1066/2007, and applications for delisting with exemption of the obligation to tender pursuant to article 11, paragraphs d) and 3) of the aforementioned Royal Decree will be subject to the *Procedure for approval of public tender offers, exemptions and exceptions*.
4. The market management companies responsible for regulated futures and options exchanges may decide to remove derivatives contracts from trading for reasons of illiquidity or in the general interest of the market.
5. Except in the cases mentioned in paragraph 3 of this section, securities will be delisted in accordance with the general procedure regulated in Part VI of the Public Administration and Ordinary Administrative Procedures Act, subject to the following conditions:
  - a. The decision to initiate the procedure will be made by the CNMV Executive Committee at the proposal of the General Markets Division, subject to a report from the General Legal Division.
  - b. Where applicable, the issuer will be duly notified and allowed a maximum rejoinder period of fifteen business days in which to make any pleadings and/or file any documents or other evidence it may see fit.
  - c. Where so required given the nature of the delisting procedure, the CNMV Board may agree a public information period at the proposal of the General Director of Markets. Such period will not under any circumstances be less than twenty business days, and the decision will be published in the Official Journal of the Spanish State.
  - d. The delisting procedure will be finalized by the CNMV Board at the proposal of the General Director of Markets, subject to a report from the General Legal Division.
6. Initiation of the delisting procedure, the rejoinder period and the decision reached will be treated as relevant information and will be included in the CNMV's special registries and disseminated via its website.
7. The CNMV will notify ESMA and the competent authorities in the other member States in which a financial instrument is traded of the removal of any financial instruments from trading via the appropriate channels.

## **6. SUSPENSION OF THE MAXIMUM DEADLINE FOR DECISIONS**

1. The procedure will be finalized and the decision notified within a maximum deadline of three months from initiation of the process.
2. The deadline for processing and finalization of the delisting procedure referred to in section 5 may be suspended in the following cases:

- a. Where any interested party is ordered to cure shortcomings and/or provide pertinent documents or other evidence. Suspension shall last for the interim between notification of the information demand and compliance therewith by the addressee, or by default until the period allowed for compliance lapses.
- b. Where it is necessary to seek mandatory or determining reports either within the CNMV itself or from any other official body, for the interim between the request for the report (which shall be subject to due notification of the interested parties) and delivery of the same (which shall likewise be subject to notification). Under no circumstances may such suspensions exceed a maximum of three months.
- c. Where it is necessary to prepare any technical tests, comparative analyses or reports proposed by interested parties, for the time needed to incorporate findings into the procedure.

## **7. PROCEDURE MANUALS**

1. The General Director of Markets will draw up and approve the necessary “Procedure Manuals” to ensure compliance with and application of this procedure.
2. The criteria and standards set forth in the “Procedure Manuals” constitute the basic operational guidelines and specific rules to ensure the proper, efficient conduct and completion of work within the General Markets Division.
3. The “Procedure 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 “Procedure 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 guidelines the CNMV may publish in connection with this procedure.
5. The “Procedure Manuals” will be submitted to the Executive Committee of the CNMV.

## **8. 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.