



Consolidated Text of the Spanish Securities Market Act

ACT 24/1988, OF 28 JULY, ON THE SECURITIES MARKET

CONSOLIDATED TEXT

Consolidated Text of the Spanish Securities Market Act

Securities Market Act 24/1988, 28 July (Amended by Acts 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-Act 5/2005, 11 March; 5/2005, 22 April; 19/2005, 14 November; 25/2005, 24 November; 12/2006, 16 May; 6/2007, 12 April; 47/2007, 19 December; 5/2009, 29 June; 11/2009, 26 October; Royal Decree Act 6/2010, 9 April; Act 12/2010, 30 June; Royal Decree 1/2010, 2 July; Act 2/2011, 4 March; 6/2011, 11 April; 15/2011, 16 June; 21/2011, 26 July; 25/2011, 1 August; 32/2011, 4 October; Royal Decree-Act 10/2012, 23 March; 17/2012, 4 May; Act 1/2012, 22 June and Royal Decree-Act 20/2012, 12 July).

"This text provided by the CNMV is an unofficial translated English version."

Last update July 2012

CONTENTS

| | |
|---|----|
| Preamble to Act 24/1988 | 1 |
| Preamble to Act 37/1998 | 7 |
| Preamble to Act 44/2002 | 13 |
| Preamble to Act 26/2003 | 19 |
| Preamble to Act 12/2006 | 20 |
| Preamble to Act 6/2007 | 21 |
| Preamble to Act 47/2007 | 23 |
| Preamble to Act 5/2009 | 28 |
| Preamble to Act 11/2009 | 31 |
| Preamble to Royal Decree Act 6/2010 | 32 |
| Preamble to Royal Decree Act 1/2010 | 33 |
| Preamble to Act 2/2011 | 36 |
| Preamble to Act 6/2011 | 37 |
| Preamble to Act 15/2011 | 39 |
| Preamble to Act 21/2011 | 40 |
| Preamble to Act 32/2011 | 41 |
| Preamble to Royal Decree-Act 10/2012 | 44 |
| Preamble to Royal Decree-Act 17/2012 | 46 |
| Preamble to Royal Decree-Act 20/2012 | 46 |
| TITLE I. GENERAL | 49 |
| CHAPTER I. SCOPE OF THE ACT | 49 |
| Article 1 | 49 |
| Article 2 | 49 |
| Article 3 | 50 |
| Article 4 | 51 |
| CHAPTER II. SECURITIES REPRESENTED BY BOOK ENTRIES | 51 |
| Article 5 | 51 |
| Article 6 | 51 |
| Article 7 | 52 |

Securities Market Act 24/1988, 28 July (Amended by Acts 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-Act 5/2005, 11 March; 5/2005, 22 April; 19/2005, 14 November; 25/2005, 24 November; 12/2006, 16 May; 6/2007, 12 April; 47/2007, 19 December; 5/2009, 29 June; 11/2009, 26 October; Royal Decree Act 6/2010, 9 April; Act 12/2010, 30 June; Royal Decree 1/2010, 2 July; Act 2/2011, 4 March; 6/2011, 11 April; 15/2011, 16 June; 21/2011, 26 July; 25/2011, 1 August; 32/2011, 4 October; Royal Decree-Act 10/2012, 23 March; 17/2012, 4 May; Act 1/2012, 22 June and Royal Decree-Act 20/2012, 12 July).

"This text provided by the CNMV is an unofficial translated English version."

Consolidated Text of the Spanish Securities Market Act

| | |
|---|-----------|
| Article 8 | 53 |
| Article 9 | 53 |
| Article 10 | 53 |
| Article 11 | 53 |
| Article 12 | 54 |
| Article 12.bis. Right of withdrawal in the event of insolvency of the entities responsible for book-keeping or participants in the record-keeping system, and the pro rata rule | 54 |
| TITLE II. NATIONAL SECURITIES MARKET COMMISSION | 55 |
| CHAPTER I. CREATION AND DUTIES | 55 |
| Article 13 | 55 |
| Article 14 | 55 |
| Article 15 | 57 |
| Article 16 | 57 |
| CHAPTER II. ORGANISATION | 58 |
| Article 17 | 58 |
| Article 18 | 58 |
| Article 19 | 59 |
| Article 20 | 60 |
| Article 21 | 60 |
| Article 22 | 60 |
| Article 23 | 61 |
| Article 24 | 61 |
| TITLE III. THE PRIMARY MARKET | 62 |
| CHAPTER I. GENERAL PROVISIONS | 62 |
| Article 25. Freedom of issue, placement of issues and eligibility requirements for admission to trading on an official secondary market | 62 |
| Article 26. Information requirements for admission to trading in an official secondary market. | 62 |
| Article 27. Contents of prospectus | 63 |
| Article 28. Liability of prospectus | 64 |
| Article 29. Cross-border validity of prospectus | 65 |

Securities Market Act 24/1988, 28 July (Amended by Acts 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-Act 5/2005, 11 March; 5/2005, 22 April; 19/2005, 14 November; 25/2005, 24 November; 12/2006, 16 May; 6/2007, 12 April; 47/2007, 19 December; 5/2009, 29 June; 11/2009, 26 October; Royal Decree Act 6/2010, 9 April; Act 12/2010, 30 June; Royal Decree 1/2010, 2 July; Act 2/2011, 4 March; 6/2011, 11 April; 15/2011, 16 June; 21/2011, 26 July; 25/2011, 1 August; 32/2011, 4 October; Royal Decree-Act 10/2012, 23 March; 17/2012, 4 May; Act 1/2012, 22 June and Royal Decree-Act 20/2012, 12 July).

"This text provided by the CNMV is an unofficial translated English version."

Consolidated Text of the Spanish Securities Market Act

| | |
|--|-----------|
| Article 30. Preventive measures | 65 |
| Article 30.bis. Public offering for the sale or subscription of securities | 65 |
| CHAPTER II. ISSUES OF BONDS OR OTHER SECURITIES RECOGNISING OR CREATING DEBT CLAIMS | 66 |
| Article 30.ter. Regime for issues of bonds or other securities recognising or creating a debt claim | 66 |
| TITLE IV. OFFICIAL SECONDARY MARKETS IN SECURITIES | 67 |
| CHAPTER I. GENERAL PROVISIONS | 67 |
| Article 31 | 67 |
| Article 31.bis. Authorisation and revocation | 68 |
| Article 31.ter. Conditions for exercise of business | 70 |
| Article 31.querter. Appointment of directors and executives and replacement of the governing company | 70 |
| Article 32 | 70 |
| Article 32.bis. Additional rules established by the markets for listing financial instruments | 71 |
| Article 32.ter. Obligations in the area of market abuse | 72 |
| Article 33. Suspension of financial instruments from trading | 72 |
| Article 34. Removal from trading | 73 |
| Article 35. Issuers' periodic reporting obligations | 74 |
| Article 35.bis. Other reporting obligations | 76 |
| Article 35.ter. Issuers' responsibility | 77 |
| Article 36 | 77 |
| Article 37. Members of the official secondary markets | 78 |
| Article 38. Remote access | 79 |
| Article 39 | 79 |
| Article 40 | 80 |
| Article 41 | 80 |
| Article 42 | 80 |
| Article 43. Transparency requirements | 80 |
| Article 44 | 81 |

Securities Market Act 24/1988, 28 July (Amended by Acts 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-Act 5/2005, 11 March; 5/2005, 22 April; 19/2005, 14 November; 25/2005, 24 November; 12/2006, 16 May; 6/2007, 12 April; 47/2007, 19 December; 5/2009, 29 June; 11/2009, 26 October; Royal Decree Act 6/2010, 9 April; Act 12/2010, 30 June; Royal Decree 1/2010, 2 July; Act 2/2011, 4 March; 6/2011, 11 April; 15/2011, 16 June; 21/2011, 26 July; 25/2011, 1 August; 32/2011, 4 October; Royal Decree-Act 10/2012, 23 March; 17/2012, 4 May; Act 1/2012, 22 June and Royal Decree-Act 20/2012, 12 July).

"This text provided by the CNMV is an unofficial translated English version."

Consolidated Text of the Spanish Securities Market Act

| | |
|---|----|
| Article 44.bis | 82 |
| Article 44.ter | 86 |
| Article 44.quater. Possibility of choosing the clearing and settlement system or the central counterparty | 89 |
| Article 44.quinquies. Right to designate a settlement system | 89 |
| Article 44.sexies. Access to central counterparty, clearing and settlement facilities | 89 |
| CHAPTER II. STOCK EXCHANGES | 90 |
| Article 45 | 90 |
| Article 46 | 90 |
| Article 47 | 90 |
| Article 48 | 90 |
| Article 49 | 91 |
| Article 50 | 91 |
| Article 51 | 91 |
| Article 52 | 91 |
| Article 53. Obligations of shareholders and holders of other securities and financial instruments | 91 |
| Article 53.bis. Issuers' obligations with respect to own shares | 92 |
| Article 53.ter. Preventive measures | 93 |
| Article 54 | 93 |
| Chapter III. PUBLIC-DEBT BOOK-ENTRY MARKET | 93 |
| Article 55 | 93 |
| Article 56 | 94 |
| Article 57 | 94 |
| Article 58 | 95 |
| CHAPTER IV. OFFICIAL SECONDARY MARKETS IN FUTURES AND OPTIONS REPRESENTED BY BOOK ENTRIES | 96 |
| Article 59. Official Secondary Markets in Futures and Options | 96 |
| CHAPTER IV.BIS. TRANSACTION REPORTING | 98 |
| Article 59.bis. Notification of transactions to the National Securities Market Commission. | 98 |

Securities Market Act 24/1988, 28 July (Amended by Acts 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-Act 5/2005, 11 March; 5/2005, 22 April; 19/2005, 14 November; 25/2005, 24 November; 12/2006, 16 May; 6/2007, 12 April; 47/2007, 19 December; 5/2009, 29 June; 11/2009, 26 October; Royal Decree Act 6/2010, 9 April; Act 12/2010, 30 June; Royal Decree 1/2010, 2 July; Act 2/2011, 4 March; 6/2011, 11 April; 15/2011, 16 June; 21/2011, 26 July; 25/2011, 1 August; 32/2011, 4 October; Royal Decree-Act 10/2012, 23 March; 17/2012, 4 May; Act 1/2012, 22 June and Royal Decree-Act 20/2012, 12 July).

"This text provided by the CNMV is an unofficial translated English version."

| | |
|---|-----|
| CHAPTER V. TAKEOVER BIDS | 99 |
| Article 60. Mandatory takeover bids. | 99 |
| Article 60.bis. Obligations of the governing and executive bodies | 102 |
| Article 60.ter. Breakthrough measures | 103 |
| Article 60.quater. Squeeze-out and tag-along | 104 |
| Article 61. Voluntary takeover bids | 105 |
| CHAPTER VI. ANNUAL CORPORATE GOVERNANCE REPORT | 106 |
| Article 61.bis. Annual corporate governance report | 106 |
| Article 61.ter. Annual report on director remuneration | 108 |
| TITLE V. INVESTMENT FIRMS | 108 |
| CHAPTER I. GENERAL PROVISIONS | 108 |
| Article 62. Definition of investment firm, and exclusions | 109 |
| Article 63. Investment services and ancillary services | 110 |
| Article 64. Classes of investment firm | 111 |
| Article 65. Other institutions | 113 |
| Article 65.bis. Agents of investment firms | 113 |
| Article 65.ter. Electronic trading | 114 |
| CHAPTER II. CONDITIONS FOR GAINING ACCESS TO THE ACTIVITY | 115 |
| Article 66. Authorisation and registration | 115 |
| Article 67. Denial of authorisation and requirements for access | 116 |
| CHAPTER III. CONDITIONS FOR CARRYING OUT THE ACTIVITY | 119 |
| Article 68. Amendments to the Articles of Association, changes in the investment services and ancillary services and changes of officers and executives | 119 |
| Article 69 | 120 |
| Article 69.bis. Disclosure of shareholder structure | 124 |
| Article 70. Financial requirements | 124 |
| Article 70.bis. Information on solvency | 126 |
| Article 70.ter. Internal organisational requirements | 128 |
| Article 70.quater. Conflicts of interest | 130 |
| CHAPTER IV. CROSS-BORDER TRANSACTIONS | 131 |
| Article 71. Cross-border transactions by Spanish investment firms | 131 |

Securities Market Act 24/1988, 28 July (Amended by Acts 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-Act 5/2005, 11 March; 5/2005, 22 April; 19/2005, 14 November; 25/2005, 24 November; 12/2006, 16 May; 6/2007, 12 April; 47/2007, 19 December; 5/2009, 29 June; 11/2009, 26 October; Royal Decree Act 6/2010, 9 April; Act 12/2010, 30 June; Royal Decree 1/2010, 2 July; Act 2/2011, 4 March; 6/2011, 11 April; 15/2011, 16 June; 21/2011, 26 July; 25/2011, 1 August; 32/2011, 4 October; Royal Decree-Act 10/2012, 23 March; 17/2012, 4 May; Act 1/2012, 22 June and Royal Decree-Act 20/2012, 12 July).

"This text provided by the CNMV is an unofficial translated English version."

Consolidated Text of the Spanish Securities Market Act

| | |
|---|-----|
| Article 71.bis. Investment firms authorised by another Member State of the European Union | 133 |
| Article 71.ter. Coercive measures | 134 |
| Article 71.quater. Non-EU investment firms | 135 |
| CHAPTER V. CORPORATE TRANSACTIONS AND REVOCATION OF INVESTMENT SERVICES FIRMS' AUTHORISATION | 136 |
| Article 72 | 136 |
| Article 73 | 136 |
| Article 74 | 137 |
| Article 75 | 138 |
| Article 76 | 138 |
| Article 76.bis | 139 |
| TITLE VI. INVESTMENT GUARANTEE FUND | 139 |
| Article 77 | 139 |
| TITLE VII. RULES OF CONDUCT | 141 |
| CHAPTER I. RULES OF CONDUCT APPLICABLE TO PROVIDERS OF INVESTMENT SERVICES | 141 |
| Article 78. Parties to which this obligation refers | 141 |
| Article 78.bis. Classes of clients | 142 |
| Article 78.ter. Transactions with eligible counterparties | 143 |
| Article 79. Obligation of diligence and transparency | 144 |
| Article 79.bis. Reporting obligations | 144 |
| Article 79.ter. Records of contracts | 146 |
| Article 79.quater. Exceptions to the information and record-keeping obligations | 146 |
| Article 79.quinquies. Fulfilment of the information obligations when providing services through another investment firm | 146 |
| Article 79.sexies. Obligations with regard to managing and executing orders | 146 |
| CHAPTER II. MARKET ABUSE | 147 |
| Article 80 | 147 |
| Article 81 | 148 |
| Article 82. Relevant information, parties obliged to disclose it, and publication | 149 |

Securities Market Act 24/1988, 28 July (Amended by Acts 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-Act 5/2005, 11 March; 5/2005, 22 April; 19/2005, 14 November; 25/2005, 24 November; 12/2006, 16 May; 6/2007, 12 April; 47/2007, 19 December; 5/2009, 29 June; 11/2009, 26 October; Royal Decree Act 6/2010, 9 April; Act 12/2010, 30 June; Royal Decree 1/2010, 2 July; Act 2/2011, 4 March; 6/2011, 11 April; 15/2011, 16 June; 21/2011, 26 July; 25/2011, 1 August; 32/2011, 4 October; Royal Decree-Act 10/2012, 23 March; 17/2012, 4 May; Act 1/2012, 22 June and Royal Decree-Act 20/2012, 12 July).

"This text provided by the CNMV is an unofficial translated English version."

Consolidated Text of the Spanish Securities Market Act

| | |
|--|------------|
| Article 83 | 150 |
| Article 83.bis | 151 |
| Article 83.ter | 152 |
| Article 83.quarter. Notification of suspicious transactions | 152 |
| TITLE VIII. RULES FOR SURVEILLANCE, SUPERVISION AND DISCIPLINE | 153 |
| CHAPTER I. GENERAL PROVISIONS | 153 |
| Article 84. Scope of supervision, inspection and discipline | 153 |
| Article 85. Powers of the National Securities Market Commission. Supervision and inspection | 155 |
| Article 86 | 159 |
| Article 86.bis | 162 |
| Article 87. Equity of consolidable groups and relations with other supervisors | 162 |
| Article 87.bis. Supervision of the solvency of investment firms and their consolidable groups | 163 |
| Article 88 | 165 |
| Article 89 | 165 |
| Article 90. Professional secrecy | 165 |
| Article 91. Cooperation between the National Securities Market Commission and the competent authorities in European Union member states, the European Securities and Markets Authority and the European Banking Authority. | 168 |
| Article 91.bis. Exchange of information between the National Securities Market Commission and the competent authorities of Member States of the European Union | 170 |
| Article 91.ter. Refusal to cooperate or exchange information | 172 |
| Article 91.quarter. Cooperation by the National Securities Market Commission with the competent authorities of third countries | 172 |
| Article 90.quinquies. Requests for the designation of branches as significant | 173 |
| Article 91.sexies. Joint decisions under the framework of supervision of groups of investment firms operating in several Member States | 174 |
| Article 91.septies. Establishment of colleges of supervisors | 174 |
| Article 92. Public records in connection with issuers | 175 |
| Article 93 | 176 |
| Article 94 | 177 |

Securities Market Act 24/1988, 28 July (Amended by Acts 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-Act 5/2005, 11 March; 5/2005, 22 April; 19/2005, 14 November; 25/2005, 24 November; 12/2006, 16 May; 6/2007, 12 April; 47/2007, 19 December; 5/2009, 29 June; 11/2009, 26 October; Royal Decree Act 6/2010, 9 April; Act 12/2010, 30 June; Royal Decree 1/2010, 2 July; Act 2/2011, 4 March; 6/2011, 11 April; 15/2011, 16 June; 21/2011, 26 July; 25/2011, 1 August; 32/2011, 4 October; Royal Decree-Act 10/2012, 23 March; 17/2012, 4 May; Act 1/2012, 22 June and Royal Decree-Act 20/2012, 12 July).

"This text provided by the CNMV is an unofficial translated English version."

| | |
|---|-----|
| CHAPTER II. INFRINGEMENTS AND SANCTIONS | 177 |
| Article 95 | 177 |
| Article 96 | 178 |
| Article 97 | 178 |
| Article 98 | 179 |
| Article 99 | 180 |
| Article 100 | 184 |
| Article 101 | 188 |
| Article 101.bis | 188 |
| Article 102 | 188 |
| Article 103 | 189 |
| Article 104 | 190 |
| Article 105 | 190 |
| Article 106 | 191 |
| Article 106.bis | 191 |
| Article 106.ter | 191 |
| Article 107 | 192 |
| Article 107.bis | 192 |
| Article 107.ter. Information and notification of administrative infractions and sanctions | 193 |
| TITLE IX. TAXATION OF SECURITIES TRANSACTIONS | 193 |
| Article 108 | 193 |
| Article 109 | 195 |
| Article 110 | 195 |
| TITLE X. LISTED COMPANIES | 195 |
| CHAPTER I. GENERAL PROVISIONS | 195 |
| Article 111 | 195 |
| Article 111.bis | 196 |
| CHAPTER II. SHAREHOLDER AGREEMENTS SUBJECT TO DISCLOSURE | 196 |
| Article 112. Disclosure of shareholder agreements and other agreements that affect a listed company | 196 |

Securities Market Act 24/1988, 28 July (Amended by Acts 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-Act 5/2005, 11 March; 5/2005, 22 April; 19/2005, 14 November; 25/2005, 24 November; 12/2006, 16 May; 6/2007, 12 April; 47/2007, 19 December; 5/2009, 29 June; 11/2009, 26 October; Royal Decree Act 6/2010, 9 April; Act 12/2010, 30 June; Royal Decree 1/2010, 2 July; Act 2/2011, 4 March; 6/2011, 11 April; 15/2011, 16 June; 21/2011, 26 July; 25/2011, 1 August; 32/2011, 4 October; Royal Decree-Act 10/2012, 23 March; 17/2012, 4 May; Act 1/2012, 22 June and Royal Decree-Act 20/2012, 12 July).

"This text provided by the CNMV is an unofficial translated English version."

| | |
|--|-----|
| CHAPTER III. CORPORATE BODIES | 196 |
| Article 113. Shareholders' meeting. | 196 |
| Article 114. Duties of the directors | 196 |
| Article 115. Board of Directors | 196 |
| CHAPTER IV. COMPANY INFORMATION | 196 |
| Article 116. Annual Report on Corporate Governance | 197 |
| Article 116.bis. Additional information <i>to be included in the directors' report</i> | 197 |
| Article 117. Reporting instruments | 197 |
| TITLE XI. OTHER TRADING SYSTEMS | 197 |
| CHAPTER I. MULTILATERAL TRADING FACILITIES | 197 |
| Article 118. Definition of a multilateral trading facility | 197 |
| Article 119. Creation of multilateral trading facilities | 197 |
| Article 120. Governing companies and rules of operation | 198 |
| Article 121. Process of trading and concluding trades in a multilateral trading facility | 199 |
| Article 122. Monitoring of compliance with the rules of the multilateral trading facility and with other legal obligations | 199 |
| Article 123. Pre-trade transparency requirements | 200 |
| Article 124. Post-trade transparency requirements | 200 |
| Article 125. Central counterparty, clearing and settlement agreements | 201 |
| Article 126. Remote access to multilateral trading facilities | 201 |
| CHAPTER II. PROVISIONS COMMON TO OFFICIAL SECONDARY MARKETS AND MULTILATERAL TRADING FACILITIES | 202 |
| Article 127. Coercive measures | 202 |
| CHAPTER III. SYSTEMATIC INTERNALISERS | 202 |
| Article 128. Scope | 202 |
| Article 129. Reporting obligations | 203 |
| Article 130. Order execution | 203 |
| Article 131. Treatment of clients | 204 |
| ADDITIONAL PROVISIONS OF ACT 24/1988 | 205 |
| Additional provision one | 205 |
| Additional provision two | 205 |

Securities Market Act 24/1988, 28 July (Amended by Acts 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-Act 5/2005, 11 March; 5/2005, 22 April; 19/2005, 14 November; 25/2005, 24 November; 12/2006, 16 May; 6/2007, 12 April; 47/2007, 19 December; 5/2009, 29 June; 11/2009, 26 October; Royal Decree Act 6/2010, 9 April; Act 12/2010, 30 June; Royal Decree 1/2010, 2 July; Act 2/2011, 4 March; 6/2011, 11 April; 15/2011, 16 June; 21/2011, 26 July; 25/2011, 1 August; 32/2011, 4 October; Royal Decree-Act 10/2012, 23 March; 17/2012, 4 May; Act 1/2012, 22 June and Royal Decree-Act 20/2012, 12 July).

"This text provided by the CNMV is an unofficial translated English version."

Consolidated Text of the Spanish Securities Market Act

| | |
|--|------------|
| Additional provision three | 205 |
| Additional provision four | 205 |
| Additional provision five | 206 |
| Additional provision six | 206 |
| Additional provision seven | 206 |
| Additional provision eight | 206 |
| Additional provision nine | 206 |
| Additional provision ten | 207 |
| Additional provision eleven | 207 |
| Additional provision twelve | 207 |
| Additional provision thirteen | 207 |
| Additional provision fourteen | 207 |
| Additional provision fifteen | 207 |
| Additional provision sixteen | 208 |
| Additional provision seventeen | 208 |
| Additional provision seventeen (sic) | 209 |
| Additional provision eighteen. Audit Committee | 209 |
| Additional provision nineteen | 210 |
| Additional provision twenty | 211 |
| Additional provision twenty-one | 211 |
| ADDITIONAL PROVISIONS OF ACT 37/1998 | 212 |
| Additional provision one | 212 |
| Additional provision two | 212 |
| Additional provision three | 212 |
| Additional provision four | 212 |
| Additional provision five | 213 |
| Additional provision six | 213 |
| Additional provision seven | 213 |
| Additional provision eight | 213 |
| Additional provision nine | 213 |

Securities Market Act 24/1988, 28 July (Amended by Acts 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-Act 5/2005, 11 March; 5/2005, 22 April; 19/2005, 14 November; 25/2005, 24 November; 12/2006, 16 May; 6/2007, 12 April; 47/2007, 19 December; 5/2009, 29 June; 11/2009, 26 October; Royal Decree Act 6/2010, 9 April; Act 12/2010, 30 June; Royal Decree 1/2010, 2 July; Act 2/2011, 4 March; 6/2011, 11 April; 15/2011, 16 June; 21/2011, 26 July; 25/2011, 1 August; 32/2011, 4 October; Royal Decree-Act 10/2012, 23 March; 17/2012, 4 May; Act 1/2012, 22 June and Royal Decree-Act 20/2012, 12 July).

"This text provided by the CNMV is an unofficial translated English version."

Consolidated Text of the Spanish Securities Market Act

| | |
|---|-----|
| Additional provision ten | 213 |
| Additional provision eleven | 213 |
| Additional provision twelve | 213 |
| Additional provision thirteen | 214 |
| Additional provision fourteen | 214 |
| Additional provision fifteen | 214 |
| ADDITIONAL PROVISIONS OF ACT 44/2002 | 214 |
| Additional provision one | 214 |
| Additional provision two | 214 |
| Additional provision three | 215 |
| Additional provision four | 215 |
| ADDITIONAL PROVISIONS OF ACT 26/2003 | 216 |
| Additional provision one | 216 |
| Additional provision two | 216 |
| Additional provision three | 217 |
| ADDITIONAL PROVISIONS OF ACT 6/2007 | 217 |
| ADDITIONAL PROVISIONS OF ACT 47/2007 | 218 |
| ADDITIONAL PROVISIONS OF ACT 11/2009 | 218 |
| Additional provision one | 218 |
| Additional provision three | 218 |
| ADDITIONAL PROVISIONS OF LEGISLATIVE ROYAL DECREE 1/2010 | 219 |
| Additional provision one | 219 |
| Additional provision two | 219 |
| Additional provision seven | 219 |
| ADDITIONAL PROVISIONS OF ACT 2/2011 | 219 |
| Additional provision one | 219 |
| TRANSITORY PROVISIONS OF ACT 24/1988 | 221 |
| Transitory provision one | 221 |
| Transitory provision two | 221 |
| Transitory provision three | 221 |

Securities Market Act 24/1988, 28 July (Amended by Acts 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-Act 5/2005, 11 March; 5/2005, 22 April; 19/2005, 14 November; 25/2005, 24 November; 12/2006, 16 May; 6/2007, 12 April; 47/2007, 19 December; 5/2009, 29 June; 11/2009, 26 October; Royal Decree Act 6/2010, 9 April; Act 12/2010, 30 June; Royal Decree 1/2010, 2 July; Act 2/2011, 4 March; 6/2011, 11 April; 15/2011, 16 June; 21/2011, 26 July; 25/2011, 1 August; 32/2011, 4 October; Royal Decree-Act 10/2012, 23 March; 17/2012, 4 May; Act 1/2012, 22 June and Royal Decree-Act 20/2012, 12 July).

"This text provided by the CNMV is an unofficial translated English version."

Consolidated Text of the Spanish Securities Market Act

| | |
|---|------------|
| Transitory provision four | 221 |
| Transitory provision five | 221 |
| Transitory provision six | 222 |
| Transitory provision seven | 222 |
| Transitory provision eight | 223 |
| Transitory provision nine | 223 |
| Transitory provision ten | 223 |
| Transitory provision eleven | 223 |
| Transitory provision twelve | 223 |
| Transitory provision thirteen | 223 |
| TRANSITORY PROVISIONS OF ACT 37/1998 | 224 |
| Transitory provision one | 224 |
| Transitory provision two | 224 |
| Transitory provision three | 224 |
| Transitory provision four | 224 |
| Transitory provision five | 224 |
| Transitory provision six | 224 |
| Transitory provision seven | 224 |
| TRANSITORY PROVISIONS OF ACT 44/2002 | 225 |
| Transitory provision one | 225 |
| Transitory provision two | 226 |
| Transitory provision six | 226 |
| Transitory provision nine | 226 |
| TRANSITORY PROVISIONS OF ACT 26/2003 | 227 |
| Transitory provision one | 227 |
| Transitory provision two | 227 |
| Transitory provision three | 227 |
| TRANSITORY PROVISIONS OF ACT 6/2007 | 227 |
| Transitory provision one | 227 |
| Transitory provision two | 228 |

Securities Market Act 24/1988, 28 July (Amended by Acts 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-Act 5/2005, 11 March; 5/2005, 22 April; 19/2005, 14 November; 25/2005, 24 November; 12/2006, 16 May; 6/2007, 12 April; 47/2007, 19 December; 5/2009, 29 June; 11/2009, 26 October; Royal Decree Act 6/2010, 9 April; Act 12/2010, 30 June; Royal Decree 1/2010, 2 July; Act 2/2011, 4 March; 6/2011, 11 April; 15/2011, 16 June; 21/2011, 26 July; 25/2011, 1 August; 32/2011, 4 October; Royal Decree-Act 10/2012, 23 March; 17/2012, 4 May; Act 1/2012, 22 June and Royal Decree-Act 20/2012, 12 July).

"This text provided by the CNMV is an unofficial translated English version."

| | |
|---|-----|
| TRANSITORY PROVISIONS OF ACT 47/2007 | 228 |
| Transitory provision one | 228 |
| Transitory provision two | 228 |
| TRANSITORY PROVISIONS OF ACT 11/2009 | 228 |
| Transitory provision three | 228 |
| TRANSITORY PROVISIONS OF ACT 2/2011 | 229 |
| Transitory provision five | 229 |
| TRANSITORY PROVISIONS OF ACT 6/2011 | 229 |
| TRANSITORY PROVISIONS OF ACT 1/2012 | 229 |
| Transitory provision two | 229 |
| REPEALING PROVISION OF ACT 24/1988 | 230 |
| SOLE REPEALING PROVISION OF ACT 37/1998 | 230 |
| SOLE REPEALING PROVISION OF ACT 44/2002 | 230 |
| REPEALING PROVISION OF ACT 6/2007 | 231 |
| REPEALING PROVISION OF ACT 47/2007 | 231 |
| REPEALING PROVISION OF LEGISLATIVE ROYAL DECREE 1/2010 | 231 |
| REPEALING PROVISION OF ACT 2/2011 | 231 |
| REPEALING PROVISION OF ACT 21/2011 | 232 |
| REPEALING PROVISION OF ACT 25/2011 | 232 |
| FINAL PROVISIONS OF ACT 24/1988 | 233 |
| Final provision one | 233 |
| Final provision two | 233 |
| Final provision three | 233 |
| FINAL PROVISIONS OF ACT 37/1988 | 233 |
| Final provision one | 233 |
| Final provision two | 233 |
| Final provision three | 234 |
| FINAL PROVISIONS OF ACT 44/2002 | 234 |
| Final provision one | 234 |
| Final provision two | 234 |

Securities Market Act 24/1988, 28 July (Amended by Acts 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-Act 5/2005, 11 March; 5/2005, 22 April; 19/2005, 14 November; 25/2005, 24 November; 12/2006, 16 May; 6/2007, 12 April; 47/2007, 19 December; 5/2009, 29 June; 11/2009, 26 October; Royal Decree Act 6/2010, 9 April; Act 12/2010, 30 June; Royal Decree 1/2010, 2 July; Act 2/2011, 4 March; 6/2011, 11 April; 15/2011, 16 June; 21/2011, 26 July; 25/2011, 1 August; 32/2011, 4 October; Royal Decree-Act 10/2012, 23 March; 17/2012, 4 May; Act 1/2012, 22 June and Royal Decree-Act 20/2012, 12 July).

"This text provided by the CNMV is an unofficial translated English version."

Consolidated Text of the Spanish Securities Market Act

| | |
|---|-----|
| Final provision three | 234 |
| Final provision four | 234 |
| SOLE FINAL PROVISIONS OF ACT 26/2003 | 235 |
| FINAL PROVISIONS OF ACT 6/2007 | 235 |
| Final provision one | 235 |
| Final provision two | 235 |
| Final provision three | 235 |
| Final provision four | 235 |
| FINAL PROVISIONS OF ACT 47/2007 | 235 |
| Final provision one | 235 |
| Final provision two | 236 |
| Final provision three | 236 |
| Final provision four | 237 |
| Final provision five | 237 |
| Final provision six | 237 |
| FINAL PROVISIONS OF ACT 5/2009 | 237 |
| Final provision two | 237 |
| Final provision three | 239 |
| Final provision four | 240 |
| Final provision five | 241 |
| Final provision six | 241 |
| Final provision seven | 241 |
| Final provision eight | 242 |
| FINAL PROVISIONS OF ACT 11/2009 | 242 |
| Final provision five | 242 |
| Final provision six | 242 |
| Final provision ten | 242 |
| Final provision eleven | 242 |
| FINAL PROVISIONS OF ACT 6/2010 | 242 |
| Final provision one | 242 |

Securities Market Act 24/1988, 28 July (Amended by Acts 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-Act 5/2005, 11 March; 5/2005, 22 April; 19/2005, 14 November; 25/2005, 24 November; 12/2006, 16 May; 6/2007, 12 April; 47/2007, 19 December; 5/2009, 29 June; 11/2009, 26 October; Royal Decree Act 6/2010, 9 April; Act 12/2010, 30 June; Royal Decree 1/2010, 2 July; Act 2/2011, 4 March; 6/2011, 11 April; 15/2011, 16 June; 21/2011, 26 July; 25/2011, 1 August; 32/2011, 4 October; Royal Decree-Act 10/2012, 23 March; 17/2012, 4 May; Act 1/2012, 22 June and Royal Decree-Act 20/2012, 12 July).

"This text provided by the CNMV is an unofficial translated English version."

Consolidated Text of the Spanish Securities Market Act

| | |
|--|-----|
| Final provision two | 242 |
| FINAL PROVISIONS OF ACT 12/2010 | 243 |
| Final provision one | 243 |
| Final provision two | 243 |
| Final provision three | 243 |
| Final provision four | 243 |
| Final provision five | 243 |
| FINAL PROVISIONS OF LEGISLATIVE ROYAL DECREE 1/2010 | 244 |
| Final provision one | 244 |
| Final provision two | 244 |
| FINAL PROVISIONS OF ACT 2/2011 | 244 |
| Final provision one | 244 |
| Final provision three | 245 |
| Final provision five | 245 |
| Final provision six | 245 |
| Final provision seven | 245 |
| Final provision eight | 246 |
| Final provision nine | 246 |
| Final provision ten | 246 |
| Final provision eleven | 246 |
| FINAL PROVISIONS OF ACT 6/2011 | 247 |
| Final provision one | 247 |
| Final provision two | 247 |
| Final provision three | 247 |
| FINAL PROVISIONS OF ACT 15/2011 | 248 |
| FINAL PROVISIONS OF ACT 21/2011 | 248 |
| Final provision one | 248 |
| Final provision two | 248 |
| Final provision three | 248 |
| Final provision four | 249 |

Securities Market Act 24/1988, 28 July (Amended by Acts 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-Act 5/2005, 11 March; 5/2005, 22 April; 19/2005, 14 November; 25/2005, 24 November; 12/2006, 16 May; 6/2007, 12 April; 47/2007, 19 December; 5/2009, 29 June; 11/2009, 26 October; Royal Decree Act 6/2010, 9 April; Act 12/2010, 30 June; Royal Decree 1/2010, 2 July; Act 2/2011, 4 March; 6/2011, 11 April; 15/2011, 16 June; 21/2011, 26 July; 25/2011, 1 August; 32/2011, 4 October; Royal Decree-Act 10/2012, 23 March; 17/2012, 4 May; Act 1/2012, 22 June and Royal Decree-Act 20/2012, 12 July).

"This text provided by the CNMV is an unofficial translated English version."

Consolidated Text of the Spanish Securities Market Act

| | |
|---|-----|
| Final provision six | 249 |
| Final provision eleven | 249 |
| FINAL PROVISIONS OF ACT 25/2011 | 250 |
| Final provision one | 250 |
| Final provision two | 250 |
| Final provision three | 251 |
| FINAL PROVISIONS OF ACT 32/2011 | 251 |
| Final provision one | 251 |
| Final provision two | 251 |
| Final provision four | 252 |
| Final provision five | 252 |
| Final provision six | 252 |
| FINAL PROVISIONS OF ROYAL DECREE-ACT 10/2012 | 252 |
| Final provision three | 252 |
| FINAL PROVISIONS OF ROYAL DECREE-ACT 17/2012 | 252 |
| Final provision one | 252 |
| Final provision two | 253 |
| FINAL PROVISIONS OF ACT 1/2012 | 253 |
| Final provision one | 253 |
| Final provision three | 253 |
| <u>Analysis of the Securities Market Act</u> | 254 |
| Previous references | 254 |
| Notes | 257 |
| Matters dealt with | 257 |

Securities Market Act 24/1988, 28 July (Amended by Acts 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-Act 5/2005, 11 March; 5/2005, 22 April; 19/2005, 14 November; 25/2005, 24 November; 12/2006, 16 May; 6/2007, 12 April; 47/2007, 19 December; 5/2009, 29 June; 11/2009, 26 October; Royal Decree Act 6/2010, 9 April; Act 12/2010, 30 June; Royal Decree 1/2010, 2 July; Act 2/2011, 4 March; 6/2011, 11 April; 15/2011, 16 June; 21/2011, 26 July; 25/2011, 1 August; 32/2011, 4 October; Royal Decree-Act 10/2012, 23 March; 17/2012, 4 May; Act 1/2012, 22 June and Royal Decree-Act 20/2012, 12 July).

"This text provided by the CNMV is an unofficial translated English version."

PREAMBLE TO ACT 24/1988

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 the numerous and varied problems associated with the current regulation of Spain's securities markets. However, it also aims to lend an 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 secondary legislation. This approach is the result of coordinating two opposing requirements: a) the need to avoid fixing within the framework of an 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 intensely 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 law 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 "marketable 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 "security certificates" (*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 certificates. The separation of the concept of marketable 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 fact that the economic terms of the transfer take precedence over the individual characteristics of the parties. 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 it does not include representatives of brokers subject to surveillance; nonetheless, the latter can make their positions known through an Advisory Committee (*Comité Consultivo*) created for this purpose. 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, proper price discovery in the markets, and the protection of investors, by promoting disclosure of the 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 standards 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 be 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 Market in Public Debt 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 Market in Public Debt 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 certificates.

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 public attesting officials in the subscription for and trading of securities has been eliminated, although this evidently does not entail the disappearance of voluntary recourse to a public attesting official. Instead, 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 are integrated within the market and also to guarantee the adequate supervision 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 transactions agreed outside the market. In addition to this principle, intermediaries 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 have liability in 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 certain percentages to be established by secondary legislation.

8. Basic to the organisation 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 such 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 Management Companies (*Sociedades Rectoras de las Bolsas de Valores*) in order to allow for members joining or leaving them; the fact that the Articles (*estatutos*) of such Stock Exchange Management Companies are subject to official approval; the provision that these Articles 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 company of stock exchanges (*Sociedad de Bolsas*) made up of the Stock Exchange Management 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 entities 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 centres by those Autonomous Communities (*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 organisation 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 Communities.

10. The Market in Public Debt 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 will 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 Market in Public Debt 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 mixed 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 tender offers 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 in other countries, 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 implementing regulations. 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 Management 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 govern 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 breach with the traditional practices of the Spanish financial system, official credit institutions, banks, savings banks, 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 Chartered 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 into which their activity in the securities markets would be concentrated. The Act considers that it is premature to impose compulsory specialisation 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 standards of conduct, 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 privileged 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 penalties, similar to that provided in the Discipline and Control 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 system of surveillance, supervision and penalties, 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 entities 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 penalized in accordance with the provisions contained in this Act, adapted to the procedure for penalisation provided in the Discipline and Control 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 that 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 to supervise the markets would be of 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 Chartered 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 that 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 Corporations 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 incorporate as a Broker-dealer or Broker which is a member of a Stock Exchange may become members individually or, alternatively, choose to practice as Chartered 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 of 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 will 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 liberalisation.

PREAMBLE TO ACT 37/1998

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, 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 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 one of the keystones 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 firm", within the scope of authorisation granted by the State where it has its corporate domicile, may offer investment services and complementary activities 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 is 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 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 the distribution of powers between the Spanish government and the Autonomous Communities to the content of the ruling of 16 July 1997.

The initial article of the Reform Act introduces several changes to Title I 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 marketable securities, all financial instruments are now subject to the discipline applicable to marketable securities, in order to adapt to 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 marketable 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 the parties governed by the Act 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 Communities 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 an 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 operating 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 any or all 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 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 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 Spanish situation, 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 management company. For this reason, some amendments have been made to the rules regarding the acquisition of holdings in these management companies.

Several highly significant new elements have been introduced in the Market in Public Debt 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 Communities.

The working of the market is structured in two distinct areas: registry, 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 redefines 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 firms and credit institutions as defined in the Investment Services Directive. Previously, investment firms were defined by their financial entity status and by offering professional investment services to third parties.

In accordance with the Directive, the activity status of investment firms is categorised with regard to the investment services and complementary activities 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 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 firms, authorising the National Securities Market Commission to act as guarantor for the system.

Credit institutions are considered equivalent to investment 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 entities and enabling other persons or entities which do not have investment 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 taking up the business" completes the administrative regime governing investment 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 Investment Guarantee Fund, etc.).

Chapter III contains separate regulations on "Conditions for pursuit" for authorising investment firms. Significant stakes are also included within the administrative intervention regime. Such significant stakes are subject to exhaustive control by the National Securities Market Commission in order to ensure correct management of investment 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 extension of investment 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 firms; provides for revocation of authorisation; and, most importantly, envisages the possibility of total or partial suspension of an investment 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 "Investment Guarantee Fund" (*Fondo de Garantía de Inversiones*). As cited 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 Guarantee Funds for credit institutions, it compensates investors in the event of insolvency or bankruptcy of investment 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 penalties 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 are increased. Secondly, new features have been added to the categories of institutional investment, namely "Funds of Funds" and "Master and Feeder Funds", which are both specific types of investment within the category of securities investment companies and funds, since they are a new subclass thereof, 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 Investment Guarantee Funds.

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 Spanish Corporations 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 corporate 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 equity 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 source 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.a) and 149.1.11.a) of the Spanish constitution.

PREAMBLE TO ACT 44/2002

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. (official secondary market in private sector fixed-income securities). Additionally, pursuant to article 54 of the Spanish Securities Market Act, the Autonomous Communities 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 will 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* – Systems Company) through the merger of SCLV and CADE. The 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 management 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 fitness and propriety 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 organised trading systems has also been introduced, which refers, among other aspects, to the authorisation regime, the obligation to create governing companies in the form of corporations (*sociedad anónima*) and the supervision and penalty 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 mortgage 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 especially 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 mortgage 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 firm) and the content of the contract (it must include the mechanism for calculating the net outstanding balance) to ensure that the guarantees are only executed 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 entities (generally credit institutions) to increase the proportion of their mortgage portfolios which they can assign to asset securitisation funds under the heading of mortgage participations (*participación hipotecaria*) which, in this case, will be issued and marketed as a "mortgage participation 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 transactions by venture capital entities 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 Directorate-General of Insurance and Pension Funds (*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 firms and insurance entities 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 Ombudsperson (*Defensor del Cliente*), who must be an independent entity or professional, to attend to and resolve claims which fall within the scope of his/her established duties. The financial institution will 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 Ombudsperson.

The extended powers given to the supervisory bodies with a view to protecting financial services clients include the extension of penalties to cover deficiencies in administration and internal control at credit institutions, investment firms and insurance entities, 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 price-sensitive information and privileged 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 privileged information has been extended to instruments other than marketable securities while the concept of price-sensitive 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 entities which offer services in the securities market to prevent leaks of information between departments within the entity or between 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 price discovery 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 business and professional integrity of directors, general managers and similar posts at investment firms to authorised signatories with general powers of representation. The Act also updates the regime of penalties applicable to credit institutions, investment firms and insurance entities, 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 entities 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 26/2003

In the scope of the European Union, the European Commission is drawing up an action plan on company law based on the Winter Group Report on a Modern Regulatory Framework for Company Law in Europe, which was presented in November 2002, and, in response to a mandate from the Economic and Financial Affairs Council (ECOFIN) in Oviedo, addresses significant aspects of the reform of corporate governance arising as a result of recent events. The member states have adopted these legislative measures in a number of areas in order to instil confidence in the markets and have commissioned reports on drawing up codes of good governance or on reforming existing codes. Germany approved the Cromme Report last year; France and Italy revised their codes and, earlier this year, the Higgs and Smith reports together proposed a set of amendments to the UK code that is based on the 1992 Cadbury report.

Spain has also been active in this regard. Act 44/2002, of 22 November, on Measures to Reform the Financial System, regulates an audit committee for companies issuing shares or bonds that are listed in the securities markets (article 47); the mechanisms for ensuring effective auditor independence have been strengthened (article 51) and the Securities Market Act has been adapted to the Market Abuse Directive by establishing stringent rules for the disclosure of price-sensitive information to the market (articles 37 *et seq.*).

Also, considering the new globalised economic framework, particularly the interrelations between financial markets, the Spanish economy's growing degree of internationalisation, the levels of harmonisation resulting from the single European market, the new structural situation, and certain dysfunctions revealed recently in other foreign markets, it was considered necessary to encourage a detailed reflection on the impact which these factors have on the financial markets.

For these reasons, a motion passed by the Spanish Parliament on 16 April 2002 promoted the creation of a special commission of experts tasked with analysing the problems created by the aforementioned circumstances for companies that issue listed securities and financial instruments, the relationship between such companies and the consultants, financial problems and other companies and persons that provide professional services to them in the area of financial activity, and the interrelations between the foregoing parties, all in the interests of increasing transparency on the part of listed companies and providing shareholders with more stability and security. The special commission was also urged to analyse the current validity and degree of adoption of the corporate governance code in connection with listed companies.

Consequently, by a Cabinet Decision dated 19 July 2002, a Special Commission for Fostering Transparency and Security in the Markets and Listed Companies was created with the commission to draw up a report; that report was published on 8 January 2003 and represented progress along the line established previously by the Special Commission for Studying a Code of Ethics for Companies' Boards of Directors. The Commission considered that the principle of transparency was vital to proper functioning of the financial markets, which means that all information of relevance to investors must be conveyed to the market, that the information conveyed must be correct and truthful, and that it must be conveyed symmetrically and equitably and within a useful time-scale. The Commission stated that transparency obligations are complementary to self-regulation, which it also recommended and which ultimately enables many issues to be left to private regulation. Consequently, although the set of measures which it proposed were posited as recommendations particularly for the companies themselves, in the sphere of self-regulation, the report highlighted the advisability of having a regulatory framework to foster transparency with rules whose

fulfilment did not depend solely on the will of the companies to which they are addressed, namely listed companies.

On the basis of the aforementioned report, the recommendations which can best be incorporated into a regulation have been legislated, such as:

- a) The duties of reporting and transparency.
- b) The definition and rules governing the duties of directors, particularly in the event of conflict of interest.
- c) The obligation to establish a set of corporate governance mechanisms including regulations of the board of directors and of the shareholders' meeting.

Therefore, the goal is to establish rules to foster transparency in company management, while respecting the aforementioned principle of self-regulation.

Accordingly, the matters referred to above are now given legislative support in the form of an Act.

The legislative reform is being implemented specifically through an amendment of certain provisions of the consolidated text of the Spanish Corporations Act, approved by Legislative Royal Decree 1564/1989, dated 22 December, where the precepts are applicable generally to all corporations, and also through the introduction of a new title on listed companies into Act 24/1998, of 28 July, on the Securities Market.

Finally, as a result of the obligations imposed on listed companies in the area of reporting and publication, the breach of such obligations is expressly established as an infraction, without prejudice to the fact that oversight of compliance and application by listed companies of the legislative measures introduced by this proposal will correspond to the National Securities Market Commission, in accordance with the powers attributed to it by the Securities Market Act, with the result that any breach of such obligations will be pursued under the system of breaches and penalties established in the Securities Market.

PREAMBLE TO ACT 12/2006

(...)

IV

This Act amends Act 24/1988, of 28 July, on the Securities Market.

On the one hand, article 6.9 of Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation, and articles 7 to 11 of Commission Directive 2004/72/EC of 29 April 2004, are transposed. To this end, a new article is introduced into the Securities Market Act which obliges certain parties to notify the National Securities Market Commission of any transactions which are suspect of being based on inside information or which seek to distort free price discovery.

Moreover, the regulation governing *Bolsas y Mercados Españoles, Sociedad Holding de Mercados y Sistemas Financieros, S.A.* and any other entity that might find itself in the same situation as the latter at any future time, has been completed to provide greater operational flexibility.

Finally, the rules governing significant stakes in the companies that manage the Spanish securities registry, clearing and settlement systems and the secondary markets have been clarified and standardized.

PREAMBLE TO ACT 6/2007

I

This Act is intended to amend Act 24/1988, of 28 July, on the Securities Market, so as to partly incorporate two European Directives into Spanish law. They are Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids (the Takeover Directive) and Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC (the Transparency Directive).

Both Directives form part of the Financial Services Action Plan approved by the European Commission in 1999 in order to promote the construction of a single financial market for the European Union. The former seeks to foster a market in corporate control that is not only efficient but also protects the rights of minority shareholders in listed companies. The latter seeks to provide greater transparency in financial markets through regulations that improve the information to be disclosed to the markets by issuers of listed securities. The transposition of the two Directives will be completed with the approval of secondary legislation under this amendment by virtue of the delegation to the government by the legislature in the framework of this Act.

II

The Takeover Directive is the result of a long and complex drafting process which took close to fifteen years. The Directive establishes the minimum common framework for regulating takeover bids for companies which are at least partly listed in a regulated market. The Directive seeks to “protect the interests of holders of the securities of companies ... when those companies are the subject of takeover bids or of changes of control”. To that end, the Directive includes a number of principles that must be respected in transposition: all shareholders must be afforded equivalent treatment and must have sufficient time and information to make a decision on the bid; the board of an offeree company must act in the interests of the company as a whole; false markets must not be created in the securities of the offeree company, of the offeror company or of any other company concerned by the bid; an offeror must announce a bid only after ensuring that he/she can fulfil in full the consideration that is offered; an offeree company must not be hindered in the conduct of its affairs for longer than is reasonable.

In addition to the need to transpose the Directive, this Act seeks to amend some aspects of the current regulations to ensure that takeover bids are conducted within a comprehensive legal framework and with total legal certainty.

III

The Transparency Directive responds to the securities market's need for abundant truthful information in order to operate properly. This Directive, together with the community measures adopted in connection with the International Accounting Standards, and the rules on market abuse

and prospectuses for public offerings or listings of securities, constitute the harmonized European framework on disclosure by issuers of securities.

Specifically, the Directives focuses on two fundamental aspects: periodic reporting (annual, half-yearly and quarterly) and the disclosure of the significant holdings in the capital of listed companies. Certain rules are also provided with regard to the information that issuers must provide to their shareholders and bondholders, principally in connection with shareholders' meetings and bondholders' meetings. This Directive represents the minimum requirements and member states are allowed to impose stricter conditions on issuers for which they are the home state.

IV

The amendments to the Securities Market Act are ordered not by subject matter but in the order of the articles which are amended. Article 1 amends article 34 of the Securities Market Act in order to make improvements to the system for trading halts. Listed companies seeking to delist must generally, with very limited exceptions, make a takeover bid aimed at all the shares that it is intended to delist.

Article 2 amends article 35 of the Securities Market Act and introduces the rules on periodic disclosures, i.e. annual, half-yearly and quarterly reports that issuers must draft, publish and disseminate, and file with the National Securities Market Commission (CNMV).

Article 3 introduces a new article 35.bis into the Securities Market Act to cover issuers' other disclosure obligations, such as the obligation to disclose any change in the rights inherent to the securities, to facilitate the exercise of their rights by shareholders and bondholders, and to notify the National Securities Market Commission of any plans to amend the Articles of Association.

Article 4 introduces a new article 35.ter of the Securities Market Act on issuers' responsibility for drawing up and publishing certain regulated information. On this matter, the acts follow the model used for transposing the Prospectuses Directive (2003/71/EC, of 4 November) regarding the liability for drafting and publishing prospectuses for public offerings of securities or listings of securities in a regulated market, as expressed in article 28 of the Securities Market Act, following the amendment introduced by Royal Decree-Act 5/2005, of 11 March, on urgent reforms to promote productivity and improve public procurement.

Article 5 amends article 53 of the Securities Market Act to include rules governing notification to the issuer and the National Securities Market Commission of the acquisition or loss of a significant stake in an issuer's voting stock or of financial instruments giving entitlement to acquire such securities.

Article 6 completes this regime by establishing, in a new article 53.bis, the obligation for issuers to notify the National Securities Market Commission of transactions with own shares and to disseminate the information publicly.

Article 7 introduces a new article 53.ter into the Securities Market Act. It enables the National Securities Market Commission to adopt preventive measures with regard to issuers and other bound parties subject to supervision by authorities in other Member States. This is a provision that is common to all the Directives in the area of financial services (Market Abuse, Prospectuses, MiFID).

Article 8 expands the contents of Chapter V of Title IV of the Securities Market Act to cover cases where a takeover bid for 100% of the company is mandatory; obligations of the Board of Directors

of a company which is the target of a takeover bid; the possibility of adopting anti-takeover measures; optional neutralisation measures, and squeeze-outs and sell-outs.

Article 9 adapts the rules on publication and dissemination of price-sensitive information contained in article 82 of the Securities Market Act to the provisions of the Transparency Directive. Article 10 empowers the National Securities Market Commission, as set out in the Directives, to demand from an issuer's auditors such information as it may need to discharge its supervisory duties and to demand that issuers publish supplements or corrections to their periodical disclosures. To this end, a new section 1.bis is introduced into article 85 of the Securities Market Act. Article 11 reorganizes the list of the National Securities Market Commission's public records contained in article 92 of the Act, clearly establishing the register of regulated information as the central storage mechanism for such information that is required by the Directive.

Articles 12 and 13 amend articles 99 and 100, respectively, of the Securities Market Act to introduce the precise categories of serious and very serious penalties for breaches of the obligations under the Act.

Finally, article 14 introduces a new article 116.bis into Act 24/1998, of 28 July, to include additional information that listed companies must publish in their directors' report.

The Act also contains additional and transitory provisions to provide for a smooth transition between the old and new rules governing takeover bids and transparency.

PREAMBLE TO ACT 47/2007

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, 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, as well as Directive 2006/49/EC of the European Parliament and of 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 professionalization coupled with a sharp increase in the number of small investors entering the financial markets). Both the products and the investors 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 has 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 price discovery on a pan-Community basis.

Clearing 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 rules of conduct 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 redrafted into line with the new powers of the National Securities Market Commission in the area of supervision and inspection and the functions of cooperation and information exchange with the supervisors of other Member States as a result of the transposition of Directive 2004/39/EC; to reflect the new rules on supervising investment firms as established in Directive 2006/49/EC and to adapt the system of penalties to the amendments made throughout the law and to update the penalties themselves.

VI

A new Title XI has been added to regulate 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 equivalent 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 transitory provisions by giving investment firms six months from the entry into force of the amendments to adapt their Articles of Association, programmes of activities and internal codes of conduct. 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.

PREAMBLE TO ACT 5/2009

The need to guarantee stability for financial institutions so as to defend normal market working and protect the users of financial services generally justifies all the regulations on finance. Part of the financial regulations, introduced in the 1990s, are the rules on significant holdings. These rules address the prior vetting of the acquisition of holdings that may represent a significant influence on financial institutions. In short, the approach involves prior administrative oversight to ascertain, for prudential purposes, the identity, fitness and propriety, and solvency of the institutions' principal shareholders. In practice, this involves extending the work of supervision over the authorisation of institutions to cover any subsequent change in their ownership structure that may affect the fitness and propriety of the owners.

The transnational nature of the financial markets has meant that this issue has long been regulated at Community level. In fact, the regulations currently in force on significant holdings, contained in Act 24/1998, of 28 July, on the Securities Markets, Act 26/1988, of 29 July, on the discipline and intervention of credit institutions and the Consolidated Text of the Act on Regulation and Supervision of private insurance, approved by Legislative Royal Decree 6/2004, of 29 October, arose from the transposition of a number of EU Directives (Council Directive 93/22/EEC of 10 May 1993

on investment services in the securities field, Second Directive 89/646 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, Council Directive 92/49/EEC of 18 June 1992 on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance, Directive 2002/83/EC concerning life assurance, and Directive 2005/68/EC on reinsurance).

More than 15 years after the first Community regulation was passed, the approach has been found to be both opportune and efficacious, but it is also necessary to implement a number of reforms that may enhance its effectiveness in practice. In this context, Directive 2007/44/EC of the European Parliament and of the Council of 5 September 2007 amending Council Directive 92/49/EEC, and Directives 2002/83/EC, 2004/39/EC, 2005/68/EC and 2006/48/EC as regards procedural rules and evaluation criteria for the prudential assessment of acquisitions and increases of holdings in the financial sector was passed. That directive amended the 5 directives that regulate, respectively, life insurance and nonlife insurance, markets in financial instruments, reinsurance, and the taking up of the business of credit institutions, with the objective of reforming the rules on significant holdings in a uniform way.

The primary purpose of Directive 2007/44/EC is to clarify the criteria and procedures for evaluating significant holdings in order to provide the necessary legal certainty and clarity. Consequently, its principal contributions are in three areas. Firstly, a new, clearer evaluation procedure has been designed with tighter and more transparent deadlines for each phase of the evaluation procedure. Secondly, the strictly prudential criteria which the financial supervisors may use as a basis for opposing a proposed acquisition are set out exhaustively. Thirdly, cooperation between the acquirer's and acquiree's supervisors during the prudential evaluation period is greatly enhanced.

In line with the provisions of the Directive, this Act seeks to increase the clarity and efficacy of the rules on significant holdings, by enhancing the legal certainty and predictability of the entire evaluation process. In short, the Act simply transposes Directive 2007/44/EC for the three financial sectors that are involved: credit institutions, investment firms, and insurers and reinsurers. Nevertheless, it is a partial transposition since the more technical aspects are left to future secondary legislation.

Moreover, apart from incorporating EU regulations into Spanish law, the final part of the Act addresses specific amendments to Act 26/2006, of 17 July, on private insurance and reinsurance brokerage, to replace the current system of prior authorisation of close links and the rules on significant holdings with a system of non-opposition, so that if the Directorate-General of Insurance and Pension Funds does not oppose a proposed transaction, then it can take place.

The Act comprises three articles, two additional provisions, one repealing provision, and nine final provisions.

The three articles refer, respectively, to the necessary amendments to incorporate the provisions of Directive 2007/44/EC into the rules on significant holdings contained in Act 24/1988, of 28 July, on the Securities Market, Act 26/1988, of 29 July, on the discipline and intervention of credit institutions, and the Consolidated Text of the Act on Regulation and Supervision of private insurance. This Act introduces into those three Acts, with the necessary adjustments in each case, the same reformed rules on significant holdings, whose principal features are described below.

The concept of significant holding in Spanish law hinges on two approaches. The qualitative approach identifies a significant holding with the possibility of exerting a significant influence on the acquiree. The quantitative approach determines a percentage of capital or voting rights whose possession is deemed objectively to grant a holding of this type. The latter criterion has been

changed by the amendments to article 69.1 of Act 24/1988, article 56.1 of Act 26/1988, and article 22 of the Consolidated Text of the Act on Regulation and Supervision of private insurance. As a result of those amendments, a significant holding is deemed to exist when a party holds at least 10 per cent of the capital or voting rights of an entity; the pre-existing threshold of 5 per cent has been eliminated by order of the EU.

Additionally, a new obligation is created to notify the supervisor of holdings which, though not significant, entail attaining or exceeding the threshold of 5 per cent of capital or voting rights (new article 69.3 of Act 24/1988, new article 57.1 of Act 26/1988, and article 22.bis.1 of the Consolidated Text of the Act on Regulation and Supervision of private insurance). This new requirement does not trigger the evaluation procedure but does inform the supervisor of the existence of holdings of this type.

Another consequence of including the provisions of Directive 2007/44/EC is the simplification of the various thresholds triggering disclosure in the event of increases or decreases in significant holdings: 20, 30 and 50 per cent, instead of the previous 10, 15, 20, 25, 33, 40, 50, 66 and 75 per cent.

The amendments also add the list of strictly prudential requirements that the Bank of Spain, the National Securities Market Commission and the Directorate-General of Insurance and Pension Funds must consider when evaluating the fitness of a potential acquirer that has decided either to acquire a significant holding or to add to its holding such as to exceed one of the aforementioned thresholds. Only on the basis of those criteria, or in the cases where the information filed by the acquirer is incomplete, may the supervisors block an acquisition of, or increase in, a significant stake. The criteria, which were introduced in the new articles 69.5 of Act 24/1988, 58.1 of Act 26/1988, and 22.ter.1 of the Consolidated Text of the Act on Regulation and Supervision of private insurance, refer to the acquirer's fitness and solvency, the fitness of the entity's future directors, the entity's ability to fulfil the regulatory requirements that may apply to it, and the absence of rational signs that it may engage in money laundering or terrorist financing. To obtain an appropriate evaluation of the latter aspect, there is a new requirement that a report be requested from the Executive Service of the Commission for Preventing Money Laundering and Monetary Violations.

Regarding the design of the evaluation procedure, the new wording of Act 24/1988, Act 26/1988 and the Consolidated Text of the Act on Regulation and Supervision of private insurance, pending secondary legislation, defines clearer and more transparent deadlines for each of the phases. Firstly, the total maximum period in which supervisors must complete their evaluation and notify whether or not they oppose the transaction is established as 60 business days, and the system of tacit approval is maintained. Moreover, a system has been designed for requesting additional information under which, to avoid groundless delays, the aforementioned period may only be halted once. Once the procedure has concluded, the supervisor now has the possibility to publish, at the request of the potential acquirer or at its own initiative, the reasons for its decision (i.e. whether or not to oppose the acquisition) provided that the information so revealed does not affect third parties unrelated to the transaction.

Finally, cooperation between the supervisor of the acquirer and that of acquiree is greatly strengthened. This is the case both inside Spain, through cooperation between the Bank of Spain, the National Securities Market Commission and the Directorate-General of Insurance and Pension Funds, and between supervisors in different member states of the European Union. The main goal is to ensure that the competent authorities work in close cooperation when verifying the fitness of a potential acquirer that is authorized in another member state or, within Spain, regulated in another area of activity.

The final part of the Act includes two additional provisions regarding measures in connection with airports and on the review of the EU system of emission rights trading, a general repealing provision, and 9 final provisions that amend the Private Insurance and Reinsurance Brokerage Act, the Collective Investment Institutions Act, the Corporations Act, the Act Governing Real Estate Investment Companies and Funds and Mortgage Securitisation Funds, Royal Decree-Act 18/1982 on Deposit Guarantee Funds for Savings Banks and Credit Cooperatives, the section on competency, and empowerment of the Government to implement secondary legislation, incorporates EU legislation and bring the Act into force.

PREAMBLE TO ACT 11/2009

I

The search for constant improvements in citizens' welfare requires that new systems of investment be promoted that respond appropriately to the markets' constant needs with the goal of maintaining their dynamism and minimizing the negative impact of economic cycles so as to favour our country's ongoing economic integration into a globalised setting. The real estate market is one of the most developed and mature markets in the Western economies, and it demands with greater intensity measures that, as far as possible, provide liquidity for real estate investments since this is a market which accounts for around 10% of the gross domestic product of the advanced economies, and close to 16% in Spain.

This Act seeks to establish the necessary legal framework for real estate investment companies, *Sociedades Cotizadas de Inversión en el Mercado Inmobiliario* (SOCIMI), which are configured as a new instrument for investment in the real estate market, more specifically the rental market. SOCIMI are companies whose primary activity is investment, directly or indirectly, in urban real estate assets for rental, which may include homes, commercial premises, retirement homes, hotels, parking garages and offices. In order to allow for indirect investment, SOCIMI are allowed to own holdings in other SOCIMI or in entities that fulfil the same requirements as to investment and distribution of earnings as apply to SOCIMI, whether resident in Spanish territory or otherwise, both listed and unlisted.

The creation of this new type of mercantile company makes it necessary to establish certain requirements with regard to the investment of their equity, the returns which that investment produces and the obligation to distribute earnings, compliance with which makes these companies eligible for a special tax regime. Therefore, the combination of a specific substantive regime with a special tax regime pursues the basic objectives of continuing to promote the rental market in Spain, increasing its degree of professionalism, facilitating citizens' access to real estate, increasing the competitiveness of the Spanish securities markets, and dynamising the real estate market, providing investors with a stable return on their investment in the capital of these companies through the obligatory distribution of earnings to the shareholders.

II

The special tax regime for the SOCIMI is constructed on the basis of an 18% company tax rate subject to compliance with certain requirements. Notable among those requirements is that at least 80% of the assets must be carbon properties which are allocated for rental and are wholly owned or held through companies that meet the same requirements as to investment and earnings distribution, whether Spanish or foreign, listed or otherwise. Likewise, the real estate market must

be the principal source of revenues for these companies, whether in the form of rent, subsequent sale of properties upon completion of a minimum period of rental, or earnings from holdings in companies with similar characteristics. Nevertheless, the tax accrues in proportion to the distribution of dividends by the company. Dividends collected by shareholders are exempt, unless the recipient is a legal person subject to company tax or a permanent establishment of a foreign entity, in which case a tax credit is provided so that such income is taxed at the shareholder's tax rate. Income is not taxed unless distributed to the shareholders. This tax system has similar economic effects to those that exist for Real Estate Investment Trusts (REITS) in other countries, based on non-taxation at the company and effective taxation in the hands of the shareholder.

This system is designed preferentially for small and medium-sized investors to give them access to investment in real estate assets on a professional basis, with a diversified portfolio of assets and enjoying a minimum return from the outset since a very significant percentage of income must be distributed as dividends. Additionally, in order to guarantee liquidity for investor, these companies are required to be listed in regulated markets, this being an essential requirement to qualify for the special tax regime.

Finally, special rules are established for companies to enter and abandon this special system in order to ensure appropriate taxation of income that is generated on the disposal of properties that were owned by the company both in tax periods when it was taxed under the special regime and in others when it was taxed under another tax regime.

PREAMBLE TO ROYAL DECREE-ACT 6/2010

I

The goal of promoting economic growth in Spain and, consequently, creating employment, and of doing so on a sounder and more sustainable basis, requires at this time the adoption of a number of measures to strengthen the capacity of our productive industry and guarantee effective support for such growth from the public institutions.

In the framework of the Sustainable Economy Strategy, the Government has adopted a number of initiatives to reform the legal framework for economic activity in pursuit of that goal. In this context, and in the scenario of progressive withdrawal internationally of measures to stimulate aggregate demand, it is urgent to introduce now a number of additional measures which are necessary to regulate and orient the process of recovery from the outset.

On this understanding, and in accordance with the initiative proposed by the Prime Minister before Parliament on 17 February last, and based on the general willingness expressed by various Parliamentary groups, on 1 March last, the Government commenced a round of negotiations aimed at the adoption, through open and constructive dialogue, of new measures to promote a recovery and to do so with a political consensus that, in itself, contributes very intensely to enhancing confidence in Spain's capacity to overcome the problems deriving from the economic crisis.

Without prejudice to the processes of dialogue and negotiation under way in specific forums with regard to the Social Dialogue, the Toledo Pact and budgetary stability, as well as future agreements during legislative processing of parliamentary initiatives in this same line, particularly the Sustainable Economy Act, the aforementioned negotiations revealed, following a number of meetings and on the basis of the various proposals submitted by the Government and the political groups with parliamentary representation, sufficient consensus on a range of initiatives to promote economic recovery and employment.

As a result of this basic agreement, the Cabinet immediately adopted the measures that arose in that round of negotiations, in the form of decisions, regulations and legislative initiatives, in order that they might impact the process of economic recovery as soon as possible. This Royal Decree-Act contains the measures from among the foregoing which are not only urgent but must also necessarily be given the rank of law.

Based on the aforementioned purpose, the Royal Decree-Act addresses reforms in a number of areas which are particularly relevant at this time because of their impact on Spain's productive structure, their specific importance within that structure or their importance in the present context of stabilisation and recovery.

(...)

Chapter IV contains measures designed to cushion the negative impact of the economic crisis on the citizens who are most vulnerable, particularly those with dependants. In this context, it is both necessary and urgent to raise the threshold of attachable earnings for these citizens, confined to the situation where the price obtained for the mortgaged family dwelling is insufficient to cover the mortgage debt, and tax reform to promote services related to long-term care, which supports growth and job creation in this sector.

(...)

V

Chapter IV includes measures for the protection of citizens and consumers.

(...)

Finally, article 18 amends Act 24/1988, on the Securities Market, to require the participation of an entity authorized to provide investment services in certain offerings of securities to the general public that do not require a prospectus and use any form of publicity for this purpose, the goal being to provide appropriate channels for investor protection.

(...)

PREAMBLE TO LEGISLATIVE ROYAL DECREE 1/2010

I

This legislative royal degree fulfils the provisions of the seventh final provision of Act 3/2009, of 3 April, on structural modifications to mercantile companies, which empowered the Government to consolidate, within one year, the legal texts enumerated in that provision into a single text called the "Capital Companies Act". In this way, the traditional separation of the regulations governing different corporate forms would be replaced under that generic heading, which would be defined by the new Act.

The separation of corporations (*sociedad anónima*) and limited liability companies (*sociedad de responsabilidad limitada*) into two special acts was the result not so much of the process of decoding as of the fact that the extent of the regulations prevented these legal regimes from being included under the 1885 Commerce Code, which devoted only a few articles to corporations and made no mention of limited liability companies since they had not come into being when it was drafted. Consequently, the acts of 1951 (a model of technical perfection for its time) and 1953 were promulgated as independent legal texts, and this situation persisted as a feature of Spanish

company law. Instead of providing a single act, progress in the regulation of capital companies was expressed in two separate texts.

This duality, even plurality, of "containers"—e.g. when Act 19/1989, of 25 July, decided that the new regulation for limited partnerships by shares (*sociedad comanditaria por acciones*) should be incorporated into the Code, and when Act 26/2003, of 17 July, introduced a new title, Title X, into the Securities Market Act to deal with listed corporations—would not have been excessively problematic if the "content" had been coordinated sufficiently. Although the legislators sought such coordination, either by repeating the same regulations (imperfectly) or by reference, the result was not always fully satisfactory. Moreover, following the major reforms instituted at the end of the last century—the aforementioned Act 19/1989, of 25 July, and Act 2/1995, of 23 March—there were mismatches, imperfections and lacunae with respect to which jurisprudence and case law provided diverging solutions that were insufficiently justified.

Hence, the Parliament considered it necessary to commission the Government to draw up a consolidated text of the regulations governing capital companies, so as to combine in a single text the content of those two special acts and, importantly, the part of the Securities Market Act that regulates the purely corporate aspects of corporations with securities listed on an official secondary market, plus the articles of the Mercantile Code dealing with partnerships limited by shares, a derivative corporate form that is scarcely used in practice. A single legal text should contain all the general regulations governing capital companies, the only exception being that arising from the Act on structural modifications (in which the empowerment was promulgated), whose content, referring to all manner of mercantile companies, including "companies of persons", was so disparate as not to be susceptible to consolidation. This is a task of extraordinary importance since the vast majority of companies established and operating in Spain are either corporations or limited liability companies; nevertheless, it is not a trivial one.

II

The Parliament established the method and the limits of the commission to the executive: that single legal text must be the result of regularising, clarifying and harmonising the multiple legal texts referred to above. Therefore, the consolidation cannot confine itself to merely juxtaposing articles; rather, a complex process must be performed in pursuit of that triple objective on which the legal decision is based, for reasons of general interest. When drawing up the consolidated text, the Government did not confine itself to reproducing the legal texts being consolidated; rather, it was required to perform a delicate task of drafting to fulfil its commission.

To regularise means to adjust or put in order. In pursuit of regularisation, the system was modified on occasion, while an attempt was also made to reduce the imperfections in the existing texts. Naturally, the consolidated text contains the entire content of the texts from which it was produced. The parts that experience has shown to be obsolete were not removed; solutions adopted by the law that have proven to be of doubtful efficacy or excessively costly to implement have been maintained; and rules that promise a solution but have not yet been enshrined in law were not included. However, a consolidated text that was not regularised would be a betrayal of the commission from Parliament.

In addition to regularisation, the commission required that the law be clarified, i.e. that doubts regarding interpretation of the text be eliminated as far as possible by determining the exact scope of the regulation. On some (a few) occasions, that result was achieved purely from the systematics; more often, it was necessary to specify what the regulation said and eliminate anything that hampered comprehension, modify formulae that were unsuccessful and include elements that were

indispensable for comprehension. In this way, rather than reforming the legal texts, the meaning of the rules was specified and the overall text was perfected without the need for substitution.

In short, the mandate to harmonize made it necessary to eliminate divergences in the legal language, unify and update the terminology, and, above all, overcome discrepancies arising from the preceding legislative process. In this connection, the consolidated text extends or generalizes solutions originally established for a single form of capital company, thus avoiding not only the use of references but also the need to resort to reasoning in pursuit of the same goal. This harmonisation was particularly necessary in determining the power of the shareholders' meeting and, above all, the matter of dissolution and liquidation of capital companies since the out-dated provisions of chapter IX of the Corporations Act contrasted with the much more modern chapter X of the Limited Liability Companies Act, which was used as the basis for consolidation.

(...)

IV

Theoretically, the distinction between corporation (*sociedad anónima*) and limited liability company (*sociedad de responsabilidad limitada*) hinges on a duality: where the former are naturally open, the latter are essentially closed; where the former have a rigid system for defending capital stock, which must be retained and is, consequently, a guarantee for the company's creditors, the latter occasionally replace these defence mechanisms (often more formal than effective) with systems of liability, with the result that the regulation is more flexible. This is not the place to make projections about the future of capital as a technique of guarantees vis-à-vis third parties (an issue that can only be addressed appropriately in the supranational context of the European Union) but it is interesting to note that this contrast between open and closed companies is not absolute since, as reality shows, the vast majority of Spanish corporations (except, evidently, those that are listed) have clauses in their articles that limit the free transfer of shares. The underlying legal model does not match reality, and this fact was taken into account by the Spanish legislator and was duly considered when drafting the consolidated text. Therefore, in reality, there is an overlap of corporate forms in that a given set of needs—those specific to closed companies—can be addressed by two different corporate forms, conceived with different degrees of imperativeness, and it is not always easy to discern the point of this duality. Therefore, the question as to how the two main forms of capital company should interrelate in the future remains unanswered, as does the issue of whether a transition from one form to the other should fulfil the requirements established for the change of corporate form or whether more agile and simple techniques should be implemented to facilitate such a change. Rather than a rigid composition based on the chosen corporate form, the essential distinction should lie in whether a company is listed or not. The important role played by listed companies in the capital markets makes it necessary for the government to intervene in economic activity not only to protect investors but also to guarantee the stability, efficiency and good working of the financial markets.

Accordingly, it is necessary to take into consideration that the regulation of listed companies is systematized in this consolidated text, which addresses purely corporate issues, and also in Act 24/1988, of 28 July, on the securities market, which regulates the financial aspect of these companies, driven primarily by the principle of transparency to ensure proper market working and investor protection.

(...)

PREAMBLE TO ACT 2/2011

I

The international financial and economic crisis, the most serious one in many decades, has also had an intense effect on the Spanish economy, truncating the lengthy period of continuous growth that it had experienced in the preceding 15 years.

In Spain, the crisis had the unique effect of accelerating, with unusual sharpness, the adjustment in the construction sector that had commenced in 2007. As a result, and since construction is very labour-intensive, unemployment increased very considerably in a very short period of time.

In line with the approach adopted by the G 20 countries and the decisions of the European Union, the Spanish government firstly took a set of actions to strengthen the financial system and contain the sharp decline in activity, palliating its consequences in the economic and social dimensions. That set of actions was integrated into the Spanish Economy and Employment Stimulus Plan (Plan E), which represented a notable fiscal effort.

In parallel, the Executive drew up a Strategy for Recovery of the Spanish Economy which hinges on the conviction, reaffirmed by the impact of the crisis in Spain, that it is necessary to accelerate the renewal of the production model that commenced in 2004.

This new step towards modernizing the Spanish economy is in response to the challenge to reinforce the soundest and most stable components of our productive model. This should reduce our overdependence on a few cyclical sectors while maximizing the possibilities available due to growth of new activities offering greater stability, especially with regard to job creation and maintenance, which, for that very reason, require more qualified labour. Moreover, these are activities in which Spanish companies have invested heavily and in which they now occupy leading positions worldwide. That is the Sustainable Economy which this Act seeks to promote.

The Strategy for a Sustainable Economy, approved by the Cabinet in November 2009, sets out an ambitious and demanding program of reforms which furthers some of the strategic options adopted since the previous legislature, such as granting primacy to investment in research, development and integration, and promoting activities related to clean energy and energy-saving, and also in this legislature, within Plan E, such as the rigorous transposition of the Services Directive.

The Strategy includes a varied range of legislative, regulatory and administrative initiatives as well as the promotional reforms in specific areas of the Spanish economy such as the labour market and the Toledo Pact Commission. All these measures seek to foster new growth, that is balanced and lasting: i.e. sustainable. Sustainable in three senses of the word: economically, i.e. increasingly sounder, grounded in improved competitiveness, innovation and training; environmentally, in which rational management of natural resources represents an opportunity to create new businesses and new jobs; and socially, by promoting and guaranteeing equal opportunities and social cohesion.

This Sustainable Economy Act is one of the most important components of the Strategy since it addresses, transversely and with a structural scope, many of the changes with the rank of law that are required to accelerate the development of a more competitive, more innovative economy, one that is capable of both renewing the traditional industries and making a determined move into new activities that require stable quality jobs.

The Act is structured in a preliminary Title, which defines its object, the concept of sustainable economy, and the resulting principles of action for the public powers, and four Titles setting out

the reforms to promote the sustainability of the Spanish economy. The first of them focuses on improving the economic situation, i.e. the actions by the public sector which determine the context of economic development; (...)

(...)

III

Title I concentrates the reform of the public sector oriented towards assuring an efficient economic situation that supports the competitiveness of the Spanish economy. In coherence with that general goal, the Title adopts reforms that affect the actions of all the Public Administrations, exercising the central government's powers over the common administrative procedure and the general regulation of the economy.

(...)

Chapter III includes measures to reform the financial markets, in line with international agreements to enhance transparency and improve corporate governance, with the corresponding amendment of Act 24/1988, of 28 July, on the Securities Market, to require that listed companies provide shareholders with a report on remuneration that must be approved by the shareholders' meeting, and of Act 13/1985, of 25 May, on investment coefficients, own funds and disclosure obligations of financial intermediaries and other rules for the financial system, which will enable the Bank of Spain to require that credit institutions apply a remuneration policy that is coherent with prudent and effective risk management. As mechanisms for the protection of the users of financial services and in order to ensure responsible lending practices, credit institutions are required to assess borrowers' solvency and also to increase the information they provide about the financial and banking products which they offer.

Compliance with these measures aimed at enhancing the transparency of entities operating in the financial markets may entail the use of personal data. In addition to assuring compliance with data protection regulations through the intervention of the National Securities Market Commission and Bank of Spain, as necessary, in such publication, it should be noted that these initiatives are being implemented in line with the European Commission Recommendation of 30 April 2009 complementing Recommendations 2004/913/EC and 2005/162/EC as regards the regime for the remuneration of directors of listed companies, and with the conclusions of international economic forums such as the G 20.

(...)

Section 3 of Chapter III develops methods for protecting clients of financial services, enabling the financial supervisors' complaints services to operate through an amendment of Act 44/2002, of 22 November, on Measures to Reform the Financial System.

(...)

PREAMBLE TO ACT 6/2011

The financial crisis brought to light numerous deficiencies in prudential regulation worldwide. Consequently, the European Union set in motion a process to reform prudential regulations in line with discussions by the G 20 and the ongoing amendments to the Basel II agreement.

Directive 2009/111/EC of the European Parliament and of the Council of 16 September 2009 amending Directives 2006/48/EC, 2006/49/EC and 2007/64/EC as regards banks affiliated to central institutions, certain own funds items, large exposures, supervisory arrangements, and crisis management, is the first step in this process.

The approval of Directive 2009/111/EC addresses a number of fundamental reforms including: establishing the conditions for hybrid capital instruments to qualify as own funds, improving cooperation between supervisors to strengthen the European Union framework of crisis management, and determination of a range of requirements for allowing exposure to securitisation positions.

This Act seeks to commence transposition of the Directive; to that end, it amends Act 13/1985, of 25 May, on investment coefficients, own funds and reporting obligations of financial intermediaries, and Act 24/1988, of 28 July, on the Securities Market. Moreover, given the changes made by that Directive on the exchange of information between supervisory authorities and the European Central Bank, it was necessary to amend Legislative Royal Decree 1298/1986, of 28 June, on the adaptation of current law governing credit institutions to that of the European Community.

The financial crisis arose from investment in complex asset-backed structures whose risk was often difficult for investors to assess. Securitisation is important for the functioning of the financial system since it enables large amounts of funding to be raised by mechanisms that distribute risk among numerous investors. Nevertheless, there is the problem of asymmetric information between the originator or sponsor, who is better informed about the characteristics of the structure to be securitised, and the investor, who is much less informed. This would be harmful if both parties' incentives were aligned, but this is not in fact the case: whereas the originator is seeking to transfer the risk to the investor, the latter is seeking the maximum possible return with the minimum risk. The amendments introduced by this Act into Act 13/1985, of 25 May, and Act 24/1988, of 28 July, into articles one.one and two.one, respectively, seek to align both incentives by requiring entities to fulfil a number of requirements, to be developed in secondary legislation, in order to be allowed to acquire exposure to securitisation positions and launch asset-backed securities.

The financial crisis also revealed the need to improve the European framework for crisis prevention and management. Given the high degree of integration of the European Union's financial markets and the consequent possibility that a financial crisis in one member state will spread to the rest of the Union, it is essential to strengthen cooperation between supervisors. Consequently, in line with the provisions of the Directive, this Act introduces a number of measures in this direction such as the obligation on the Bank of Spain and National Securities Market Commission to take account of the impact of their decisions on the financial stability of other member states, the regulation of colleges of supervisors and joint decisions in the framework of supervision of cross-border groups, and the possibility of designating branches as significant.

Finally, hybrid capital instruments play an important role in current capital management by credit institutions. Those instruments enable credit institutions to attain a diversified capital structure and reach a broad range of financial investors. The Basel Committee on Banking Supervision reached an agreement both on the criteria for eligibility and the limits for inclusion of certain types of hybrid financial instruments in the core capital of credit institutions. Consequently, it is important to establish criteria for those capital instruments to qualify as core capital of credit institutions.

Accordingly, this Act amends the rules on computing preference shares as own funds established in the second additional provision of Act 13/1985, of 25 May. Therefore, this instrument is brought into line with international requirements that make it possible to ensure that it is an effective

instrument for fulfilling entities' capital requirements. Nevertheless, the regulation itself contains a transitional regime for securities issued before it came into force.

Finally, article three addresses the reform of the exchange of information between the Bank of Spain and the European Central Bank by amending Legislative Royal Decree 1298/1986, of 28 June.

This Act is issued in accordance with the provisions of paragraphs 6, 11 and 13 of article 149.1 of the Constitution, which gives the State exclusive power in the areas of mercantile legislation, regulation of creditors, banking and insurance, and the conditions and coordination of general planning of economic activity, respectively.

PREAMBLE TO ACT 15/2011

Credit rating agencies play a fundamental role since they have responsibility for assessing the solvency of an entity or financial instrument, which is a fundamental parameter for the stability of the financial system as a whole. The recent financial crisis highlighted the need to improve a number of aspects in relation to such agencies. As a common response to this fact, the European Union approved Regulation (EC) no. 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies, which determines organisational and operational conditions that such agencies must fulfil and establishes rules for their registration and supervision.

With regards to supervision, although the common rules provided by Regulation (EC) 1060/2009 were fundamental, it is vital to establish a truly European supervisory framework insofar as the actions of rating agencies transcend the national scope of the member states. For that reason, the rules contained in Regulation (EC) 1060/2009 must be complemented in the coming months by creating a European Securities and Markets Authority and granting it the power to supervise rating agencies; this process should culminate with the launch of the Authority with full powers in 2011, once Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC has been published.

As a result of both processes, the approval of Regulation (EC) no. 1060/2009 and the imminent creation of the European Securities and Market Authority, it is necessary to make a number of adjustments to our legislation so as to provide the maximum legal certainty in the application of Regulation (EC) no. 1060/2009 and to provide the same legal certainty for any future actions to be taken by Spain's securities markets authority, the National Securities Market Commission, in compliance with the EU regulations and particularly in cooperation with the new European Authority.

Therefore, the Act firstly makes the adjustments that are necessary by virtue of Regulation (EC) no. 1060/2009. The obligation for certain financial institutions to use ratings issued by agencies registered or certified by virtue of the Regulation is specified. Consequently, the Act sets out the obligations for credit institutions as referred to in article 1.2 of Legislative Royal Decree 1298/1986, of 28 June, on the adaptation of existing law on credit institutions to EU regulations, of the investment firms referred to in article 62 of Act 24/1988, of 28 July, on the Securities Market, of the mortgage securitisation funds referred to in article 5 of Act 19/1992, of 7 July, on the rules governing real estate investment companies and funds and mortgage securitisation funds, and the depositories of collective investment institutions as regulated in Title V of Act 35/2003, of 4 November, Collective Investment Institutions.

Secondly, the creation of that authority and granting it supervisory powers over rating agencies by establishing a common supervisory regime for the European Union would not be complete if national regulations were not adjusted appropriately so that the respective national supervisors can cooperate with the functions of the new European authority in order to attain the utmost efficacy and integration of European supervision of rating agencies.

In short, this Act seeks to provide the maximum legal certainty for the provisions of Regulation (EC) no. 1060/2009 while also making the essential adjustment to regulations to enable the future European system for the supervision of rating agencies to be effective once the new European authority begins to operate.

PREAMBLE TO ACT 21/2011

I

The purpose of this Act is, firstly, to reduce organisation operating costs of capital companies, introduce some rules for modernizing the law governing that type of companies, for which there is an insistent demand in practice, and remove some of the least justified differences between the legislation governing corporations and that governing limited liability companies.

Secondly, this Act seeks to transpose into Spanish law Directive 2007/36/EC of the European Parliament and of the Council of 11 July 2007 on the exercise of certain rights of shareholders in listed companies. With regard to its first goal, the act could be described as one of partial reform, whereas in its second goal, it falls under the category of laws of transposition.

(...)

IV

Directive 2007/36/EC of the European Parliament and of the Council of 11 July 2007 on the exercise of certain rights of shareholders in listed companies seeks to facilitate and promote, within the European Union, the exercise of shareholders' information and voting rights in listed companies. The Directive aspires to guarantee that due notice is given of shareholders' meetings and that the documents that are to be presented at such meetings are available in time for all shareholders, regardless of where they live, to make a reasoned decision for the purpose of voting.

Directive 2007/36/EC advocates eliminating obstacles to voting by shareholders and removing the legal barriers to electronic participation in shareholders' meetings, except for those that are necessary to verify the identity of the shareholder and secure the electronic communications. Particular emphasis is placed on enabling shareholders that are not resident in the member state to exercise their rights with the same ease as residents, eliminating the obstacles that hamper their access to information and their right to vote without having to be physically present at the meeting.

At the same time, all the forms of shareholder participation in meetings are regulated, such as the ability to add items to the agenda, present motions with regard to items that are on the agenda or exercise the right to information about such items and, finally, the Act removes obstacles that hamper voting by proxies appointed by shareholders who decide not to attend the meeting in person and do not participate by electronic means.

As noted above, transposing the content of this Directive is another of the fundamental goals of this Act.

The regulations governing listed companies have been greatly modernized within the framework of Spanish company law. On the one hand, notable modifications were made through Act 26/2003, dated 17 July, amending Securities Market Act 24/1998, dated 28 July, and the consolidated text of the Spanish Corporations Act, approved by Legislative Royal Decree 1564/1989, dated 22 December, in order to reinforce the transparency of listed companies, and Act 19/2005, of 14 December on the *Societas Europaeae -European listed company-* domiciled in Spain.

The former, which incorporates into law a number of pre-legislative rules from the aforementioned 2002 Proposal for a Code for Mercantile Companies, has had a considerable impact on unlisted as well as listed companies since it expanded the catalogue of the duties of directors of any type of corporation.

Moreover, the promulgation of the Capital Companies Act represents a systematic restructuring of the legislation governing listed companies and almost complete unification, in a single legal text, of legislation that was previously dispersed among the consolidated text of the Corporations Act, approved by Legislative Royal Decree 1564/1989, of 22 December, and Title XII of Act 24/1988, of 28 July, on the Securities Market.

Some of the rules incorporated into Spanish law in recent years and some of those contained in the Directives coincide with proposals made in recent years by commissions appointed to improve the governance of listed companies.

Nevertheless, despite the aforementioned regulatory changes, some aspects still need improvement. Accordingly, the Act makes use of the possibilities afforded by electronic media already available to such companies while also providing the necessary assurance for shareholders' rights, especially in cross-border situations, which are so common at present.

V

The Act contains three articles, one repealing provision and six final provisions.

(...)

A final provision introduces two new paragraphs into article 100 of Act 24/1988, of 28 July, on the Securities Markets, in order to establish a basic disciplinary system in this area. The breaches are classified as follows: breaches of the provisions governing publication of the notice of the general meetings of shareholders of listed companies, regulated in the new article 516 of the Capital Companies Act, and of the obligation to publish the outcome of votes on the business transacted at the shareholders' meeting on the website within 5 days, as provided in article 525 of that same Act.

PREAMBLE TO ACT 32/2011

Clearing, settlement and registry of transactions in securities are essential components of any financial system. They encompass all the activities that take place following a trade and which, essentially, culminate in a change of ownership of the securities and the registration of that change. In short, they enable the exchange of securities for cash.

Though much less visible than the mechanisms in the trading phase, the post-trade processes are no less important. It is vital that they function properly and provide the necessary legal certainty to ensure the financial system's efficiency, competitiveness and stability, as well as investor protection.

The basic elements of post-trade activities are regulated by Act 24/1998, of 28 July, on the Securities Market, Royal Decree 116/1992, of 14 February, on the representation of shares by book-entries and the clearing and settlement of stock market transactions, and Royal Decree 505/1987, of 3 April, creating a system of book entries for Spanish government debt. Additionally, the Securities Market Act grants a leading role to Sociedad de Gestión de los Sistemas de Registro, Compensación y Liquidación de Valores (hereafter the Systems Company) and its member companies, while not excluding the possibility that such activities may be performed by other entities.

This Act and its secondary legislation made it possible to construct a structure of clearing, settlement and registry for trades in securities which has functioned properly for the last two decades but which needs to be reformed to adapt it to the new situation. Since Spanish post-trade activities are to be conducted in the context of greater integration within the European Union, it is necessary to update the regulation.

In pursuit of greater competitiveness, it is advisable for Spanish post-trade activities to be standardized, to an extent, with the structures of our main European partners. Moreover, additional players can be expected to enter the sector, such as the Eurosystem TARGET2-Securities project, which seeks to facilitate centralized settlement in central bank money of trades in securities in euro or other currencies, bringing European cross-border settlement of securities into line with domestic settlement in terms of efficiency and costs and, in passing, become a relevant step towards a single market in securities comprising financial services.

Therefore, the reform is necessary to maintain and enhance the competitiveness of our post-trade system and, consequently, of the financial sector. Apart from this express intention, the amendments include factors to strengthen the clearing, settlement and registry system.

The content of the reform must be entered in a large number of legal texts, which represents the various phases in which the reform will be implemented. Although many of these elements go beyond the purpose of this Act and will be addressed through amendments to secondary legislation, it is advisable here to note the major vectors on which the reform of the clearing, settlement and registry system is based.

The first vector is the introduction of central counterparties (CCP) into post-trade services. CCPs will interpose themselves, for their own account, between buyers and sellers in securities trades, assuming the counterparty risk, and will clear the securities and cash arising from such transactions. Their intervention in the process between the trade in the stock market or multilateral trading facility and the settlement will make it possible to replace a system of multilateral settlement based on gross amounts with the bilateral model based solely on net amounts. This should reduce settlement costs and facilitate elimination of the concept of assured delivery as investors remain protected since, in practice, they have a relationship with a special agent, namely the central counterparty, which is highly solvent and has considerable technical resources, instead of bilateral settlement subject to greater counterparty risks.

The second vector is the elimination of the current mechanisms for delivery assurance within the scope of the Systems Company. Assured delivery has traditionally been interpreted as a commitment to settle all trades, by always delivering securities in exchange for cash. To achieve this, a system of collective guarantees was established in order to finance the process of obtaining securities or cash in transactions that could not be settled in time. Although this institution has provided a very high level of investor protection, it is necessary to revise it in order to ensure the system's robustness. Elimination of assured delivery entails, in the final instance, allowing incidents to be settled through compensation in cash if it is impossible to obtain the securities, which improves the system's stability. However, investors continue to enjoy a high degree of

protection since, essentially, their relationship with a central counterparty minimizes (while not eliminating) the risk of delivery failure. Additionally, in the event of failure, the compensation in cash should be sufficient for the security in question and for any price change that may have occurred in the interim.

The third vector is the elimination of the current system of control based on registry references in order to apply one based solely on net balances and alternative control procedures. Registry references have been a specific feature of the Spanish clearing, settlement and registry system. They have satisfactorily performed their exclusive function as a mechanism of control, although they have certain drawbacks. Therefore, replacing those references with a system of balances will make the system more efficient but must be accompanied by alternative mechanisms for oversight, liability, and incident resolution to ensure that the new system offers at least the same guarantees as the current one. The aforementioned increase in the system's efficiency will be enhanced by unification of the equities registry systems, as already seen, with those for fixed-income and government debt, upon completion of the process of reform.

II

The purpose of this Act is to commence the process of reform of the securities clearing, settlement and registry system, focusing on the matters required by the reform of the Securities Market Act. These matters are related mainly to the first vector mentioned above, namely the interposition of a central counterparty, and the other questions are left for amendments to secondary legislation.

Firstly, the Act defines a more precise framework for the case of insolvency of an entity entrusted with the registry of securities represented by book entries or of a securities depository. This is a necessary component for the transition from a system based on registry references to one based on balances. Holders of securities are granted the right to withdraw, and aspects relating to trades not yet registered are regulated. This step is coherent with the current powers of the National Securities Market Commission to transfer the accounting records of securities to other entities in the event of insolvency of any one of them, and respects the principle that assets which do not belong to the insolvent party must be given to their third-party owners.

The Act then introduces the obligation to intervene in the central counterparty for multilateral equities trades arranged either in an official secondary market or in a multilateral trading facility. This obligation is a response to the need to provide legal certainty for relations between investors and the central counterparty.

The reform of the clearing, settlement and registry system also requires amendments to the regulations governing the Systems Company. Accordingly, this Act eliminates references to assured delivery. It also establishes corporate law rules to facilitate relations between that entity and the other players in trading and post-trade. In particular, the regulation governing the agreements into which the Systems Company may enter have been completed to provide greater legal coverage for the TARGET2-Securities project.

To fulfil the first pillar of the reform, this Act sets rules for the central counterparties that are to be created. Central counterparties are required to have a high level of financial solvency and technical capability in order to interpose themselves between buyers and sellers through clearing members. This requires considerable technical abilities to calculate net positions and a strong financial position to be able to handle incidents. However, the fundamental variable is that there must be an appropriate system of guarantees and a legal regime with full legal certainty that protects the central counterparty, its member entities, the net positions so calculated and the other components of the clearing, settlement and registry system, the ultimate goal being to assure successful completion of trades.

This Act seeks to provide the system with that legal certainty by numerous references to the fundamental support provided by Act 41/1999, of 12 November, on securities payment and settlement systems. Among the various issues regulated here, central counterparties are required to be separate legal persons from the Systems Company in order to ensure proper management of the risks that are assumed.

Finally, the reform that begins with this Act includes a large number of milestones and requires amendment of numerous other legal texts. This process must be performed in a regulated and harmonious way so that the transition to the new clearing, settlement and registry system takes place with full guarantees, although the main milestones must be attained before 2014 in order to fulfil the goal of the reform.

The Act comprises a single article amending Act 24/1988, of 28 July, on the Securities Market, which is divided into seven subsections, plus a repealing provision and six final provisions. Those provisions empower the Government to establish the deadlines for adaptation of the Stock Exchange Management Companies and the Systems Company to the new regulation, grants the National Securities Market Commission certain supervisory powers, empowers the Government to combine the registry systems for equities, fixed-income and government debt, and grant powers to implement secondary legislation under the Act and determine its entry into force.

The amendments provided in this Act will also be applicable to the clearing, settlement and registry systems created by the Autonomous Communities with powers in this area by virtue of article 44.bis.2 of this Act.

PREAMBLE TO ROYAL DECREE-ACT 10/2012

(...)

II

This Royal Decree-Act makes the legislative amendments required by the transposition of Directive 2010/78/EU of the European Parliament and of the Council of 24 November 2010 amending Directives 98/26/EC, 2002/87/EC, 2003/6/EC, 2003/41/EC, 2003/71/EC, 2004/39/EC, 2004/109/EC, 2005/60/EC, 2006/48/EC, 2006/49/EC and 2009/65/EC in respect of the powers of the European Supervisory Authority (European Banking Authority), the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority).

In November 2008, the Commission mandated a High-Level Group chaired by Jacques de Larosière to make recommendations on how to strengthen European supervisory arrangements with a view to better protecting the citizen and rebuilding trust in the financial system. In its final report presented on 25 February 2009 (the 'de Larosière Report'), the High-Level Group recommended that the supervisory framework be strengthened to reduce the risk and severity of future financial crises.

In its conclusions following its meeting on 18 and 19 June 2009, the European Council recommended that a European System of Financial Supervisors, comprising three new European Supervisory Authorities (ESA), be established, which led to the approval of Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a

European Supervisory Authority (European Banking Authority); Regulation (EU) no 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority); and Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority).

The change in the institutional architecture of supervision in the framework of the European Union made it necessary to adapt existing EU legislation to the new architecture and the new procedures arising from the new supervision scheme; this was done by approving the aforementioned Directive 2010/78/EU.

Directive 2010/78/EU made amendments to the industry directives in order to integrate the newly-created ESAs into the European framework of cooperation between supervisors, and to enable those ESAs to fulfil their functions as set out in their respective regulations.

Accordingly, and in parallel with the amendments made in the scope of the European Union, this Royal Decree-Act incorporates into Spanish law the amendments made by Directive 2010/78/EU, with the exception of the rules on money laundering, which will be transposed in the form of secondary legislation; and those relating to collective investment institutions, which were transposed by Act 31/2011, of 4 October, amending Act 35/2003, of 4 November, on Collective Investment Institutions, and its secondary legislation.

For the purpose of this transposition, the Royal Decree-Act contains provisions focusing on the following:

One: obligation to cooperate with the European Banking Authority, the European Securities and Markets Authority and the European Systemic Risk Board.

Two: notification to the European Banking Authority and the European Securities and Markets Authority of a number of aspects related to supervision of the solvency of financial institutions.

Three: introduction of the binding mediation mechanism of the European Banking Authority and European Securities and Markets Authority for conflicts between supervisors in different member states.

Four: obligation to consult with the European Banking Authority.

Five: disclosure to the European Insurance and Occupational Pensions Authority of certain aspects of the activity and supervision of occupational pension schemes.

On the basis of those premises, this Royal Decree-Act comprises seven articles, each of which makes amendments, as described above, to the following acts: Act 13/1985, of 25 May, on the investment coefficients, own funds and reporting obligations of financial intermediaries; Legislative Royal Decree 1298/1986 on the adaptation of current law governing credit institutions to that of the European Community; Act 24/1988, of 28 July, on the Securities Market; Law 26/1988, dated 29 July, on the oversight and intervention of credit institutions; Law 41/1999, of 12 November, on the securities payment and settlement systems; Legislative Royal Decree 1/2002, of 29 November, approving the consolidated text of the Act regulating pension plans and funds; Act 5/2005, of 22

April, on the supervision of financial conglomerates, amending other acts governing the financial sector.

The measures envisaged in this Royal Decree-Act are aimed at adapting the national supervision scheme to the obligations arising from European Union law, which establishes a new European supervisory framework with the instruments considered to be indispensable to avoid a recurrence of the financial practices that gave rise to the economic crisis. This adaptation must be done as quickly as possible, because only in this way can the European supervision scheme be implemented effectively in Spain, in coordination with other Member States, as required by EU law.

PREAMBLE TO ROYAL DECREE-ACT 17/2012

(...)

Article four derives from Commission Regulation (EU) No. 1210/2011 of 23 November 2011, amending Regulation (EU) No. 1031/2010 (Auctioning regulation) in particular, to determine the volume of greenhouse gas emission allowances to be auctioned prior to 2013. The regulation establishes 120 million general emission allowances to be auctioned in the European Union in 2012. Annex I to the regulation, which sets out the volume of allowances to be auctioned by each Member State, establishes that Spain may auction 10,145,000 rights in 2012. Efforts to procure a temporary common platform, which will be used until a definitive one is designated, are at a very advanced stage and auctions are expected to commence immediately.

In this vein, article four amending Act 24/1988, of 28 July, on the Securities Market, responds to the need, under article 43 of the Auctioning regulation, for Member States to ensure that the national measures transposing articles 14 and 15 of Directive 2003/6/EC on insider dealing and market manipulation apply to persons in breach of articles 37 to 42 of the Regulation, which establish the market abuse regime applicable to auctioned products other than financial instruments in auctions held in their territory or elsewhere. It is therefore necessary to implement legislation that permits financial institutions to participate in auctions on their own account or on behalf of clients; to vest in the National Securities Market Commission the powers of supervision, inspection and sanction in relation to market abuse; to establish which offences are considered to be market abuse; and to ensure that the National Securities Market Commission cooperates with other competent authorities to uphold the market abuse regime in spot trades.

In short, adoption of the amendment of Act 24/1998, on 28 July, on the Securities Market considered in this Royal Decree-Act responds to the need to adapt Spanish financial legislation to the imminent commencement of allowance trading. To this end, the adoption of this measure requires the passage of a Royal Decree-Act, fulfilling the requirements of article 86 of the Spanish Constitution since it is an extraordinary and urgent need.

(...)

PREAMBLE TO ROYAL DECREE-ACT 20/2012

The Government has considered urgent to adopt also other measures to reinforce the elements of competition in the retail distribution sector, in order to increase the competitiveness of Spanish foreign trade and facilitate access to financing for Spanish companies.

This Royal Decree includes, in Title V, a set of urgent liberalising measures in the field of commercial distribution and promotion of the activity in the foreign sector.

Regarding the field of commercial distribution, the existing scheme is amended by introducing greater liberalisation of trading hours and open trade on Sundays and holidays. The reduction in restrictions in this area has been a consistent recommendation of international organisations such as the International Monetary Fund and the Organisation for Economic Cooperation and Development. The extension of freedom of opening hours will have positive effects on productivity and efficiency in the retail distribution and prices, and will provide businesses with a new variable that will enhance effective competition between retailers. The possibilities of consumer purchases are also increased and, consequently, their opportunities to reconcile work and family life.

Besides urgent measures are introduced in relation to sales promotions through an amendment to Title II of Act 7/1996 of January 15, regulating the retail trade. The proposed measures are general for all types of sales promotion activities, i.e., rebates, clearance sales, closing-down sales or any other promotional offer aimed to increase the sales. The aim with this is to liberalise commercial activity, giving the possibility to perform at the same time and in the same place of the commercial business any type of promotional sales activity, in such a way that rebates can coexist with the clearance sales or other commercial offers.

With respect to exports promotion and the internationalisation of Spanish companies, a number of measures are introduced related to the foreign sector. Thus, taking into account that in recent years the contribution of foreign demand to growth has been positive thanks to the favorable increase in exports, and in order to strengthen this effect, it is essential to reorient support instruments to finance operations of this nature and enhance the tools available to the General State Administration to encourage these activities with a focus on effectiveness and efficiency in a context of austerity and fiscal consolidation. First, this Title includes a change in Act 10/1970 of 4 July, amending the Export Credit Insurance, which permits reducing State participation but ensuring that the General State Administration maintains control of the activity through the State.

Moreover, the role of Export Credit Agencies has been subject to a recent and rapid transformation and development, expanding their traditional roles and improving the instruments of official support in the areas of foreign trade, foreign investment and foreign economic transactions. In this regard, Royal-Decree-Law 6/2010 of 9 April, on measures to boost economic recovery and employment, broadened official support instruments for export credit by completing the catalogue of operations which may be undertaken by the *Compañía Española de Seguros de Créditos a la Exportación SA Compañía de Seguros y Reaseguros (CESCE)* -Spanish Company of the Insurance PLC Insurance and Reinsurance Company (CESCE)-. However, the recent development in the financial markets has highlighted the importance of continuing to adapt these instruments to economic conditions and to the requirements of banking regulations, in order to be an effective instrument to boost the financing of operations of internationalization and promotion of international competitiveness of enterprises.

For this purpose, this Royal-Decree-Law amends Act 10/1970 of July 4, and empowers CESCE to issue unconditional guarantees on derived or linked risks related to foreign trade, including those of a purely financial nature, also extending the potential scope of the coverage in the operations performed by the entity for the State.

It also reinforces support for financing operations for the internationalisation of companies, providing more liquidity to the funding granted for exports. To that end, this Royal-Decree-Law amends Act 24/1988 of 28 July, on the Securities Market and Act 44/2002, on Measures to Reform the Financial System, in order to incorporate into the legal system a new financial instrument, the “bonds of internationalization”, which shall have, as an underlying asset, support credits to the internationalization of the Spanish company, making it more attractive to financial institutions the finance of export and investment activities of Spanish companies.

On the other hand, the integration of the Spanish economy into the global value chain requires a shift from the promotion of the internationalisation of Spanish companies to the promotion of the internationalisation of the Spanish economy. That is to say, besides promoting exports and overseas investment in domestic Spanish companies, it is necessary to support foreign investment in our country. The internationalisation of the Spanish economy in the broadest sense will lead to job creation and wealth for our country. It is therefore considered appropriate to modify the current aims of the *Instituto Español de Comercio Exterior (ICEX)* -Spanish Foreign Trade Institute (ICEX)-, to include the attraction and promotion of foreign investment in Spain. For this reason, the Agency will be renamed *Entidad Pública Empresarial ICEX España Exportación e Inversiones (ICEX)*, -Spanish Business Agency ICEX Spain Export and Investment (ICEX)-, attached to the Ministry of Economy and Competitiveness, through the State Secretariat for Trade.

(...)

TITLE I
GENERAL

CHAPTER I
SCOPE OF THE ACT

Article 1¹

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 2²

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 "association participation shares" 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, mortgage bonds and mortgage participations.
- e) Asset-backed securities.
- f) Units and shares in UCITS.
- g) Money market instruments, i.e. categories of instruments which are normally traded 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.
- h) Preference shares.

¹ As amended by item 1 of the Sole Article of Act 47/2007, of 19 December

² As amended by item 2 of the Sole Article of Act 47/2007, of 19 December

- 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.
 - l) Bonds of internationalization³.
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

³ Letter l) in section 1 added by article 30 of Royal Decree-Act 20/2012, of 13 July

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

Article 4⁴

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

Marketable securities may be represented by book entries or by certificates. 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 certificates 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, 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 6⁵

Representation of securities by book entry shall always require that the issuer draft a document, whose execution as a public instrument will be optional, stating the information needed to identify the securities making up the issue.

The issuer shall deposit one copy of the document with the entity responsible for the book-entry records and another with the National Securities Market Commission. For securities listed in an official secondary market, a copy of the instrument shall also be deposited with the market's governing body.

The issuer and the entity responsible for the book entry records must at all times have a copy of that document at the disposal of the holders and interested members of the public.

The document referred to in paragraph one above will be replaced by:

- a) The prospectus, provided that the issuer is required to submit one to the National Securities Market Commission for vetting and registration, in accordance with the provisions of this Act.

⁴ As amended by item 3 of the Sole Article of Act 47/2007, of 19 December

⁵ Amended by article 1.1. of Royal Decree-Act 5/2005, of 11 March

- b) The publication of the terms of the issue in the Official Gazette (*Boletín Oficial*), in the case of issues of debt by the State and autonomous regions and in other cases provided by law.

The document referred to shall not be required for financial instruments traded on official secondary futures and option markets, or in other cases, subject to the conditions to be established by regulation.

Article 7⁶

1. A single entity 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 entity shall be freely designated by the issuer from among the investment firms and credit institutions authorised to perform the activity provided for in article 63.2.a). The designation shall be registered in the register at the National Securities Market Commission provided for in article 92 of this Act as a prerequisite 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.4.
3. Without prejudice to the powers assumed by the Autonomous Communities 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.

The keeping of book-entry records relating to securities listed on 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 management companies of the secondary markets or organised trading systems.

4. In connection with both the various entities entrusted with keeping the book entry records and with the various types of securities, the Government shall establish rules for the organisation and operation of the relevant registers, the deposits 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 competent Autonomous Community 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 entity in breach vis-à-vis the aggrieved party, unless the aggrieved party is solely to blame. That liability must, as far as possible, be paid in kind.
6. The provisions of this article relating to the Systems Company shall be applicable to similar services created by the management companies of the Stock Markets in accordance with section 2

⁶ Section 3 amended by item 4 of the sole article of Act 47/2007, of 19 December. Amended by Act 44/2002, of 22 November

of article 44.bis, when so authorised by the relevant Autonomous Community, after first hearing the issuer and the service.

Article 8⁷

Securities represented by book entry shall be classified as such by virtue of their entry in the relevant book entry records which shall, as appropriate, be central, from which point they shall be subject to the provisions of this Chapter. The contents of securities so represented 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 fungible for the purposes of clearing and settlement operations shall be laid down by regulation.

Article 9⁸

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 certificates.

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

A third party purchasing, for a consideration, 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.

Vis-à-vis a purchaser in good faith of securities represented by book entries, an issuer may only raise the objections arising from the inscription in connection with the document referred to in article 6 and those which the issuer would have been able to raise had the securities been represented by certificates.

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 lien shall be enforceable vis-à-vis third parties from the time the corresponding entry is recorded.

Article 11

⁷ Paragraph 1 amended by article 1.2 of Royal Decree-Act 5/2005, of 11 March

⁸ Paragraph 4 amended by article 1.3 of Royal Decree-Act 5/2005, of 11 March

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/her. The obligation to return the certificate lapses when the certificate has expired.

Article 12.bis. *Right of withdrawal in the event of insolvency of the entities responsible for book-keeping or participants in the record-keeping system, and the pro rata rule.*⁹

1. In the event of insolvency of an entity responsible for the accounting of securities represented by book entries or of an entity participating in the record-keeping system, the holders of securities recorded in those registers will have the right to withdraw the securities registered in their name and to request their transfer to another entity, without prejudice to the provisions of articles 44.bis.9 and 70.ter.1.f) of this Act.

2. For the purposes of this article, the insolvency judge and the insolvency administrators will safeguard the rights deriving from the settlement operations under way at the time that the entity responsible for the accounting of securities by book entries or the member entity of the record-keeping system declares insolvency, according to the rules on clearing, settlement and record-keeping.

3. The record-keeping system shall offer the utmost guarantees to ensure that there are no mismatches between the securities entered in the records and the securities actually deposited with the entities responsible for book-keeping and with the member entities of the record-keeping system. The potential incidents for which the supervisory authorities must be notified, as well as the mechanisms and deadlines for the resolution of such incidents shall be regulated in secondary legislation.

In any case and without prejudice to the provisions of the preceding paragraph, when the securities with the same International Securities Identification Number (ISIN) separated from the estate of the insolvent party are insufficient to completely fulfil the rights of the registered holders of the

⁹ Added by item 1 of the sole article of Act 32/2011, of 4 October.

securities with the same ISIN, the shortfall will be distributed pro rata among all holders without prejudice to their right to claim for indemnity from the entity for the value of the part not paid in securities, which must be paid in money.

4. Where there are limited rights in rem or liens of any other kind on the securities, and without prejudice to agreements between the guarantor and the beneficiary of the guarantee, once the pro rata rule has been applied, such liens shall be understood to be apply to the result of the pro rata rule and the debt claims for the part not paid in securities.

TITLE II NATIONAL SECURITIES MARKET COMMISSION

CHAPTER I CREATION AND DUTIES

Article 13¹⁰

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 corporate bodies 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 Communities 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 situation 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 14¹¹

¹⁰ Paragraph 4 added by article 2.1 of Act 37/1998, of 16 November

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 System 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 September¹².
5. The assets acquired by the National Securities Market Commission shall, without exception, be subject to private law.
6. With respect 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

¹¹ Amended by article 46.1 of Act 44/2002, of 22 November

¹² The reference to the Consolidated Text will be understood as referring to the General Budget Act 47/2003, of 26 November, by virtue of its additional provision thirteen.

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 National Audit Tribunal (Tribunal de Cuentas).

10. The Internal Regulation must be approved by the National Securities Market Commission Board. This Code of Conduct 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 (Boletín 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 16¹³

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 penalties shall be subject to the system envisaged in article 97.
- b) Resolutions dealing with questions of the intervention and replacement of administrators shall be subject to the system envisaged in article 107.

¹³ Amended by Act 37/1998, of 16 November

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 Minister of Economy and Finance.
- b) The Director General of the Treasury and Financial Policy and the Deputy Governor of the Bank of Spain shall automatically be members of the Board.
- c) Three Commissioners appointed by the Minister of Economy and Finance from among persons of acknowledged competence in 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 18¹⁴

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 following powers:

- a) Approve the Circulars referred to in Article 15 of this Act.
- b) Approve the Internal Code of Conduct 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.

¹⁴ Amended by Act 44/2002, of 22 November

- 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/her by the Board.
 - h) Execute the other duties assigned to him/her by the current legal code.
3. The Vice-President of the National Securities Market Commission shall have the following powers:
- a) Replace 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/she 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 Administration¹⁵. 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 22¹⁶

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 appointed shall be determined by regulation. The committee members 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 Communities with powers in securities market matters and in whose territory there is an official secondary market. The National Securities Market Commission Advisory Committee 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 Commissioners and the manner in which they are selected shall be determined by regulation. The Commissioners shall be designated in representation of the market infrastructures, issuers, investors, credit institutions and insurance entities, professional groups designated by the National Securities Market Commission and investment guarantee funds, plus another representative of each of the Autonomous Communities with powers in securities market matters and in whose territory there is an official secondary market.

¹⁵ cf. Act 5/2006, of 10 April, on regulating conflicts of interest of members of the Government and senior civil servants in the Central Government (Official State Gazette, 11 April).

¹⁶ Amended by final provision 2.1 of Act 21/2011, of 26 July. Amended by Act 37/1998, of 16 November

Article 23¹⁷

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

The 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) The authorisation, revocation and corporate transactions of investment 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.
- c) The authorisation and revocation of the branches of investment 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 provide advice on 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 24¹⁸

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

¹⁷ Amended by final provision 2.2 of Act 21/2011, of 26 July. Item c) was repealed by final provision 5.1 of Act 2/2011, of 4 March. Amended by Act 37/1998, of 16 November

¹⁸ Amended by Act 13/1996, of 30 December. Amended by Act 22/1993, of 29 December.

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 ¹⁹

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. The issue of securities shall not require prior administrative approval.
2. The issuer is entitled to use any appropriate technique that it wishes to place issues. In the event that the issuer is obliged to draw up a prospectus, the placement must abide by the conditions included therein.
3. The issuer must be properly incorporated pursuant to the law of the country in which it is registered, and must be operating in accordance with its deed of incorporation, bylaws or equivalent documents.
4. The securities must 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.*²⁰

1. The admission of securities to trading in an official secondary market shall not require prior administrative authorisation. Nonetheless, the following requirements must be met in advance:
 - a) The documents certifying that the issuer and the securities are subject to the legal system which is applicable thereto must be presented and registered with the National Securities Market Commission.
 - b) The issuer's financial statements, authorised and audited pursuant to the legislation applicable to the issuer, must be presented and registered with the National Securities Market Commission.
 - c) A prospectus must be presented to, vetted by and registered with the National Securities Market Commission, and it must be made public.

¹⁹ Amended by article 1.4 of Royal Decree Act 5/2005, of 11 March

²⁰ cf. ORDER EHA/3537/2005, of 10 November, implementing article 27.4 of Act 24/1988, of 18 July, on the Securities Market.

2. In the case of non-equity securities issued by the State, the Autonomous Community Governments and the Local Governments, compliance with the foregoing requirements will not be necessary. Nevertheless, these issuers will be entitled to draw up a 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, as well as any other type of transferable securities giving the right to acquire shares or equivalent securities as a consequence of their conversion or the exercise of the rights they confer, provided that those securities 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 grant partial or total exemption from the requirements set forth in article 25 and section 1 above in the admission to trading of certain securities 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 to ensure that the securities are traded in a correct, efficient, and orderly fashion. Said procedure, 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 by regulation. 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.*²¹

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 analysable and comprehensible form.

2. The prospectus must be signed by a person with power to bind the issuer of the securities.

3. The prospectus shall contain a summary which, in a brief manner and in non-technical language, conveys 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.

²¹ cf. ORDER EHA/3537/2005, of 10 November, implementing article 27.4 of Act 24/1988, of 18 July, on the Securities Market.

- b) Any decision to invest in the securities should be based on consideration by the investor of the prospectus as a whole.
 - c) Civil liability may not be claimed against any person for the summary alone, unless it is misleading, inaccurate or inconsistent with 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 having the power to authorise such an omission. Following express appointment, said Commission shall be entitled to implement or update the contents of the order.

The Minister of Finance, and, by his express authorization, the National Securities Market Commission, shall also have the power to determine the forms for the different prospectus types, the documents which must be attached, and the situations in which the information contained in the prospectus may be incorporated by reference.

Article 28. *Liability for prospectus.*

1. Liability for the information contained in a prospectus shall lie, at least, with the issuer, the offeror or the person requesting admission to trading on an official secondary market and the directors of all of them, in accordance with the conditions to be established by regulation.

Furthermore, the liability indicated in the preceding paragraph shall also lie with 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 to be laid down by regulation.

Other persons who shall be liable, in terms to be laid down by regulation, are those who accept liability for the prospectus, provided that this is made clear in that document, and any other persons not included among the foregoing who authorized the contents of the prospectus.

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 must 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, any of the persons indicated in the previous sections shall be liable for any damages that may be caused to the owners of the securities acquired as a result of false information or omissions of relevant data from the prospectus or any other document that the guarantor must draw up.

The action to claim responsibility shall expire three years from the time on when the claimant was in a position to be aware of falsity or omissions in the contents of the prospectus.

4. It will not be possible to claim any liability 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 validity of prospectus.*²²

Notwithstanding the provisions of Article 30, a prospectus approved by the National Securities Market, and any supplements thereto, shall be valid for listing in any host Member State, provided that the National Securities Market Commission gives notice to the European Securities and Markets Authority and the competent authority of each host Member State as regulated in secondary legislation.

The National Securities Market Commission shall publish, on its website, a list of the certificates of approval of prospectuses and any supplements thereto, with a link, if appropriate, to the publication of those documents on the website of the competent authority in the home Member State, or on the issuer's website, or on the website of the regulated market.

Additionally, without prejudice to the provisions of article 30, a prospectus approved by the competent authority of the home Member State, and its supplements, shall be valid for listing in Spain provided that said competent authority notifies it to the European Securities and Markets Authority and the National Securities Market Commission. In this case, the National Securities Market Commission shall not approve that prospectus or perform any administrative procedure in connection with it.

Article 30. *Preventive measures.*²³

1. Where Spain is the host Member State, the National Securities Market Commission must inform the competent authority of the home Member State and the European Securities and Markets Authority if it observes that the issuer or the financial institutions in charge of the public offering have committed irregularities or if it observes a breach of the issuer's obligations imposed due to listing on an official secondary market.

2. If, despite the measures adopted by the competent authority in the home Member State or because such measures have proved to be insufficient, the issuer or financial institution in charge of the public offering 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 and the European Securities and Markets Authority, adopt the pertinent measures to protect investors. The National Securities Market Commission shall notify the European Commission and the European Securities and Markets Authority of the measures that are adopted.

Article 30.bis. *Public offering for the sale or subscription of securities.*²⁴

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

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

²² Amended by article 3.1 of Royal Decree-Act 10/2012, of 23 March.

²³ Amended by article 3.2 of Royal Decree-Act 10/2012, of 23 March.

²⁴ Amendment introduced by Royal Decree Act 6/2010, of 9 April, on measures to promote economic recovery and employment.

- a) An offering of securities exclusively directed to qualified investors.
- b) An offering of securities directed to less than 100 natural or legal persons per Member State, without including qualified investors.
- c) An offering of securities addressed to investors who acquire securities for a total consideration of at least 50,000 euro each, per offering.
- d) An offering of securities whose unit nominal value amounts to at least 50,000 euro.
- e) An offering of securities amounting to a total of less than 2,500,000 euro, which limit shall be calculated over a period of 12 months.

In the placement of issues referred to in items b), c), d) and e) of this section, addressed to the general public using any form of advertising, an entity authorized to provide investment services must intervene for the purposes of marketing those securities.

2. It will not be possible to perform a public offering for the sale or subscription of securities without prior publication of a prospectus vetted by the National Securities Market Commission. The exceptions to the obligation to publish a prospectus in public offerings for sale or subscription, in accordance with the nature of the issuer or the securities, the amount of the offering 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 offerings, shall be determined by secondary legislation.

3. Public offerings for the sale or subscription of securities not exempt from the obligation to publish a prospectus shall be subject to all the regulations relating to the admission to trading of securities in regulated markets contained herein, with the amendments and exceptions determined by secondary legislation. For these purposes, it shall be taken into account that article 25.5 may not be applicable to public offerings of sale or subscription of securities.

CHAPTER II

ISSUES OF BONDS OR OTHER SECURITIES RECOGNISING OR CREATING DEBT CLAIMS

Article 30.ter. *Regime for issues of bonds or other securities recognising or creating a debt claim.*²⁵

1. The provisions of this chapter shall be applicable to issues of bonds or other securities which recognise or create a debt claim that 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 Spanish Corporations 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

²⁵ Amended by Act 25/2004, of 24 November. Article added by Royal Decree Act 5/2005, of 11 March

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 be published in the Official Bulletin of the Mercantile Register.

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.

TITLE IV

OFFICIAL SECONDARY MARKETS IN SECURITIES

CHAPTER I

GENERAL PROVISIONS

Article 31²⁶

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.

²⁶ Amended by item 4 of article 3.3 of Royal Decree-Act 10/2012, of 23 March. Amended by item 5 of the sole article of Act 47/2007, of 19 December. Amended by Act 44/2002, of 22 November. Amended by Act 37/1998, of 16 November.

- e) Any other State-wide markets which, due to meeting the requirements set out in section 1, are authorised in the framework of the provisions of this Act and its implementing regulations, and those autonomous region markets which are authorised by the Autonomous Communities 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 Securities and Markets Authority 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 significant holdings envisaged in Article 69 of this Act for investment firms, in the terms to be established by secondary legislation; a significant holding shall be deemed to be any holding which, 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 significant 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 significant 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.*²⁷ ²⁸

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 Communities, the authorisation must be given by the Autonomous Community with powers in this area.

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

²⁷ Amended by item 4 of article 3.4 of Royal Decree-Act 10/2012, of 23 March. Item 7 was added by item 2 of the sole article of Act 32/2011, of 4 October (see footnote 6 with regard to entry into force). Added by item 6 of the sole article of Act 47/2007, of 19 December.

²⁸ Article added by item Six of the sole article of Act 47/2007, of 19 December

- 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 Articles of Association of the governing company.
 - c) Draw up a schedule of activities 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 business or professional repute and have sufficient knowledge and experience in matters connected with the securities market.
 - e) Shareholders who are to hold a significant stake in the market governing company must be fit and proper, 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 Articles of Association of the market governing company or to the market regulation shall require prior approval by the National Securities Market Commission or, as the case may be, by the Autonomous Community Governments with powers in this area, in connection with markets in their territory.
4. The Minister of Economy and Competitiveness 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.
- Any revocation of an authorisation must be notified to the European Securities and Markets Authority.
5. The specific rules for applying this provision shall be issued in the form of a regulation.
6. The Autonomous Communities with powers in this area may establish any additional organisational measures that they deem appropriate for markets located in their territory.

7²⁹.

Article 31.ter. *Conditions for exercise of business.*³⁰

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.querter. *Appointment of directors and executives and replacement of the governing company*³¹

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 Community 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 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 Communities, the authorisation must be given by the Autonomous Community with powers in this area.

Article 32³²

1. The listing of securities on official secondary markets shall require prior vetting by the National Securities Market Commission of compliance with the requirements and procedure established by this Act and its implementing regulations. In the case of securities which may be traded on the Stock Exchanges, said vetting shall be carried out once only and shall be valid for all Stock Exchanges. Listing on each of the official secondary markets shall also require the agreement of the governing body of the market in question, at the request of the issuer, which may make the request,

²⁹ Section 7 was added by the sole article of Act 32/2011, which will enter into force when determined by the implementing regulations, as provided in final provision 6.

It states as follows: "*7. Transactions in shares or other marketable securities that are equivalent to shares or that give entitlement to acquire shares which are performed in the multilateral trading segments of official secondary markets or of multilateral trading facilities shall be subject to mechanisms that allow their orderly settlement and completion through the necessary participation of a central counterparty.*"

³⁰ Article added by item Seven of the sole article of Act 47/2007, of 19 December

³¹ Article added by item Eight of the sole article of Act 47/2007, of 19 December

³² Amended by Royal Decree-Law 5/2005, of 11 March. Amended by Act 37/1998, of 16 November

on its own responsibility, once the securities have been issued or the corresponding book entries have been established.

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 demergers 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 Book-Entry Market or, as appropriate, on the other official secondary markets, as determined at the time of issue. Securities issued by the Autonomous Communities 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 Communities with powers in the matter, with regard to securities traded exclusively on markets in the corresponding Autonomous Communities, subject to fulfilment of the specific requirements demanded by said markets.

Article 32.bis. *Additional rules established by the markets for listing financial instruments.*³³

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, that they 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) providing their members with access to the information published in accordance with this Act and its secondary legislation;
- c) periodically checking 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

³³ Article added by item Nine of the sole article of Act 47/2007, of 19 December

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. *Obligations in the area of market abuse.*³⁴

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:

- 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. *Suspension of financial instruments from trading.*³⁵

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 Communities with powers in this area, those powers shall rest with the Autonomous Community government in connection with financial instruments traded solely in the regional territory.

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

³⁴ Article added by item Ten of the sole article of Act 47/2007, of 19 December

³⁵ The first paragraph of item 2 was amended by article 3.5 of Royal Decree-Act 10/2012, of 23 March. Amended by item 11 of the sole article of Act 47/2007, of 19 December.

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.

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. *Removal from trading.*³⁶

1. The National Securities Market Commission may exclude from trading those financial instruments 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 Communities with powers in this area, those powers shall rest with the Autonomous Community government in connection with financial instruments traded solely in the regional territory.

2. The National Securities Market Commission must immediately publish the decision to remove an instrument from trading and inform the European Securities and Markets Authority and competent authorities of other Member States where the instrument is traded so that they can order removal 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 multilateral trading facilities 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.

³⁶ The first paragraph of item 2 was amended by article 3.6 of Royal Decree-Act 10/2012, of 23 March. Amended by item Twelve of the sole article of Act 47/2007, of 19 December. Amended by Act 6/2007, of 12 April

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 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 company 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 Corporations Law, 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.³⁷

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 directors' report, reviewed by the auditor with the scope defined in article 208 of the Consolidated Text of the Corporations Law, approved by Legislative Royal Decree 1564/1989, of 22 December, and the declarations of responsibility for its content.

The report of issuers whose shares are listed on an official secondary market or on another regulated market domiciled in the European Union must disclose transactions by directors and members of the oversight board of a *Societas Europaea* -*European listed company*- domiciled in Spain that has opted for the dual system, or by persons acting on behalf of such persons, performed with that issuer or with any other issuer in the same group during the year to which the financial

³⁷ A paragraph was added to paragraph 1 by final provision 5.2 of Act 2/2011, of 4 March. Amended by Act 6/2007, of 12 April.

statements refer, where the transactions fall outside the ordinary course of business or were not performed on an arm's-length basis.

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 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 directors' 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 directors' 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 directors' 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 who 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 euro.

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 mutual funds and open-ended collective investment companies referred to in Law 35/2003, of 4 November, on Collective Investment Institutions.

Article 35.bis. *Other reporting obligations*³⁸

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

³⁸ Added by Act 6/2007, of 12 April.

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 general meeting of shareholders that must vote on the amendment or be informed of same.

Article 35.ter. Issuers' responsibility³⁹

1. The responsibility 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.

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 36⁴⁰

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 transactions.

³⁹ Added by Act 6/2007, of 12 April.

⁴⁰ Amended by item thirteen of the sole article of Act 47/2007, of 19 December. Amended by Act 44/2002, of 22 November. Amended by Act 37/1998, of 16 November

Article 37. *Members of the official secondary markets*⁴¹

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 Communities 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:
 - 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 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 fit and proper;
 2. have a sufficient level of trading ability and competence;

⁴¹ Amended by item fourteen of the sole article of Act 47/2007, of 19 December. Amended by Act 37/1998, of 16 November

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 Community 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. *Remote access*⁴²

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, shall refer it to the competent authority of that Member State and it shall provide that information to the European Securities and Markets Authority, upon the latter's request, in accordance with the procedure and conditions set out in article 35 of the Regulation (EU) no. 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC. Additionally, 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 comply, on behalf of their clients, with any 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 client furnishing such collateral or margin as the member may deem advisable, which must be at least those to be laid down by regulation, if any.

⁴² Item 1 was amended by article 3.7 of Royal Decree-Act 10/2012, of 23 March. Amended by item fifteen of the sole article of Act 47/2007, of 19 December. Amended by Act 44/2002, of 22 November. Amended by Act 4/1990, of 29 June.

Article 40

No member of an official secondary market may act on its own behalf 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 financial links and contractual relationships with third parties that may, when they act either on their own account or on the account of third parties, give rise to conflicts of interest with other clients. Subject to the general criteria to be 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

Remuneration received by members of official secondary markets in respect of their brokerage in the trading of securities shall be set freely. Nevertheless, the Government may establish maximum levels of remuneration 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*⁴³

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.

⁴³ Amended by item sixteen of the sole article of Act 47/2007, of 19 December. Amended by Act 37/1998, of 16 November

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 the 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 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 multilateral trading facilities, 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 Communities with powers in the matter may establish any other disclosure requirement relating to transactions performed in their territory.

Article 44⁴⁴

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

⁴⁴ Amended by Act 37/1998, of 16 November. Amended by Act 44/2002, of 22 November

- a) Establish that relationships between members of official secondary markets and third parties for the trading of securities be formalised in written agreements signed by the parties, a counterpart being delivered to each of them.
- b) Lay down the regulations required to ensure that the agreements 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 performance 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 implement the 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 Book-Entry Market, to the Bank of Spain.

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

Article 44.bis⁴⁵ ⁴⁶

1. 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

⁴⁵ Additional provision two, section 2, of Act 22/2003, of 9 July, on Insolvency (as amended by additional provision three of Royal Decree Act 5/2005, classifies article 44.bis of the Securities Market Act as special legislation for purposes of applying section 1, which reads as follows: "1. *In the event of bankruptcy of credit institutions or entities classified by law as being equivalent to them, investment firms, insurers, members of official securities markets and members of the official securities clearing and settlement systems, the special rules for bankruptcy in the specific applicable legislation will apply except as regards the composition, appointment and working of the receivers.*" Additionally, Additional Provision Three (*Amendment of the Bankruptcy Act*) of Act 36/2003, of 11 November, on Economic Reform Measures, introduced a section 3 into additional provision two of the Bankruptcy Act which reads as follows: "3. *The legislation referred to in the preceding section shall apply, with the same scope, to the transactions or contracts envisaged therein, particularly transactions connected with the payment, clearing and settlement systems for securities, buy/sell-backs and sell/buy-backs, repos and derivatives transactions.*"

⁴⁶ Paragraphs 3, 4 and 7 were amended by item 3 of the sole article of Act 32/2011, of 4 October. (Paragraphs 3 and 4 will enter into force when determined by the implementing regulations, as provided in final provision 6). Paragraph 12 was added and paragraphs 1.1.a), 1.1.b) and 1.1.c) were amended by item 17 of the sole article of Act 47/2007, of 19 December. Amended by Act 12/2006, of 16 May. Amended by Act 22/2003, of 9 July, on Insolvency. Article added by Act 44/2002, of 22 November.

markets and on multilateral trading facilities, 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 multilateral trading facilities where this is necessary to facilitate the settlement of trades in those securities.

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 Communities with powers in this matter may order the creation by the management 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 sole purpose, the restrictions regarding object and activity envisaged in the first paragraph of Article 46 and in Article 48.1 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 Community.

3⁴⁷. Direct and indirect holdings in the capital of the Systems Company shall be subject to the rules governing significant 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

⁴⁷ Section 3 was added by Act 32/2011, and will enter into force when determined by the implementing regulations, as provided in final provision 6. It states as follows: "*3. Direct and indirect holdings in the capital of the Systems Company shall be subject to the rules governing significant 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 significant.* 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 Minister of Economy and Finance 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 articles 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.

The Systems Company must have at least an audit committee, a risks committee and an appointments and remuneration committee. It must also have mechanisms to enable users and other interested parties to express their opinions about the performance of the functions and must have rules designed to avoid any conflicts of interest to which they might be exposed as a result of their relations with shareholders, directors and executives, member entities and clients. The Government, following consultation with the National Securities Market Commission and the Bank of Spain, may enact the secondary legislation referred to in this paragraph.

Additionally, the specific functions of oversight and control that must be performed with regard to member entities, the requirements as to solvency and technical resources, special reporting obligations to the National Securities Market Commission and any other aspects considered to be necessary for its proper functioning shall be established by secondary legislation, having regard in any event to the criterion of proportionality as a function of the level of activity."

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 significant.

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.

4⁴⁸. The Systems Company shall be governed by this Act and its implementing regulations and by a Regulation to be approved by the Ministry of Economy on the basis of a report by the National Securities Market Commission, the Bank of Spain and the Autonomous Communities whose Statutes of Autonomy empower them in the matter of regulating securities trading centres. That Regulation shall govern the functioning of the Systems Company, the services it provides, its economic system, the procedures for setting and disclosing tariffs, the conditions and principles according to which it shall provide the aforementioned services, and the legal system of the entities participating in the systems that said company manages. In particular, the Regulation shall establish the legal system of the participating entities that hold individualised accounts relating to securities 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 the collateral of all types that the entities participating in the systems managed by the Systems Company must present.

5. If a member entity ceases to meet all or part 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 Ministry 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.

⁴⁸ Section 4 was amended by Act 32/2011, and will enter into force when determined by the implementing regulations, as provided in final provision 6. It states as follows: *"4. The Systems Company shall be governed by this Act and its implementing regulations and by a Regulation to be approved by the Minister of Economy and Finance on the basis of a report by the National Securities Market Commission, the Bank of Spain and the Autonomous Regions 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 system, the procedures for setting and disclosing tariffs, the conditions and principles according to which the Systems Company shall provide the aforementioned services, and the legal system of the entities participating in the systems that the Systems Company manages. In particular, the Regulation shall establish the legal system of the participating entities that hold individualised accounts relating to securities belonging to parties which do not hold that status. The Regulation shall also regulate the procedures to ensure the delivery and payment of securities and the collateral of all types that member entities may have to provide as a function of their activities in the systems managed by the Systems Company"*.

7. The Systems Company may establish agreements with resident and non-resident entities, either public or private, that perform any or all similar functions, with central counterparties and others, subject to the provisions of this Act, of its implementing regulations and of the Regulation envisaged in paragraph 4 above, with regard to the opening and keeping of accounts, the technical provision of securities and cash clearing and settlement services, or other activities of the Systems Company.

Such agreements shall not alter the system of liability with respect to fulfilment of its obligations nor may they entail the Systems Company losing control over the activity.

The adoption and amendment of such agreements shall require prior approval by the National Securities Market Commission subject to consultation with the Bank of Spain or, as the case may be, by the Autonomous Community Governments with powers in this area, in connection with markets in their territory.

8. In the event that an entity participating in the systems managed by the Systems Company is declared to be in a situation of insolvency, 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 member's estate in bankruptcy.

9. Once a member entity of the systems referred to in this article has been declared bankrupt, 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 entity authorised to perform this activity. In the same way, the owners of such securities may request for them to be transferred to another entity. If no entity 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 judge in charge of the insolvency proceedings and the receivers 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 bankruptcy 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 deemed to be a registered dealer and a settlement agency of the securities payment, clearing and settlement systems envisaged in Article 8.c), 8.g) and, if appropriate, 8.i) of Law 41/1999, of 12 November, on the securities payment and settlement systems, subject to legislation of the State or the Autonomous Community 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 Law and, in particular, the purposes envisaged in Articles 11, 13 and 14 thereof.

11. 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 paragraphs 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 integrity 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. 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.ter⁴⁹ ⁵⁰

1. Subject to prior consultation with the National Securities Market Commission and the Bank of Spain, the Minister of Economy may authorise 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 entity or entities so authorised shall perform their activities in accordance with the provisions established by the corresponding internal 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 Communities whose Statute of Autonomy empowers them in matters of regulating securities trading centres.

2. The regimes managed by central counterparties and their members shall be recognized as systems for the purposes of Act 41/1999, of 12 November, on systems for payment and securities settlement, and shall perform the functions of receiving and accepting orders for the transfer of securities and cash, clearing such orders, giving finality to such transactions, and disclosing the results to a settlement system, to culminate the corresponding execution transactions.

The entities that form part of any such system shall be liable for the functions they perform in that capacity.

To facilitate the performance of their functions, central counterparties may become members of the Systems Company.

3. Central counterparties shall have the form of a corporation (*sociedad anónima*) which shall be legally separate from the Systems Company. 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 Minister of Economy and Finance following consultation with the National Securities Market Commission. Also, they must have the minimum capital and own funds that are sufficient for their activity as determined by secondary legislation and which guarantee

⁴⁹ Additional provision two, section 2, of Act 22/2003, of 9 July, on Insolvency (as amended by additional provision three of Royal Decree Act 5/2005), classifies article 44.ter of the Securities Market Act as special legislation for the purposes of applying section 1, which reads as follows: “1. In the event of bankruptcy of credit institutions or entities classified by law as being equivalent to them, investment firms, insurers, members of official securities markets and members of the official securities clearing and settlement systems, the special rules for bankruptcy in the specific applicable legislation will apply except as regards the composition, appointment and working of the receivers.” Additionally, Additional Provision Three (*Amendment of the Bankruptcy Act*) of the Act 36/2003, of 11 November, on Economic Reform Measures, introduced a section 3 into additional provision two of the Bankruptcy Act which reads as follows: “3. The legislation referred to in the preceding section shall apply, with the same scope, to the transactions or contracts envisaged therein, particularly transactions connected with the payment, clearing and settlement systems for securities, buy/sell-backs and sell/buy-backs, repos and derivatives transactions”.

⁵⁰ Amended by item 4 of the sole article of Act 32/2011, of 4 October. Article added by Act 44/2002, of 22 November.

sufficient solvency on the part of the entity and the system it manages and solid capacity to weather situations of breach on the part of the members.

Direct or indirect ownership of the capital of a central counterparty shall be subject to the system governing significant stakes envisaged in Article 44.bis.3 of this Act.

Membership shall be confined to the entities referred to in sections a) through d) and f) of article 37.2 of this Act, the Bank of Spain and other entities, whether resident or non-resident, that perform analogous activities in the terms and with the limitations set out in secondary legislation and in the entity's own internal regulation. Access by the latter to membership shall be subject to the provisions of this Act, its secondary legislation and the internal regulation referred to in section 4 of this article, and also to approval by the National Securities Market Commission.

The requirements for the creation and operation of such entities and their members, the requirements as to solvency and technical resources, rules of conduct, collateral required to be provided by the entity and its members, special reporting obligations to the National Securities Market Commission and any other aspects considered to be necessary for their proper functioning shall be established by secondary legislation, having regard in any event to the criterion of proportionality as a function of the level of activity.

Central counterparties must have at least an audit committee, a risks committee and an appointments and remuneration committee. They must also have mechanisms to enable users and other interested parties to express their opinions about the performance of the functions and must have rules designed to avoid any conflicts of interest to which they might be exposed as a result of their relations with shareholders, directors and executives, member entities and clients. The Government may enact secondary legislation covering the aspects of corporate governance referred to in this paragraph.

4. In addition to the rules of this Act and its secondary legislation, central counterparties shall be governed by an internal Regulation, which shall have the status of a Securities Market regulation of order and discipline. That Regulation shall set out the rules for the entity's operation, the services it provides, the requirements for access to membership, the classes of members, specifying the related technical and solvency requirements, the collateral required of members and clients in relation to the associated risks, and the information that the latter must disclose in connection with the transactions they refer to the entity, the economic regime of the central counterparty, and any other matters required by regulation.

The central counterparty may, in the name and on the account of the trading entities, execute the obligations derived from the master contracts on transactions performed in marketable securities or derivatives, subject to the provisions of this or other applicable laws and of the implementing regulations.

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

6. The central counterparty shall be subject to the provisions of Act 41/1999, of 12 November, on securities payment and settlement systems, as regards the systems regulated therein.

The collateral provided by the members and clients in accordance with the rules of the central counterparty's Regulation and in connection with any transactions made in the scope of its activity 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 central counterparty or its members and from the status of member of the central counterparty.

If a member, or a member's client, fails to honour any or all of the obligations undertaken vis-à-vis the central counterparty or vis-à-vis the member, the aggrieved party may dispose of the collateral provided by the party in breach and, to that end, adopt the necessary remedies in the terms to be established in the entity's Regulation.

In the event of insolvency on the part of a member of a central counterparty or any of its clients, the central counterparty 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 accordance with the provisions of the central counterparty's 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.

Where the clients of members of a central counterparty 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 central counterparty'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 central counterparty, after first notifying the National Securities Market Commission, shall arrange for the transfer of any contracts and positions registered for clients, together with the securities and cash representing the corresponding collateral. Where such transfer cannot be effected, the entity may order the settlement of the contracts and positions which the member had open, 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.

7. Subject to the provisions of this and other Laws and of the implementing regulations of 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 hold a stake in said entities or accept them as shareholders. Such agreements, and any that may be entered into with markets or multilateral trading facilities, shall require approval by the National Securities Market Commission, following consultation with the Bank of Spain, and must fulfil the requirements to be established in secondary legislation and in the entity's own regulation.

8. Authorization granted to a central counterparty may be revoked for the same reasons as established in connection with official secondary markets.

Article 44.querter. *Possibility of choosing the clearing and settlement system or the central counterparty.*⁵¹

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. *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 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 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 added by item 19 of the Sole Article of Act 47/2007, of 19 December.

Article 44.sexies. *Access to central counterparty, clearing and settlement facilities.*⁵²

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 multilateral trading facilities or in regulated markets or multilateral trading facilities 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.

⁵¹ Article added by item 18 of the Sole Article of Act 47/2007, of 19 December

⁵² Article added by item 20 of the sole article of Act 47/2007, of 19 December

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 STOCK EXCHANGES

Article 45⁵³

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 Communities 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 Communities.

Article 46⁵⁴

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.

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 47⁵⁵

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

Article 48⁵⁶

1. 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

⁵³ As amended by item 21 of the Sole Article of Act 47/2007, of 19 December. Amended by Act 37/1998, of 16 November

⁵⁴ As amended by item 21 of the Sole Article of Act 47/2007, of 19 December. Amended by Act 44/2002, of 22 November. Amended by Act 37/1998, of 16 November

⁵⁵ Amended by Act 14/2000, of 29 December

⁵⁶ Section 1 amended by item 23 of the sole article of Act 47/2007, of 19 December. Amended by article 2.3 of Act 12/2006, of 16 May. Amended by article 69.2 of Act 14/2000, of 29 December. Amended by article 4.12 of Act 37/1998, of 16 November

Stock Exchanges, and they may not perform any brokerage activity or any of the activities listed in Article 63.

2. The Autonomous Communities 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 *Sociedad de Bolsas* as 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 *Sociedad de Bolsas*, which shall consist of the governing companies of the Stock Exchange existing at any given time. The capital of that 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. That 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 object.

The *Sociedad de Bolsas'* articles, 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 Communities 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.*⁵⁷

⁵⁷ Amended by Act 6/2007, of 12 April.

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.

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 Law 35/2003, of 4 November, on Collective Investment Institutions.

Article 53.bis. *Issuers' obligations with respect to own shares.*⁵⁸

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 Law 35/2003, of 4 November, on Collective Investment Institutions.

⁵⁸ Article added by Act 6/2007, of 12 April.

Article 53.ter. Preventive measures.⁵⁹

1. Where Spain is the host Member State in the terms to be established by regulation, the National Securities Market Commission shall inform the competent authority of the home Member State and the European Securities and Markets Authority 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 prove to be insufficient, the person indicated in the preceding paragraph persists with its violation of the law or regulations, the National Securities Market Commission shall, after notifying the competent authority of the home Member State, adopt the pertinent measures to protect investors. The National Securities Market Commission shall immediately notify the European Commission and the European Securities and Markets Authority of the measures that are adopted.

Article 54⁶⁰ (*Repealed*)

CHAPTER III

PUBLIC-DEBT BOOK-ENTRY MARKET

Article 55⁶¹

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, the European Central Bank, the National Central Banks of the European Union, or the Autonomous Communities 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 managing 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

⁵⁹ Amended by article 3.8 of Royal Decree-Act 10/2012, of 23 March. Article added by Act 6/2007, of 12 April.

⁶⁰ The repealing provision of Act 44/2002, in section b), repealed this article in the terms established in transitory provision two (*"Transitory regime governing the functions assumed by the Systems Company"*), which reads as follows: "*Article 54 of Act 24/1988, of 20 July, on the Securities Markets, shall be repealed, in accordance with the provisions of transitory provision one, once the functions which article 44.bis of that Act attributes to the Systems Company are actually assumed, all without prejudice to the maintenance of the provisions of section 2 of the aforementioned article 44.bis with respect to services created in the Autonomous Regions*". The Systems Company effectively assumed the functions on 1 April 2003 (Official Gazette 1 April 2003).

⁶¹ Amended by item 24 of the Sole Article of Act 47/2007, of 19 December. Amended by Act 44/2002, of 22 November. Amended by Act 37/1998, of 16 November

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 managing 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 Communities 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 56⁶²

1. 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.
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)*

Article 57⁶³

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 in the Public-Debt Market shall be responsible for record-keeping of the securities listed on the Public-Debt Book-Entry Market.
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. 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.

⁶² Section 3 was repealed and section 1 was amended by item 25 of the sole article of Act 47/2007, of 19 December. Amended by Act 37/1998, of 16 November

⁶³ Section 3 was amended by item 26 of the Sole Article of Act 47/2007, of 19 December. Amended by Act 44/2002, of 22 November

Article 58⁶⁴ 65

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 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.

⁶⁴ Additional provision two, section 2, of Act 22/2003, of 9 July, on Insolvency (as amended by additional provision three of Royal Decree Act 5/2005), classifies article 44.ter of the Securities Market Act as special legislation for purposes of applying section 1, which reads as follows: "*1. In the event of bankruptcy of credit institutions or entities classified by law as being equivalent to them, investment firms, insurers, members of official securities markets and members of the official securities clearing and settlement systems, the special rules for bankruptcy in the specific applicable legislation will apply except as regards the composition, appointment and working of the receivers.*" Additionally, Additional Provision Three (*Amendment of the Bankruptcy Act*) of Act 36/2003, of 11 November, on Economic Reform Measures, introduced a section 3 into additional provision two of the Bankruptcy Act which reads as follows: "*3. The legislation referred to in the preceding section shall apply, with the same scope, to the transactions or contracts envisaged therein, particularly transactions connected with the payment, clearing and settlement systems for securities, buy/sell-backs and sell/buy-backs, repos and derivatives transactions.*"

⁶⁵ As amended by item 27 of the Sole Article of Act 47/2007, of 19 December. Amended by Act 22/2003, of 9 July, on Insolvency. Amended by Act 44/2002, of 22 November. Amended by Act 37/1998, of 16 November.

CHAPTER IV

OFFICIAL SECONDARY MARKETS IN FUTURES AND OPTIONS REPRESENTED BY BOOK ENTRIES⁶⁶

Article 59⁶⁷ 68. *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 Community 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.

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

⁶⁶ Amended by Act 37/1998, of 16 November

⁶⁷ As amended by item 28 of the Sole Article of Act 47/2007, of 19 December. Amended by Act 44/2002, of 22 November. Amended by Act 37/1998, of 16 November

⁶⁸ Additional provision two, section 2, of Act 22/2003, of 9 July, on Insolvency (as amended by additional provision three of Royal Decree Act 5/2005), classifies article 59 of the Securities Market Act as special legislation for the purposes of applying section 1, which reads as follows: "1. *In the event of bankruptcy of credit institutions or entities classified by law as being equivalent to them, investment firms, insurers, members of official securities markets and members of the official securities clearing and settlement systems, the special rules for bankruptcy in the specific applicable legislation will apply except as regards the composition, appointment and working of the receivers.*" Additionally, Additional Provision Three (*Amendment of the Bankruptcy Act*) of the Act 36/2003, of 11 November, on Economic Reform Measures, introduced a section 3 into additional provision two of the Bankruptcy Act which reads as follows: "3. *The legislation referred to in the preceding section shall apply, with the same scope, to the transactions or contracts envisaged therein, particularly transactions connected with the payment, clearing and settlement systems for securities, buy/sell-backs and sell/buy-backs, repos and derivatives transactions.*"

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 Community 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 TRANSACTION REPORTING⁶⁹

Article 59.bis. *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 management company of the regulated market or 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 multilateral trading facility, 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

⁶⁹ Chapter added by item 29 of the sole article of Act 47/2007, of 19 December

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
- 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 National Securities Market Commission 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 recordkeeping 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 BIDS⁷⁰

Article 60. *Mandatory takeover bids.*

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:

⁷⁰ Chapter amended by Act 6/2007, of 12 April.

- 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.

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 company's 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 Corporations Law.

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.
6. Regardless of what is established in section 1, mandatory takeover bids shall be subject to the regime in section 2 of article 61 of the present Act when any of the circumstances established in section 3 of said precept exists.⁷¹

Article 60.bis. *Obligations of the governing and executive bodies.*

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 general meeting of shareholders, as provided in article 103 of the Consolidated Text of the Corporations Law, 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 general meeting of shareholders must approve or confirm, in accordance with article 103 of the Consolidated Text of the Corporations Law, 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.

The general meeting of shareholders 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.

⁷¹ Section 6 added by additional provision two. One of Act 1/2012, of 23 June

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 general meeting of shareholders, 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 general meeting of shareholders in accordance with the provisions of article 103 of the Consolidated Text of the Corporations Law, 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. Breakthrough measures.⁷²

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 general meeting of shareholders 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 shareholder agreements relating to the company.

c) Suspension of the restrictions set out in a) above and, of those which, being among those established in b) above, are contained in shareholder agreements, when an offeror has attained 70 per cent or more of the voting capital in a public takeover bid.

2. The provisions of the bylaws, which directly or indirectly, set in general terms the maximum number of votes casted by a single shareholder, the companies belonging to a given group or who act in concert with the formers, will be ineffective when an offeror has attained 70 per cent or more of the voting capital in a public takeover bid, unless said offeror or its group or who act in concert with the former is not subject to equivalent breakthrough measures or has not adopted them.

3. The decision to apply section 1 of this article must be adopted by the company's general meeting of shareholders, with the quorum and majority requirements provided for the amendment of the corporation bylaws in the Legislative Royal Decree 1/2010, of 2 July, approving the Consolidated Text of the Corporations Law, 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 general meeting of shareholders of the company may, at any time, revoke the decision to apply section 1 of this article, with the quorum and majority requirements provided for the amendment of the corporation bylaws in the Legislative Royal Decree 1/2010, approving the Consolidated Text

⁷² Amended by additional provision one. Three of Act 1/2012, of 23 June

of the Corporations Act. The majority required by virtue of this paragraph must coincide with that required by virtue of the preceding paragraph.

4. 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 therein.

5. Companies may cease to apply the breakthrough measures that were implemented under section 1 of this article where they are the target of a takeover bid by an entity or group or who act in concert with the former that has not adopted equivalent breakthrough measures.

Any measure adopted by virtue of the preceding paragraph will require the authorisation of the general meeting of shareholders, with the quorum and majority requirements provided for the amendment of the corporation bylaws in the Legislative Royal Decree 1/2010, of 2 July, approving the Consolidated Text of the Corporations Law, at most 18 months prior to the announcement of the takeover bid.

6. 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 tag-along.*⁷³

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. If, in the case regulated in this article, the securities subject to squeeze-out or tag-along are attached as a result of administrative acts or court rulings, or if there is any other type of lien upon them, including limited rights in rem or financial guarantees, the securities shall be disposed of free of such liens, which shall be transferred to the price paid or the securities delivered by the offeror in payment.

The depositary of the securities shall be obliged to keep on deposit the price of the sale or any securities delivered, and to give notice of the application of this procedure to the judicial or administrative authorities that ordered the attachment or to the holder of any other liens.

If, once the provisions of this section have been applied, there remains a part of the price that is not needed to cover the obligations secured by the attachment(s) or the liens on the securities, it shall be placed immediately at the disposal of the owner of the securities.

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

⁷³ Section 2 was renumbered as section 3 and a new section 2 was added by article 1.1 of Act 5/2009, of 29 June.

Article 61. *Voluntary takeover bids.*⁷⁴

1. 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.

2. When any of the circumstances indicated in section 3 below occur within two years before the announcement of the offer, the offeror must provide an independent expert report of the methods and evaluation criteria applied to determine the offer price, among which the average market value of a given period, the break-up value of the company, the value of the consideration value paid by the offeror for the same securities in the 12 months prior to the announcement of the offer, the underlying book value of the company and other generally accepted objective evaluation criteria which, in any case, ensure the safeguarding of the shareholders' rights.

The report will justify the relevance of each of the respective methods used in the valuation. The offer price shall not be less than the higher between the equitable price referred to in article 60 of this Act and the price which results from taking into account, justifying their respective relevance, the methods contained in the report.

Moreover, if the offer is made as a securities exchange, as well as the foregoing, there must be included, at least as an alternative, a consideration or cash price financially equivalent, at a minimum, to the exchange being offered.

With the aim of adapting the offer to what is set out in this section, the National Securities Market Commission may adapt the administrative procedure, extending the deadlines as necessary and requesting information and documents which it considers necessary.

3. The circumstances to which the foregoing section 2 refers are the followings:

a) That the market prices of the securities, for which the offer is made, present reasonable indications of manipulation, which have caused a sanctioning procedure initiated by the National Securities Commission for violation of what is set out in article 83.ter of Act 24/1988, of 28 July, on the Securities Market, regardless of the application of the corresponding sanctions, and as long as the interested party and the corresponding list of charges had been notified;

b) That the market prices in general, or of the offeree company in particular, have been affected by exceptional events such as natural disasters, war, emergency, or others arising from force majeure;

c) That the offeree company has been subject to expropriation, forfeiture or other circumstances of the same nature which may involve a significant alteration in the real value of its equity.

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

⁷⁴ Sections 2, 3 and 4 added by additional provision two. Two of Act 1/2012, of 23 June

CHAPTER VI Annual corporate governance report⁷⁵

Article 61.bis. *Annual corporate governance report.*⁷⁶

1. Listed corporations must publish an annual corporate governance report.
2. The corporate governance report must be notified to the National Securities Market Commission, attaching a copy of the document itself. In the case of listed companies under the supervision of other supervisors, the National Securities Market Commission shall forward a copy of the report to them.
3. The report must be disclosed in the form of a regulatory disclosure.
4. The content and structure of the corporate governance report shall be established by the Minister of Economy and Finance or, with his/her express authorisation, the National Securities Market Commission.

The report must provide a detailed description of the structure of the company's governance system and of its workings in practice. In any event, the corporate governance report must contain at least the following:

- a) The company's ownership structure, which must include:
 1. information about the shareholders with significant holdings, indicating their percentage of ownership and any familial, commercial, contractual or corporate relationship that exist, as well as their representation on the board;
 2. information about shareholdings that the members of the Board of Directors are required to disclose to the company, and any shareholder agreements disclosed to the company itself or to the National Securities Market Commission, or registered with the Mercantile Register;
 3. information about 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 represented by own shares and any significant variations in them;
 4. information about the rules governing changes to the company's articles of association.
- b) Any restriction on the transfer of securities or on voting rights.
- c) The company's administration structure, which must include:
 1. information about the composition of the Board of Directors and its committees and their rules of organization and functioning;
 2. identity and remuneration of their members, their functions and positions within the company, their relations with owners of significant holdings, disclosing the existence of any cross directorships or directors with the status of related parties, and the procedures for their selection, removal and reappointment;

⁷⁵ Introduced by Act/2011, of 4 March.

⁷⁶ Added by final provision 5.3 of Act 2/2011, of 4 March.

3. information about the powers of the members of the Board of Directors and, in particular, those relating to the possibility of issuing or repurchasing shares;
 4. information about 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;
 5. 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.
- d) Related-party transactions between the company and its shareholders, directors and executives, and intragroup transactions.
 - e) Risk control systems
 - f) The workings of the shareholders' meeting, with information about the business transacted at any meetings that were held.
 - g) Degree of application of the corporate governance recommendations and an explanation in any case where the recommendations are not followed.
 - h) A description of the main characteristics of the internal control and risk management systems in connection with the process of disclosing financial information.
5. Without prejudice to the penalties applicable for failure to file the corporate governance documentation or report or for omissions or misleading or erroneous information, the National Securities Market Commission is the body entrusted with overseeing the corporate governance rules, to which end it may obtain any information it requires in this respect and publish any information that it considers relevant regarding the actual degree of compliance.
6. Where the listed company is a *Societas Europaea* -European listed company- domiciled in Spain that has opted for the dual system, the annual corporate governance report must be accompanied by a report drafted by the oversight board on the performance of its functions.
7. The information in the annual corporate governance report regarding the composition of the Board of Directors, its delegate committees and the classification of its directors must be drawn up in accordance with the definitions to be established by the Minister of Economy and Finance or, by express delegation, by the National Securities Market Commission. Those definitions will refer to, among others, the category of executive director, proprietary director and independent director. The definition of the category of independent director will take account, among other factors, of the requirement that the appointees be proposed by the Appointments Committee based on their personal and professional qualities, and that they must be able to perform their duties without being affected by relations with the company, its significant shareholders or its executives.

The Minister of Economy and Finance or, by express delegation, the National Securities Market Commission will determine the conditions to be met by a director in order to qualify as independent and the circumstances in which such a director may cease to qualify as such. To this end, the following disqualifying circumstances may be considered: having been an employee or an executive director of a company in the group; being currently or having been a partner of the external audit firm or the person in charge of the audit report, or being the spouse or person in an equivalent relationship, or a relative to the second-degree, of an executive director or senior executive of the company.

Article 61.ter. *Annual report on director remuneration.*⁷⁷

1. In addition to the annual corporate governance report, the board of a listed company must draw up a report on its directors' remuneration which must include complete, clear and comprehensible information about the company's remuneration policy approved by the board for the current year and for future years, as appropriate. It must also include an overall summary of how the policy was applied during the year, with disclosure of the individual remuneration accrued by each director.
2. The annual report on director remuneration, the company's remuneration policy approved by the board for the current year, that planned for future years, an overall summary of how the remuneration policy was applied during the year, and the itemized individual remuneration accrued by each director will be made public and submitted for a consultative vote as a separate item on the agenda of the ordinary Shareholders' Meeting.
3. Savings banks must draw up an annual report on the remuneration of the members of their Board of Directors and Oversight Committee, which must include complete, clear and comprehensible information about the remuneration policy approved by the Board for the current year and for future years, as appropriate. It must also include an overall summary of how the policy was applied during the year, with disclosure of the individual remuneration accrued by each director and member of the Oversight Committee.
4. The annual report on remuneration of the Board of Directors, the company's remuneration policy approved by the board for the current year, that planned for future years, an overall summary of how the remuneration policy was applied during the year, and the itemized individual remuneration accrued by each director will be made public and submitted for a consultative vote as a separate item on the agenda of the General Assembly.
5. The Minister of Economy and Finance and, by express authorisation, the National Securities Market Commission shall establish the minimum content and structure of the remuneration report, which may include the following, among other matters: the amount of the fixed component, their legal remuneration items and the performance benchmarks chosen for their design, and the role of the Remuneration Committee, if one exists.

TITLE V

INVESTMENT FIRMS⁷⁸

CHAPTER I

GENERAL PROVISIONS

⁷⁷ Added by final provision 5.3 of Act 2/2011, of 4 March.

⁷⁸ Section amended by article 5 of Act 37/1998, of 16 November

Article 62. *Definition of investment firm, and exclusions.*⁷⁹

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 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;

⁷⁹ New wording provided by item 30 of the sole article of Act 47/2007, of 19 December. Amended by Act 37/1998, of 16 November

- 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. *Investment services and ancillary services.*⁸⁰

1. The following are considered to be investment services:

- 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.

⁸⁰ Amended by item 31 of the sole article of Act 47/2007, of 19 December. Amended by Act 37/1998, of 16 November

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 contained in this article.

Article 64. *Classes of investment firm.*⁸¹

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*).

⁸¹ Amended by item 32 of the sole article of Act 47/2007, of 19 December. Amended by Act 44/2002, of 22 November. Amended by Act 37/1998, of 16 November

d) Financial advisory firms.

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. *Other institutions*⁸²

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. *Agents of investment firms*⁸³

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.

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.

⁸² Amended by item 33 of the sole article of Act 47/2007, of 19 December. Amended by Act 44/2002, of 22 November. Amended by Act 37/1998, of 16 November

⁸³ Article added by item 34 of the sole article of Act 47/2007, of 19 December

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 secondary legislation, establishing in particular the other requirements imposed on the agents and the investment firms for which they work.

Article 65.ter. *Electronic trading*.⁸⁴

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.

⁸⁴ Article added by item 35 of the sole article of Act 47/2007, of 19 December

CHAPTER II

CONDITIONS FOR GAINING ACCESS TO THE ACTIVITY

Article 66. *Authorisation and registration.*⁸⁵

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 Articles of Association and other documentation to be determined by regulation, plus a schedule of activities 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 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 who control an investment firm, credit institution, insurance company or UCITS management company authorised in such Member State.

⁸⁵ Item 6 was amended by article 3.9 of Royal Decree-Act 10/2012, of 23 March. Amended by item 36 of the sole article of Act 47/2007, of 19 December. Amended by Act 5/2005, of 22 April. Amended by Act 37/1998, of 16 November

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 fitness of the shareholders and the good repute 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.

The National Securities Market Commission shall notify the European Securities and Markets Authority promptly of all authorisations that it grants.

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. *Denial of authorisation and requirements for access.*⁸⁶

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. Fitness shall be assessed on the basis of the following factors, among others:
 1. The shareholders' business and professional 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.

⁸⁶ Amended by item 37 of the sole article of Act 47/2007, of 19 December. Amended by Act 5/2005, of 22 April. Amended by Act 22/2003, of 9 July, on Insolvency. Amended by Act 37/1998, of 16 November

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 holding company, 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 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 corporation (*sociedad anónima*) constituted for an indefinite period and the shares comprising its capital must be registered. Secondary legislation may be enacted to allow 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 have 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 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 repute.

The members of the Board of Directors and the persons effectively holding executive functions in a mixed-activity holding company shall also be held to that standard of business and professional 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 code of conduct 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 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

CONDITIONS FOR CARRYING OUT THE ACTIVITY⁸⁷

Article 68. *Amendments to the Articles of Association, changes in the investment services and ancillary services and changes of officers and executives.*⁸⁸

1. Amendments to the Articles of Association 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 Articles 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.

⁸⁷ Chapter added by Act 37/1998, of 16 November

⁸⁸ Amended by item 38 of the sole article of Act 47/2007, of 19 December. Amended by Act 37/1998, of 16 November

- b) Addition to investment firms' Articles of Association of imperative or prohibitive requirements arising from law or regulation, or in compliance with court or administrative decisions.
- 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 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 69⁸⁹

1. For the purposes of this Act, a significant stake in a Spanish investment firm shall be one which, directly or indirectly, amounts to 10 per cent of the company's capital or voting rights.

Any stake which enables considerable influence to be exerted on the company, even if it is below the aforementioned percentage, shall also be deemed to be significant. Secondary legislation may be enacted to determine, based on the characteristics of the various types of investment firms, when a natural or legal person is presumed to exert significant influence, taking into account, for these purposes, the power to appoint or remove a member of the board of directors.

2. 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 contained in this Act and

⁸⁹ Amended by article 1.2 of Act 5/2009. Sections 2, 6, 7, 8 and 10 were amended by item 39 of the sole article of Act 47/2007, of 19 December. Amended by Act 37/1998, of 16 November

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, acting alone or in concert with others, that has acquired, directly or indirectly, a stake in a Spanish investment firm, with the result that it owns 5% or more of the voting rights or capital must inform the National Securities Market Commission and the investment firm immediately of this fact in writing, indicating the size of the stake that has been attained.

4. Any natural or legal person who, acting alone or in concert with others, hereinafter the potential acquirer, has decided to acquire, directly or indirectly, a significant stake in a Spanish investment firm or to increase, directly or indirectly, the stake, with the result that the corresponding voting rights or holding in capital is equal to or greater than 20%, 30%, or 50%, or where, by virtue of the acquisition the acquirer may attain a controlling stake in the investment company, hereinafter the proposed acquisition, they must provide advance notice to the National Securities Market Commission, indicating the size of the projected stake and any other information required by regulation. That information must be relevant to the assessment, and proportionate and appropriate to the nature of the potential acquirer and the proposed acquisition.

A relationship of control shall be deemed to exist for the purposes of this Title whenever any of the cases envisaged in article 42 of the Commercial Code arises.

The voting rights or capital resulting from underwriting an issue or placing financial instruments or from placing financial instruments based on a firm commitment will not be counted for the purposes of the provisions of this section provided that those rights are not exercised with a view to intervening in the management of the issuer and that they are disposed of within one year from their acquisition.

Where the National Securities Market Commission receives two or more notifications referring to the same investment company, it shall treat all potential acquirers on a non-discriminatory basis.

5. In order to ensure sound and prudent management of the investment firm that is the target of the proposed acquisition, and considering the potential influence of the acquirer on that firm, the National Securities Market Commission shall evaluate the suitability of the potential acquirer and the financial soundness of the proposed acquisition, according to the following criteria:

- a) the potential acquirer's business and professional integrity.
- b) the business and professional integrity and the experience of the directors and executives who will be responsible for the activity of the investment firm as a result of the proposed acquisition;
- c) the financial soundness of the potential acquirer to meet its commitments, particularly in relation to the type of business activity it performs and which it proposes to perform in the investment firm to which the proposed acquisition refers;
- d) the ability of the investment firm to fulfil, on a lasting basis, the obligations established in the regulations which apply to it. In particular, and where appropriate, the Commission shall assess whether the group of which it will form part has a structure that does not impede effective surveillance and allows for an effective exchange of information between the competent authorities to carry out such surveillance and to determine the division of responsibilities between them; and
- e) that there are no reasons to suspect that:

- i) in connection with the proposed acquisition, there are no cases, past or present, of money laundering or terrorist finance, as envisaged in the regulations which prohibit such activities, and no attempts to engage in such activities; or
- ii) the acquisition may increase the risk that such activities will take place.

As soon as the National Securities Market Commission receives the notification referred to in the preceding section, it shall request a report from the Executive Service of the Commission for Money Laundering and Monetary Violations with a view to obtaining an adequate evaluation of this criterion. With this request, the National Securities Market Commission shall submit any information it has received from the potential acquirer or which it has obtained by virtue of its powers that may be relevant for the assessment of this criterion. The Executive Service shall forward the report to the National Securities Market Commission within 30 working days from the day following receipt of the request with the aforementioned information.

6. The National Securities Market Commission shall have a period of 60 working days from the date on which it acknowledged receipt of the notification referred to in section 4 to perform the assessment referred to in the preceding section and, if necessary, to oppose the proposed acquisition. Receipt shall be acknowledged in writing within 2 working days from the date of receipt of the notification by the National Securities Market Commission, provided that it is accompanied by all of the information required under section 4 above, and it shall indicate to the potential acquirer the exact date of completion of the assessment period. As stipulated in Article 71 of Act 30/1992, of 26 November, on the Legal Regime of the Public Administrations and Common Administrative Procedure, if the notice does not contain all of the required information, a communication will be sent to the potential acquirer requesting that it present the missing information and informing it that, if it fails to present the information, it will be deemed to have dropped the proposed acquisition.

If the National Securities Market Commission does not issue a decision by the deadline, it will be deemed not to oppose the proposed acquisition.

If necessary, the National Securities Market Commission may request additional information which, in general, is required under the provisions established in section 4, for the appropriate evaluation of the proposed acquisition. That request will be in writing and will specify the additional information needed. If the request for information is made within the first 50 days of the period established in the preceding paragraph, the National Securities Market Commission may suspend the period, only once, between the date of the request for additional information and the date of receipt thereof. That interruption may be at most 20 working days, which may be extended to 30 working days, in cases envisaged by secondary legislation.

The National Securities Market Commission may oppose the proposed acquisition only if there are reasonable grounds for doing so on the basis of the criteria established in section 5 or if the information provided by the proposed acquirer is incomplete. If, after completing the assessment, the National Securities Market Commission raises any objections to the proposed acquisition, it shall inform the proposed acquirer in writing with the reasons for the decision within two working days, but in no case may it exceed the deadline for the evaluation. Where it does not oppose a proposed acquisition, the National Securities Market Commission may establish a deadline for completing the acquisition and may extend that deadline, as appropriate.

The National Securities Market Commission may not impose preconditions as to the size of the stake that must be acquired nor may it take into account the economic needs of the market in its evaluation.

The decisions adopted by the National Securities Market Commission shall include any observations or reservations expressed by the competent authority that supervises the proposed acquirer, which shall be consulted in the terms of section 7.

At the request of the acquirer or ex officio, the National Securities Market Commission may make public the reasons for its decision, provided that the information disclosed does not affect unrelated third parties.

7. In performing the assessment referred to in section 5, the National Securities Market Commission shall consult the authorities responsible for supervision in other Member States of the European Union, if the proposed acquirer is:

- a) a credit institution, insurance or reinsurance company, investment firm or a UCITS or pension fund management company authorized in another Member State of the European Union; or,
- b) the parent company of a credit institution, an insurance or reinsurance company, an investment firm, or a UCITS or pension fund management company authorized in another Member State European Union; or,
- c) a natural or legal person that controls a credit institution, an insurance or reinsurance company, an investment firm, or a UCITS or pension fund management company authorized in another Member State of the European Union.

In performing the assessment referred to in the preceding section, the National Securities Market Commission shall consult:

- a) the Bank of Spain, provided that the potential acquirer is a credit institution, the parent company of a credit institution, or a natural or legal person that controls a credit institution; or
- b) Spain's Directorate-General of Insurance and Pension Funds, provided that the potential acquirer is an insurance or reinsurance company, a pension fund management company, the parent company of an insurance or reinsurance company or pension fund management company, or a natural or legal person that controls an insurance or reinsurance company or a pension fund management company.

The National Securities Market Commission shall respond on a reciprocal basis to all consultations submitted to it by the authorities responsible for supervision of potential acquirers from other Member States and, where appropriate, by the Bank of Spain or the Directorate-General of Insurance and Pension Funds. Additionally, it shall provide them, ex officio and without undue delay, with all of the information that is essential for the evaluation, as well as any other information they may request, provided that it is appropriate for the assessment.

8. Where an acquisition regulated in section 4 takes place without having been notified beforehand to the National Securities Market Commission, or where it has been notified but the period regulated in the first paragraph of section 6 has not expired, or where the National Securities Market Commission expresses opposition, the following 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 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 in Section 2 of Chapter V of Legislative Royal Decree 1564/1989, of 22 December, which approved the

Consolidated Text of the Corporations 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 penalties envisaged in Title VIII of this Act will be imposed.

9. Any natural or legal person who has decided to dispose, directly or indirectly, of a significant stake in an investment firm must first inform the National Securities Market Commission, indicating the amount of the proposed transaction and the maximum period within which it is planned to carry it out. Such person shall also inform the Commission of any decision to reduce their significant stake such that their share of the voting rights or capital falls below 20%, 30% or 50%, or if they may lose control of the investment firm.

Failure to comply with this duty shall be punished as provided in Title VIII.

10. Investment firms 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 significant stakes in an investment 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, revocation of authorisation.

Additionally, the appropriate penalties as envisaged in Title VIII shall be imposed.

Article 69.bis. *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 of the identity of the shareholders owning significant stakes, indicating the size of such stakes. Article added by item 40 of the Sole Article of Act 47/2007, of 19 December.

Article 70. *Financial requirements*⁹⁰

⁹⁰ Section 2 was amended by article 3.1 of Act 15/2001, of 16 June. Section 4 was added by article 2.1 of Act 6/2001, of 11 April. Amended by item 41 of the sole article of Act 47/2007, of 19 December. Amended by Act 5/2000, of 22 April. Amended by Act 44/2002, of 22 November. Amended by Act 37/1998, of 16 November

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 limits established by secondary legislation.
 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 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 holdings in capital, 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. Such use of external ratings requires that the rating be issued or ratified by a credit rating agency established in the European Union and registered in accordance with the provisions of Regulation (EC) No 1060/2009 of European Parliament and of the Council, of 16 September 2009, on credit rating agencies or, for ratings of entities established outside the European Union or financial instruments issued outside the European Union that were issued by a rating agency established in a state that is not a member state of the European

Community, that a certification based on equivalence must be obtained as provided in that Regulation. In both cases, 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.

4. An investment firm that is not the originator, sponsor or original creditor shall be considered to be exposed to the credit risk of a position in securitisation on or off its trading book only if the originator, sponsor or original creditor has explicitly revealed to the investment firm that it plans to retain, on a continuous basis, a significant net economic interest which, in any case, must not be less than 5%. The conditions with which investment firms must fulfil to be permitted to attain exposure to the risk associated with a securitisation or to maintain such exposure shall be established by secondary legislation. Moreover, investment firms, when acting as originators or as sponsors of a securitisation, must apply the conditions to be established by secondary legislation to the exposure that they are going to securitise.

Article 70.bis. Information on solvency.⁹¹

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 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.

Consolidable groups of investment firms and investment firms that are not part of a consolidable group must also disclose the following information relating to their remuneration policies and practices for the categories of employees whose professional activities may impact their risk profiles:

- a) Information on the process used to determine the remuneration policy;

⁹¹ Section 1 was amended by article 2.2. of Act 6/2001, of 11 April. Sections 1 and 3 were amended by final provisions 5.4 and 5 of Act 2/2011, of 4 March. Article added by item 42 of the sole article of Act 47/2007, of 19 December

- b) Information on the fundamental characteristics of the remuneration system, especially with regard to components which are variable in nature or envisage the delivery of shares or stock options;
- c) Information on the relationship between remuneration, duties, actual discharge of such duties and the entity's risks;
- d) Aggregate quantitative information about remuneration, detailed by area of activity.

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.

To comply with the rules on remuneration policies and practices established by regulation, the National Securities Market Commission shall require the groups and undertakings referred to in this section to have remuneration policies and practices that are compatible with appropriate and effective risk management and which limit variable remuneration when it is inconsistent with maintaining a solid capital base.

The National Securities Market Commission shall use the information collected in accordance with the disclosure criteria set forth herein to compare remuneration trends and practices. The National Securities Market Commission shall provide that information to the European Securities and Markets Authority.

The National Securities Market Commission shall collect information about the number of persons in each investment firm with remuneration of at least one million euro, the business area involved, and the principal components of the salary, incentives, long-term bonuses and pension contributions. This information will be submitted to the European Securities and Markets Authority.

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. The obligations envisaged in this article shall not apply to groups or individual investment firms controlled by other investment firms or financial holding 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. *Internal organisational requirements.*⁹²

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 complies 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 is 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 the possible conflicts of interest that are regulated in article 70.4 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.

⁹² Article added by item 43 of the Sole Article of Act 47/2007, of 19 December.

- 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.

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 shall be established by secondary legislation.

They must also inform the National Securities Market Commission, in the form to be determined by secondary legislation, 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 securities and funds entrusted to them by clients, to protect their rights and avoid improper use of the securities. 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. Such secondary legislation 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. *Conflicts of interest.*⁹³

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, 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 do 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

⁹³ Article added by item 44 of the Sole Article of Act 47/2007, of 19 December.

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. *Cross-border transactions by Spanish investment firms.*⁹⁴

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 those 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 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

⁹⁴ Item 3.b) and the second paragraph of item 4 were amended by articles 3.10 and 11 of Royal Decree-Act 10/2012, of 23 March. (*Reworded in accordance with the errata published in the Official State Gazette no. 88, of 12 April 2012*). Amended by item 45 of the sole article of Act 47/2007, of 19 December. Amended by Act 37/1998, of 16 November

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 schedule of activities 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 shall give the European Securities and Markets Authority, upon the latter's request, access to that information in accordance with the procedure and conditions set out in article 35 of Regulation (EU) no. 1095/2010.

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 and the European Securities and Markets Authority 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 secondary legislation.

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. *Investment firms authorised by another Member State of the European Union.*⁹⁵

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.

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 shall 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

⁹⁵ Article added by item 46 of the Sole Article of Act 47/2007, of 19 December.

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. Coercive measures. ⁹⁶

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

⁹⁶ Items 1 and 2 amended by articles 3.12 and 13 of Royal Decree-Act 10/2012, of 23 March. Article added by item 47 of the Sole Article of Act 47/2007, of 19 December.

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 and the European Securities and Markets Authority promptly of such measures. The National Securities Market Commission may urge the European Securities and Markets Authority to act in accordance with the powers granted to it under article 19 of Regulation (EU) no. 1095/2010.

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 and the European Securities and Markets Authority promptly of such measures. The National Securities Market Commission may urge the European Securities and Markets Authority to act in accordance with the powers granted to it under article 19 of Regulation (EU) no. 1095/2010.

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. *Non-EU investment firms.*⁹⁷

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 implementing regulations.

⁹⁷ Article added by item 48 of the Sole Article of Act 47/2007, of 19 December.

CHAPTER V
CORPORATE TRANSACTIONS AND REVOCATION OF INVESTMENT SERVICES FIRMS'
AUTHORISATION⁹⁸

Article 72^{99 100}

The change of corporate form, merger, demerger or spin-off of a line of business, and any other corporate changes by an investment firm or which lead to the creation of an investment 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 creation of an investment firm.

Article 73¹⁰¹

The authorisation granted to an investment firm or to one of the entities referred to in article 65. 2 of this Act or to a branch of an entity based in a non-EU State may be revoked in the following cases:

- a) If, for causes attributable to the applicant, the authorised activities do not commence within 12 months following the date of notice of the authorisation.
- b) If authorisation is expressly waived, whether due to change of corporate form or to dissolution.
- c) If the specific authorised activities are in fact interrupted 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) In the event of supervening breach of any of the requirements governing the grant of authorisation, except where provided otherwise in connection with such requirements.
- f) In the event of a serious and systematic breach of the obligations established in article 70.1.a), article 70.ter.1.e), 70.ter.1.f) and article 70.ter.2.c) of this Act.
- g) In the event envisaged in article 69.11.
- h) In the event that the investment firm or the person or undertaking is declared legally insolvent.
- i) As a penalty, as provided in Title VIII of this Act.

⁹⁸ Chapter added by Act 37/1998, of 16 November

⁹⁹ Attention is drawn to the provisions of article 26 of Royal Decree-Act 8/2011, of 1 July, regarding the positive interpretation of administrative silence: *"In proceedings initiated at the request of the interested party, as cited in Annex I, expiration of any deadline established in that same Annex without an express decision having been notified entitles the interested party to deem the request to have been granted by administrative silence, in the terms of article 43 of Act 30/1992, of 26 November, on the Legal Regime of the Public Administration and the Common Administrative Procedure."* That Annex I sets out the procedures referred to in article 72 of the Securities Market Act.

¹⁰⁰ Amended by Act 37/1998, of 16 November

¹⁰¹ Item II) was added and item f) was amended by item 49 of the sole article of Act 47/2007, of 19 December. Amended by Act 22/2003, of 9 July, on Insolvency. Amended by Act 37/1998, of 16 November. Amended by Act 13/1992, of 1 June

- j) If the investment firm ceases to belong to the Investment Guarantee Fund envisaged in Title VI.
- k) When any of the cases of forcible dissolution provided in article 260 of the Spanish Corporations Act or in article 104 of the Limited Liability Companies Act arises.
- l) Where authorisation was obtained by means of false representations or by other irregular means.
- ll) In the case envisaged in article 69.11.b).

Article 74¹⁰²

1. The revocation of authorisation shall conform to the common procedure envisaged in Title VI of the Act on the Legal Regime of the Public Administrations and the Common Administrative Procedure.

- a) The decision to commence 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 revocation 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 revocation decision shall be enforceable immediately. Once the investment services firm in question has been notified, it may not perform any further operations. The decision must be registered with the Mercantile Register and the National Securities Market Commission, and be notified to the European Securities and Markets Authority. It must also be published in the Official State Gazette, from which point it shall be enforceable vis-à-vis third parties.

4. The Minister of Economy and Finance may, at the proposal of the National Securities Market Commission, resolve that revocation entail forcible dissolution 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 in response to orders from 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 marketable securities, financial instruments and cash entrusted to it by its clients be transferred to another entity.
- b) Demand some specific surety from the liquidators designated by the company.
- c) Appoint the liquidators.
- d) Participate in the liquidation. 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

¹⁰² Item 3 was amended by article 3.14 of Royal Decree-Act 10/2012, of 23 March. Amended by Act 37/1998, of 16 November

provisions of Title III of Act 26/1988, on the Discipline and Intervention of Credit Institutions, as suitably adapted, shall apply.

5. Where revocation does not entail dissolution of the investment firm, it must settle its outstanding transactions in an orderly manner and, where appropriate, transfer the marketable 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 firm decides to dissolve for any of the reasons envisaged in article 260 of the Spanish Corporations Act or article 104 of the Limited Liability Companies Act, the authorisation shall be deemed to have been revoked, and the National Securities Market Commission may adopt any of the measures envisaged in item 4 of this article in order to ensure orderly liquidation.

7. The revocation of the authorisation granted to a non-EU investment firm shall determine the revocation of the authorisation of its branch operating in Spain.

8. In the event that the National Securities Market Commission becomes aware that an investment firm from another European Union Member State operating in Spain has had its authorisation revoked, it shall immediately adopt the pertinent measures to ensure that the entity 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 75 ¹⁰³

The National Securities Market Commission may partly or wholly suspend the effects of the authorisation granted to an investment firm. Where suspension is partial, it shall affect some of the activities or the scope under which they were authorised.

Article 76 ¹⁰⁴

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 violation.
- b) In any of the cases envisaged in items e), f), h), j) or l) of article 73, until the revocation proceeding is completed.
- c) In the case envisaged in article 69.8.
- d) When the firm fails to make the contributions to the Investment Guarantee Fund envisaged in Title VI.
- e) As a penalty, 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

¹⁰³ Amended by Act 44/2002, of 22 November

¹⁰⁴ Amended by Act 37/1998, of 16 November

a penalty, 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 ¹⁰⁵

The National Securities Market Commission shall have the power to apply for a declaration of insolvency of an investment firm if the financial statements filed by the undertakings or the checks performed by the Commission reveal that the firm is insolvent as established under the Insolvency Act.

TITLE VI¹⁰⁶

INVESTMENT GUARANTEE FUND

Article 77 ¹⁰⁷

1. An Investment Guarantee Fund shall be created to ensure the coverage envisaged in item 7 of this article when providing the services contemplated in article 63 and the complementary activity consisting of the deposit and administration of financial instruments.

2. The Investment Guarantee Fund 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 corporation, whose capital shall be distributed among the investment firms in the same proportion as their contributions to the Fund.

3. The managing companies' budgets, their Articles, 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 stakes to changes in capital. The results of these adjustments shall be disclosed 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 Community with competencies in the matter, and in which an official secondary market is located, shall designate a member of said Board of Directors, who shall have the same functions.

¹⁰⁵ Amended by Act 22/2003, of 9 July, on Insolvency, Article added by Act 37/1998, of 16 November

¹⁰⁶ Item amended by Act 37/1998, of 16 November

¹⁰⁷ Amended by Act 53/2002, of 30 December. Amended by Act 37/1998, of 16 November

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 firms must join the investment guarantee funds. 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 shall conform to the terms to be laid down by secondary legislation.

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 secondary legislation.

The following points shall also be established by regulation:

- a) Repealed.
- b) Repealed.
- c) The specific membership system for newly-created investment firms.
- d) The exceptions to membership of the fund by those investment firms which do not incur the risks envisaged in item 1 of this Article.

6. An investment 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 revoked. 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, after receiving a report from the fund's managing company. Before such a decision is adopted, the necessary measures must be taken, including the imposition of surcharges on unpaid amounts, in order to compel the investment 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 measures that are adopted.

The exclusion decision shall be publicised sufficiently so as to ensure that the clients of the investment firm in question are immediately aware of the measure taken.

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 an entity that is a member of a fund, may apply to the managing company of the 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 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 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 twenty-one working days.

Once the fund has paid the guarantee, it shall be subrogated to the rights of the investors vis-à-vis the investment firm, up to an amount equal to that which had been paid to them as indemnity.

In the event that the securities or other financial instruments entrusted to the investment 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 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 investment guarantee funds 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 investment guarantee funds 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 investment guarantee funds.
- 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 its commitments rapidly.
- e) The rules to determine the amount of the contributions to be made by the member entities, 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 RULES OF CONDUCT

CHAPTER I

RULES OF CONDUCT APPLICABLE TO PROVIDERS OF INVESTMENT SERVICES ¹⁰⁸

Article 78. *Parties to which this obligation refers.*

1. Providers of investment services must respect:

- a) The standards of conduct envisaged in this Chapter.
- b) The codes of conduct which, in the implementation of the standards 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 own internal codes of conduct.

¹⁰⁸ Chapter added by item 50 of the sole article of Act 47/2007, of 19 December

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 codes of conduct.

Article 78.bis. *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:

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) Individual entrepreneurs that 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 make 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. *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, UCITS and their management companies, pension funds and their management companies, other financial institutions authorised or regulated under Community legislation or the national act 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 Community 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.

Article 79. *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. *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 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 listed 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); UCITS 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 is 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) securities giving the right to acquire or sell other 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. *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. *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.quinques. *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 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. *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 account of price, costs, speed, likelihood of execution and settlement, size, nature of the transaction and any other factor that is 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.

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

MARKET ABUSE ¹⁰⁹

Article 80 ¹¹⁰

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 standards set out in this Chapter.

¹⁰⁹ Chapter added by item 51 of the sole article of Act 47/2007, of 19 December

¹¹⁰ Amended by item 52 of the sole article of Act 47/2007, of 19 December. Amended by Act 44/2002, of 22 November.

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 code of conduct 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 codes of conduct 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 codes 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 codes.

Article 81 ¹¹¹

1. Inside information shall mean information of a precise nature relating, directly or indirectly, to one or more marketable securities or financial instruments within the scope of application of this act, or to one or more issuers of such marketable securities or financial instruments, that has not been made public and which, if it were or had been made public, would be likely or had been likely to have a significant effect on the price of those marketable securities or financial instruments on a regulated market or trading facility.

The provisions of the preceding paragraph shall also apply to marketable securities or financial instruments with regard to which a request for admission has been made on a regulated market or organised 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 on 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) Prepare or carry out any type of transaction on the marketable 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, the underlying of which is the marketable security or financial instrument to which the information refers.

Excepted from this prohibition are the preparation or execution of transactions whose very existence constitutes inside information, and transactions conducted in the discharge of an obligation that has become due to acquire or dispose of marketable securities or financial instruments where that obligation results from an agreement concluded before the person concerned possessed the inside information, or other transactions performed in accordance with the applicable regulations.

b) Disclosing inside information to third parties, except in the normal conduct of the exercise of his employment, profession or duties.

¹¹¹ Paragraph added to section 2 by Final Provision 5.6 of Act 2/2011, of 4 March. Amended by Act 44/2002, of 22 November

- c) Recommending or inducing another person, on the basis of inside information, to acquire or dispose of marketable securities or financial instruments to which that information relates.

The prohibitions established in this section shall apply to any person who possesses inside information while that person knows, or ought to have known, that it is inside information.

The prohibitions established in this section shall also apply to the administrators and members of the board of directors of a *Societas Europaea* -*European listed company*- domiciled in Spain that has opted for the dual system with regard to any transaction in the own securities of the company or of subsidiaries, or associated or related companies about which, due to their position, they have inside or restricted information, as well as suggesting such transactions to any other person until such information is made publicly available.

3. The prohibitions established in the preceding section shall not apply to transactions performed in pursuit of monetary, exchange-rate or public debt-management policy by a Member State of the European Union, the European System of Central Banks, by a national central bank or by any other body officially designated for such a purpose, or by any other person acting on their behalf. Nor shall they apply to trading in own shares in the framework of buy-back programmes executed by issuers, or to the stabilisation of a marketable security or financial instrument, provided such trading is performed in accordance with the conditions to be established by regulation.

4. All persons or entities that operate in 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 judicial and administrative authorities in the terms established in this or other acts. 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 institutions disseminating statistics liable to have a significant effect on financial markets shall disseminate those statistics in a fair and transparent manner.

6. The Minister of Economy and, with his/her express authorisation, the National Securities Market Commission, are empowered to establish in relation to the various categories of persons or entities and their transactions on the securities markets specific measures to safeguard inside information.

Article 82. *Relevant information, parties obliged to disclose it, and publication.* ¹¹²

1. Relevant information shall mean information the knowledge of which may reasonably encourage an investor to acquire or dispose of securities or financial instruments and which, therefore, may have a significant influence on the security's or financial instrument's price in a secondary market.

2. Issuers of securities are obliged immediately to publish and disseminate any relevant information to the market. They must also send such information to the National Securities Market Commission for its 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. Issuers of

¹¹² Amended by Act 6/2007, of 12 April

securities must also disseminate such information on their web sites. Nevertheless, where the relevant information may perturb trading in the securities of the issuer or prejudice investors' interests, the issuer must notify the National Securities Market Commission of the relevant 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 relevant information where it considers that the information prejudices its legitimate interests, provided that such omission is not likely to mislead the public and that the issuer is able to ensure the confidentiality of that 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, are empowered, with regard to the obligations established in this article, to implement the procedures and means by which the aforementioned communications must be made, determine the period in which the relevant information must be published on the issuers' web sites, and specify the other points to which this article refers.

Article 83¹¹³

1. All entities or groups of entities that provide investment services, and other entities that operate or provide investment advice, on the securities markets, are obliged to establish the necessary measures to prevent the 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 entities shall be obliged to:

- a) Establish Separate Areas of activity within the entity or group to which they belong, provided that they act simultaneously in several of them. In particular, the departments responsible for proprietary trading, third-party portfolio management, and research, must be established as Separate Areas.
- b) Establish adequate barriers to information between each Separate Area 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) Make, 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 the gained access.

2. Moreover, all entities and groups of entities which produce, publish or disseminate research or recommendations on issuers of securities or financial instruments admitted to trading must act in a loyal and impartial manner, disclosing prominently in their research, publications or recommendations any significant links, including commercial relationships, and any stable stakes that the entity 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.

¹¹³ Amended by Act 44/2002, of 22 November

3. The Minister of Economy and, with his/her express authorisation, the National Securities Market Commission, may establish obligatory measures in the implementation of this Article and, in particular, the obligation that these entities have a specific internal code of conduct for the investment advice service.

Article 83.bis ¹¹⁴

1. During the study or trading phases of any legal or financial operation that may have a significant influence on the market value of the relevant securities or financial instruments, the issuers are obliged to:

- a) Limit knowledge of the information strictly to the essential persons inside or outside the organisation.
- b) Keep a documentary record for each transaction 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 its use.
- d) Establish security measures for the safekeeping, filing, access, reproduction and distribution of the information.
- e) Supervise the market performance 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 trading volumes or market prices perform in an abnormal fashion and there are rational indications that this performance is due to premature, partial or distorted disclosure of the transaction, immediately issue a communication of the price sensitive information 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 in their own shares or in 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 entity itself or by others in its group.

4. The Minister of Economy and, with his/her 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 entity in which they hold such positions, or of securities or financial instruments referenced to them.

¹¹⁴ Article added by Act 44/2002, of 22 November

Article 83.ter ¹¹⁵

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 the free formation of prices. 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 marketable securities and financial instruments;
- Which secure, by 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 doing so are legitimate and that these transactions or orders to trade conform to accepted practices in the regulated market in question.

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, when 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 shall 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 provisions of the preceding section shall not apply to the transactions or orders envisaged in Article 81.3 and, in general, to those executed in accordance with the applicable regulations.

3. The Minister of Economy and, with his/her 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 the free formation of prices.

Article 83.querter. *Notification of suspicious transactions.* ¹¹⁶

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.

¹¹⁵ Article added by Act 44/2002, of 22 November

¹¹⁶ Article 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 on whose behalf the transactions were carried out, 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, acts, 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 DISCIPLINE

CHAPTER I

GENERAL PROVISIONS

Article 84. *Scope of supervision, inspection and discipline.*¹¹⁷

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:

- a) The governing bodies of official secondary markets, the governing bodies of multilateral trading facilities and the companies that administer their securities record-keeping, clearing and settlement systems created as envisaged by this Act. The Bank of Spain is not included.

¹¹⁷ Amended by article 3.2 of Act 15/2011, of 16 June. Items a), b) and g) of section 1 were modified, and item c.bis) was added to section 2 by final provisions 5.7 and 8 of Act 2/2011, of 4 March. Amended by item 53 of the sole article of Act 47/2007, of 19 December. Amended by Act 44/2002, of 22 November. Amended by Act 37/1998, of 16 November. Amended by Act 13/1992, of 1 June

- b) The Systems Company (Sociedad de Sistemas), central counterparties, the Sociedad de Bolsas and those companies which own all the shares or a controlling stake, either directly or indirectly, in the entities listed in the preceding item.
 - 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 clearing and settlement systems that handle their operations.
- 1.bis. The credit rating agencies, established in Spain and registered by virtue of Chapter I of Title III of Regulation (EC) no. 1060/2009, of the European Parliament and of the Council of 16 September 2009 on credit rating agencies, the persons that participate in rating activities, the rated entities or related third parties, third parties to which the rating agencies have outsourced some of their functions or activities, and persons related or connected in any way to the agencies or to credit rating activities. The National Securities Market Commission shall exercise its powers in accordance with the provisions of European Union regulations on credit rating agencies.
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-EU 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.
- c.bis) UCITS management companies (SGIIC) insofar as they provide investment services.
- d) Other natural and legal persons, to the extent that they are affected by the provisions of this Act and its implementing provisions.
 - e) The credit rating agencies registered by another competent authority of the European Union by virtue of Chapter I of Title III of Regulation (EC) no. 1060/2009 of European Parliament and of the Council of 16 September 2009 on credit rating agencies and the rating agencies that have obtained certification based on equivalence by virtue of article 5 of Regulation (EC) no. 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies. The National Securities Market Commission shall exercise its powers in accordance with the provisions of European Union regulation on credit rating agencies.
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 significant stakes 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 undertakings 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 Communities 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 Communities 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 Communities, 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. *Powers of the National Securities Market Commission. Supervision and inspection.*¹¹⁸

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 that assets be attached or frozen.

¹¹⁸ Item 7 was amended, and the second item 7 sic was renumbered 8 by article 3.15 of Royal Decree-Act 10/2012, of 23 March. (*Reworded in accordance with the errata published in the Official State Gazette no. 88, of 12 April 2012*). A new item 7 was added by article 3.3 of Act 15/2011, of 16 June. Items 2 and 3 were amended, and items 6 and 7 were added, by final provisions 5.9 to 5.12 of Act 2/2011, of 4 March. Article added by item 54 of the sole article of Act 47/2007, of 19 December. Amended by Act 6/2007, of 12 April Amended by Act 37/1998, of 16 November.

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 power to:

- a) have access to any document in any form whatsoever and to receive a copy of it;
- b) demand information from any person within a reasonable time period set by the Spanish National Securities Commission 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;
- 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 attachment or freezing of assets;
- g) request temporary prohibition of professional activity;
- h) obtain from the auditors of investment firms and of the undertakings discussed in article 84.1.a) and b) any information they may have obtained in the course of their duties;
- i) take any measures to ensure that the supervised persons and undertakings comply with the applicable rules and provisions, or with demands made for remediation or correction, and, for that purpose, require such persons and undertakings to submit reports from independent experts, auditors or internal control or compliance bodies;
- 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:

1. 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.

2. 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), g), i), j) and k) above may be adopted as a precautionary measure in the course of a disciplinary proceeding or otherwise, 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, including telephone conversations which are commercial in nature that have been recorded with the prior consent of the client or investor.

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 paragraphs shall be obliged to supply any data and information requested by the Commission, in accordance with any provisions regulating their profession or activity.

For these purposes, access to information and data required by the National Securities Market Commission for discharging its duties of inspection and supervision are covered by article 11.2.a) of Organic Act 15/1999, of 13 December, on the Protection of Personal Data. The data accessed may only be used for exercising the above-mentioned powers under the terms envisaged by this Act.

The bodies and organs of any Public Administration; chambers and corporations, professional associations, boards of professional associations; other public entities, including the management and services entities of Social Security and those, in general, which exercise public functions, are required to cooperate and to provide the National Securities Market Commission with any data, documents, records, reports and background information required for the Commission to exercise the functions envisaged in article 13 of this Act, regardless of the media, in accordance with the specific demands and the stated deadline, and to provide it with cooperation, support and protection in the discharge of its duties.

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.

6. The National Securities Market Commission, in exercising its powers of supervision and inspection included in this Act, may communicate and require of the entities envisaged in articles 64, 65, 84.1.a) and b) and 84.2.a), by electronic means, the information and measures stated in this Act and its secondary legislation. Those entities will be required to provide, in the period established for this purpose, the technical resources required by the National Securities Market Commission for the efficacy of their electronic notification systems, in accordance with the provisions of article 27.6 of Act 11/2007, of 22 June, on citizens' electronic access to public services.

The electronic notification system, which shall respect the principles and guarantees of Act 11/2007, of 22 June, on citizens' electronic access to public services, and article 59 of Act 30/1992, of 26 November, on the Legal Regime of the Public Administrations and the Common Administrative Procedure, shall make it possible to accredit the date and time that notice was served on the interested party, and of access to its content, from which time the notice will be understood to have been served for legal purposes. Once there is evidence that notice has been duly served, if the content is not accessed within ten calendar days, it will be understood that the notice has been rejected for the purposes envisioned in article 59.4 of Act 30/1992.

7. Any facts that are discovered by personnel of the National Securities Market Commission in the course of their supervision and inspection functions shall have probative value, notwithstanding the evidence that the interested persons or entities may provide in defence of their respective rights or interests ¹¹⁹

8. ¹²⁰ The National Securities Market Commission shall have the powers of supervision and inspection set out in this article that are necessary to fulfil the functions assigned to it in the form of delegation or cooperation with other competent authorities, with respect to the credit rating agencies registered by virtue of Chapter 1 of Title III of Regulation (EC) no. 1060/2009, of European Parliament and the Council of 16 September 2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies, persons that participate in rating activities, rated entities or related third parties, third parties to which the rating agencies have outsourced some of their functions or activities, and persons related or connected in any way to the agencies or to credit rating activities that are domiciled in Spain, in accordance with the EU regulation on credit rating agencies.

¹¹⁹ The Errata to Royal Decree-Act 10/2012, of 23 March, published in the Official State Gazette no. 88 on 12 April 2012, amended the wording of item 7 introduced by Act 2/2011, of 4 March, so that the item initially introduced by that Royal Decree-Act 10/2012 as item 8 became the new wording of item 7.

¹²⁰ In accordance with the Errata to Royal Decree-Act 10/2012, of 23 March, published in the Official State Gazette no. 88 on 12 April 2012, this item, initially introduced by Act 15/2011, of 16 June, as item 7 of article 85, is renumbered as item 8 of article 85.

Article 86 ¹²¹

1. The separate and consolidated accounts and directors' reports for each fiscal year of the entities 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/her express authorisation, the National Securities Market Commission are empowered, following 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 entities 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 homogeneous for all entities in the same category and similar for the different categories. In addition, the Minister of Economy and Finance and, with his/her express authorisation, the National Securities Market Commission are empowered to regulate the registers, internal databases or statistics and documents which the entities listed in article 84.1 of this Act are obliged to keep, as well as those concerning securities market transactions as envisaged in article 65.

3. The Minister of Economy and Finance and, with his/her express authorisation, the National Securities Market Commission, following 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 firms included under paragraph 4 below and with consolidated groups whose parent entity is one of those referred to in article 84.1.a) and 84.1.b).

4. In order to fulfil the minimum equity requirements and restrictions imposed by article 70 or, if applicable, to fulfil the provisions of article 87, investment firms shall consolidate their financial statements with those of other investment 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 firms in any of the following circumstances:

- a) When one investment firm controls the other entities.
- b) When the principal activity of the controlling entity consists of holding stakes in investment firms.
- c) When a company whose principal activity is holding stakes in financial entities, or when a natural person or a group of natural persons that systematically act in concert, or a legal person which cannot be consolidated in accordance with this Act control several entities as defined in section 6 of this article, at least one of them being an investment firm, provided that the investment firms are the largest among the financial undertakings, in accordance with the criteria established for this purpose by the Minister of Economy and Finance.

The obligation to draw up and approve the consolidated directors' report and financial statements and to file them lies with the controlling entity; however, in the case envisaged in item c) of this

¹²¹ Section 2 was amended by final provision 5.13 of Act 2/2011, of 4 March. Sections 6 and 15 were amended by Act 47/2007, of 19 December. Amended by Act 5/2005, of 22 April. Amended by Act 44/2002, of 22 November. Amended by Act 37/1998, of 16 November. Amended by Act 13/1992, of 1 June.

paragraph, the entity responsible shall be designated by the National Securities Market Commission from among the investment firms in the group.

The consolidated directors' report and financial statements of groups of investment 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 entity responsible for drawing up and approving the financial statements and directors' report in accordance with the provisions of the preceding paragraph.

5. Secondary legislation shall be enacted to establish the cases where, owing to the nature of the entities 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 firms which belong to such groups must use the definition of equity to be defined by regulation, individually fulfil the requirements and limits for investment 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 entities; 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 firms that form part of the group to provide information regarding risks to the group as a whole, such as large risks and stakes in non-financial or other companies, and it may also impose restrictions on capital transfers from investment firms to other entities in the group. The above is without prejudice to the powers granted by the National Securities Market Commission in point 9 of this article.

In addition, the type of financial entity that must be included in the consolidated group of investment firms referred to in the previous point shall be established by regulation.

6. 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) Securities investment companies.
- d) UCITS 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 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 in which 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. For the purposes of section 4, insurance undertakings shall not form part of consolidable groups of investment firms.

8. The way in which the rules envisaged in this Act for equity and supervision of consolidated groups should be applied to subgroups of investment firms (i.e. groups of investment firms which are part of a larger consolidated group) may be regulated by secondary legislation.

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 entities 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 firm with other entities lead to the presumption of control relationship as referred to in this article, but the entities have not consolidated their accounts, the National Securities Market Commission may request information from those entities 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 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 equity requirements.

12. When there are foreign entities that can potentially form part of a consolidated group of investment 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 entity 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 controlling company is an investment firm or a company whose principal activity is the holding of stakes in investment 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 entities 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 entity's customers. The chapter of the report concerning the government bond 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 based on a proposal by the National Securities Market Commission and following a report by the Bank of Spain and the Institute of Accounting and Auditing.

15. 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.

Article 86.bis ¹²²

(Repealed by the sole repealing provision of Act 37/1998, of 16 November. However, the special features envisaged in the Canary Islands Special Zone of Act 19/1994, of 6 July, on Modifying the Economic and Fiscal Regime of the Canary Islands, will remain in force)

Article 87. Equity of consolidable groups and relations with other supervisors. ¹²³

1. Where a consolidable 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.

¹²² Article added by article 4 of Act 13/1992, of 1 June

¹²³ Amended by item 56 of the sole article of Act 47/2007. Amended by Act 37/1998, of 16 November

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 consolidable group of credit institutions and thus be subject to supervision by the Bank of Spain on a consolidated basis.

Article 87.bis. *Supervision of the solvency of investment firms and their consolidable groups.*¹²⁴

1. As the authority entrusted with supervision of investment firms and their consolidable 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) determine, based on the review and evaluation referred to in a) and b) above, 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;

¹²⁴ Section 3 was amended by final provision 2.3 of Act 21/2011, of 26 July. Section 3 was amended and section 4 was added by articles 2.3 and 4 of Act 6/2001, of 11 April. Section 3 was amended by final provision 5.14 of Act 2/2011, of 4 March. Article added by item 57 of the sole article of Act 47/2007

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, accounting or valuation mechanisms or 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, accounting and valuation 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 or modify internal control, accounting or valuation procedures, the mechanisms or the strategies adopted 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.

e) Require that investment firms and their groups limit variable remuneration as a percentage of total net revenues when it is not compatible with maintaining a solid capital base.

f) Require investment firms and their groups use net profits to strengthen their capital base.

The provisions of this section shall be understood without prejudice to the penalties that may be applicable under this Act.

4. As the authority entrusted with supervision of investment firms and their consolidable groups, the National Securities Market Commission shall have the power to:

a) Take duly into account the potential impact of its decisions on the stability of the financial system in all of the other Member States concerned, particularly in emergency situations, based on information available at the time; and,

b) Take into account the convergence of supervisory tools and practices within the scope of the European Union.

Article 88 ¹²⁵

Without prejudice to the provisions of this Act, the Bank of Spain shall have powers of surveillance and supervision over all members of the government debt book-entry market, market members and registered dealers, and over activities relating to the securities market carried out by the entities 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.

The National Securities Market Commission shall provide such cooperation as 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 89 ¹²⁶

With the exceptions envisaged in the following article, the National Securities Market Commission may order the issuers of securities and any entity connected with the securities markets to immediately disclose any significant events 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. Professional secrecy ¹²⁷

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.

¹²⁵ Paragraph 2 was amended by item 58 of the sole article of Act 47/2007, Amended by Act 44/2002, of 22 November

¹²⁶ Amended by article 38.8 of Act 44/2002, of 22 November

¹²⁷ Item 4 was amended by article 3.16 of Royal Decree-Act 10/2012, of 23 March. Item II) was added to section 4 by final provision 5.15 of Act 2/201, of 4 March. Item I) was added by article 1.3 Three of Act 5/2009, of 29 June. Amended by item 59 of the sole article of Act 47/2007. Amended by Act 44/2002, of 22 November. Amended by Act 37/1998, of 16 November.

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 such consent is not given, the person concerned shall maintain secrecy and shall be exempt from any responsibility arising from such secrecy.

4. The duty of secrecy regulated by this article shall not apply to the following cases:

a) Where 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) Where 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 an investment firm.

d) Where 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 securities markets; 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 Competitiveness, 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 to be supplied by the National Securities Market Commission, in fulfilment of its functions, to the European Securities and Markets Authority, the European Systemic Risk Board or foreign authorities or bodies responsible for the surveillance of credit institutions, insurance companies, other financial institutions and financial markets, and the management of deposit insurance 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 Competitiveness 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.
 - l) Information that the National Securities Market Commission publishes in accordance with the provisions of paragraph six of article 69.6.
 - ll) Information that the National Securities Market Commission provides to the Spanish supervisory authorities in the area of energy and the supervisors of the Iberian Market in Electricity that is necessary to fulfil their functions of supervising those markets. For these purposes, the cooperation agreements signed between the National Securities Market Commission and the supervisory authorities must be taken into account. The information that is disclosed may only be made publicly available with the Commission's prior consent.
 - m) The information disclosed to the European Securities and Markets Authority in accordance with current legislation, particularly articles 31 and 35 of Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC. Nevertheless, that information will be subject to professional secrecy.
 - n) The information provided to the European Systemic Risk Board, where that information is pertinent to the functions legally assigned to the latter under Regulation (EU) No 1092/2010 of the European Parliament and of the Council of 24 November 2010 on European Union macro-prudential oversight of the financial system and establishing a European Systemic Risk Board.
5. Judicial authorities who 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. *Cooperation between the National Securities Market Commission and the competent authorities in European Union member states, the European Securities and Markets Authority and the European Banking Authority* ¹²⁸

1. The National Securities Market Commission shall cooperate with other competent authorities of the European Union whenever necessary for the purpose of carrying out the duties under this Act, and to that end shall make use of all the powers attributed to it by the Act and those established in Regulation (EC) no. 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies.

The National Securities Market Commission shall render assistance to other competent authorities of the European Union. 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 current laws in the Spanish State.

The National Securities Market Commission shall cooperate with the European Securities and Markets Authority. In particular, it shall promptly provide all of the information required for compliance with the functions assigned to it in conformity with article 35 of the Regulation (EU) No. 1095/2010.

1 bis. The National Securities Market Commission shall cooperate with the European Banking Authority for the purposes of 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, in compliance with Regulation (EU) No. 1093/2010.

2. Where 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 such market 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 the 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 mechanisms 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 the competent authorities of the regulated market's home Member State shall establish proportionate cooperation arrangements.

For the purposes of the provisions of this item, transactions shall be deemed to have become of substantial importance when the provisions of article 16 of Regulation (EC) No. 1287/2006 of the Commission, 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

¹²⁸ Amended by article 3.17 of Royal Decree-Act 10/2012, of 23 March. Amended by article 3.4 of Act 15/2011, of 16 June. Amended by item 60 of the sole article of Act 47/2007

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 such Member State and to the European Securities and Markets Authority. 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 and the European Securities and Markets 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 other competent authorities of the European Union 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, and to the matters relating to Regulation (EC) no. 1060/2009. 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 item 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 order, 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 court decision.

All requests for assistance that are made or received under the provisions of this item by Autonomous Communities 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 publicise the matter. In the event that a request is refused, the European Securities and Markets Authority may assist the authorities to reach an agreement, in accordance with article 19 of the Regulation (EU) No. 1095/2010, without prejudice to the possibility of refusals contained in the third paragraph of this item and the European Securities and Markets Authority's capacity to act, in the event of non-compliance with European Union Law, recognised in article 17 of the Regulation (EU) No. 1095/2010.

Article 91.bis. *Exchange of information between the National Securities Market Commission and the competent authorities of Member States of the European Union.*¹²⁹

1. The National Securities Market Commission shall immediately provide the European Securities and Markets Authority and 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.

1 bis. The National Securities Market Commission shall immediately provide the European Banking Authority with all of the information which is necessary for it to perform its functions, in accordance with article 35 of Regulation (EU) No. 1093/2010.

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 91.4, 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 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 91.4, 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

¹²⁹ Items 1, 6 and 7 were amended and items 1.bis and 9 were added by articles 3.18 to 22 of Royal Decree-Act 10/2012, of 23 March. Article added by item 61 of the sole article of Act 47/2007

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 extra-judicial mechanisms 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 such confidential information as may be necessary for them to discharge their duties to the European Securities and Markets Authority and to the European Systemic Risk Board, respecting the limitations relating to specific information on particular companies and for the effects on third countries envisioned in Regulation (EU) No. 1095/2010 and Regulation (EU) No. 1092/2010, respectively, 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. 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 European Securities and Markets Authority. Should a request for information be rejected, the European Securities and Markets Authority may assist the authorities to reach an agreement, in accordance with article 19 of Regulation (EU) No. 1095/2010, without prejudice to the possibility of refusals contained in article 91.ter of this Act and the capacity to act of the European Securities and Markets Authority in the event of non-compliance with European Union Law, recognised in article 17 of Regulation (EU) No. 1095/2010.

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 act 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 penalties 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.

9. The National Securities Market Commission shall notify the European Securities and Markets Authority of the existence of a grievance procedure for the extra-judicial resolution of conflicts of financial services users in relation with investment firms' provision of investment and ancillary services.

Article 91.ter. *Refusal to cooperate or exchange information.* ¹³⁰

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 order;
- 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 Commission must notify the requesting competent authority and the European Securities and Markets Authority, providing information with the greatest possible detail.

Article 91.quater. *Cooperation by the National Securities Market Commission with the competent authorities of third countries.* ¹³¹

¹³⁰ Amended by article 3.23 of Royal Decree-Act 10/2012, of 23 March. Article added by item 62 of the sole article of Act 47/2007

¹³¹ The first paragraph of item 1 was amended by article 3.24 of Royal Decree-Act 12/2012, of 23 March. Article added by item 63 of the sole article of Act 47/2007

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 shall notify the European Securities and Markets Authority of the conclusion of any cooperation agreements referred to in this item.

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 agreement of the competent authorities which have transmitted it and, where appropriate, solely for the purposes for which those authorities gave their agreement. The same provision applies to information provided by third country competent authorities.

Article 91.quinquies. *Requests for the designation of branches as significant.* ¹³²

The National Securities Market Commission may submit requests to the competent supervisory authorities of an investment firm authorized in the European Union with branches in Spain for those branches to be considered significant and, in cases where there is no joint decision on that matter, it may decide on the branch's significance.

In those cases, and in accordance with the procedure laid down by secondary legislation, the National Securities Market Commission shall promote the adoption of a decision on the request jointly with the other competent authorities of other Member States responsible for supervising the various entities comprising the group.

The National Securities Market Commission shall also be responsible, in accordance with the procedure laid down by secondary legislation, for resolving, by joint decision, the equivalent requests sent by the competent authorities in the countries where Spanish investment firm

¹³² Added by article 2.5 of Act 6/2001, of 11 April

branches are located; should there be no joint decision on this matter, the Commission may recognise the decision of that competent authority on the branch's significance.

Furthermore, the issues that the National Securities Market Commission must take into consideration when deciding if a branch is significant or not shall be laid down by secondary legislation, and shall include the branch's market share, the potential impact of the entity's insolvency or cessation of operations on market liquidity, and the size and importance of the branch.

Article 91.sexies. *Joint decisions under the framework of supervision of groups of investment firms operating in several Member States.* ¹³³

As part of the cooperation framework referred to in article 91.1, the National Securities Market Commission, as supervisor on a consolidated basis of a group or as the competent authority responsible for supervising the subsidiaries of a European Union parent investment firm or of a European Union financial holding company in Spain, will do everything in its power to reach a joint decision on the application of articles 70.3 and 87.bis.1 to determine the adequacy of the consolidated own funds held by the group in relation to its financial situation and risk profile and the amount of own funds required for the application of paragraph 3 of article 87.bis, for each of the entities in the group of investment firms and on a consolidated basis.

The joint decision shall be adopted in accordance with the procedure to be established for this purpose by secondary legislation.

Article 91.septies. Establishment of colleges of supervisors. ¹³⁴

1. The National Securities Market Commission, as supervisor on a consolidated basis, shall establish colleges of supervisors with a view to facilitating the execution of the tasks to be determined by secondary legislation in the cooperation framework referred to in Article 91.1, and in accordance with confidentiality requirements established in the applicable legislation and with European Union Law, shall, where appropriate, establish adequate coordination and cooperation with the competent authorities of third countries.

The colleges of supervisors shall constitute the framework in the following tasks will be performed:

- a) Exchange information between competent authorities and with the European Banking Authority, in accordance with article 21 of Regulation (EU) No. 1093/2010;
- b) Agree on the voluntary sharing of tasks and voluntary delegation of responsibilities, where appropriate;
- c) Establish prudential examination programmes based on an evaluation of group risks, in accordance with article 86.bis.1;
- d) Increase the effectiveness of supervision, eliminating all duplications of unnecessary prudential requirements, specifically those relating to the requests for information referred to in section 8 of article 91.bis;

¹³³ Added by article 2.6 of Act 6/2011, of 11 April.

¹³⁴ Item 1.a) was amended by article 3.25 of Royal Decree-Act 10/2012, of 23 March. Added by article 2.7 of Act 6/2011, of 11 April

e) Apply the prudential requirements envisaged in 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 on a consistent basis to all entities of a group of investment firms, without prejudice to the options and powers envisaged under EU legislation;

f) Plan and coordinate supervisory activities, in cooperation with the competent authorities involved and, where appropriate, with the central banks, in emergency situations or in preparation for such situations, drawing on the efforts of other forums that may be established in this matter.

2. When the National Securities Market Commission acts as supervisor of an investment firm with branches deemed to be significant in accordance with the criteria in article 91.quinquies, it will also establish and chair a college of supervisors to facilitate the exchange of information referred to in paragraph 8 of Article 91.bis.

3. The establishment and functioning of the colleges will be based on rules set out in writing and established, following consultation with the competent authorities involved, by the National Securities Market as the authority responsible for consolidated supervision or by the competent authority in the home Member State. The National Securities Market Commission shall maintain all members of the college fully informed, in advance, of the organization of meetings of the colleges, of the main issues to be discussed and the issues to be considered. The National Securities Market Commission shall also fully inform all members of the college of the decisions adopted in the meetings and of the measures executed. Secondary legislation may be enacted to establish the conditions that must be met by the colleges, whose composition shall be determined by the National Securities Market Commission.

4. As a member of a college of supervisors, the National Securities Market Commission will work closely with the other competent authorities that comprise it. The confidentiality requirements laid down in this Act shall not impede the exchange of confidential information between the National Securities Market Commission and the other competent authorities within the colleges of supervisors.

The establishment and functioning of colleges of supervisors shall not affect the rights and duties of the National Securities Market Commission set out in this Act and in the respective secondary legislation.

Article 92. *Public records in connection with issuers.*¹³⁵

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, those referred to in Articles 26.1.a) and b) of this Act.

¹³⁵ Item i) was amended by article 3.26 of Royal Decree-Act 10/2012, of 23 March. Item m) was added by item 5 of the sole article of Act 32/2011, of 4 October. Item l) was added by article 3.5 of Act 15/2001, of 16 June. Item c) was amended by article 1.4 of Act 5/2009, of 29 June. Item e) was repealed, and items i) through k) were added by item 64 of the sole article of Act 47/2007, of 19 December. Amended by Act 6/2007, of 12 April

- d) A register of investment firms operating in Spain and, where applicable, of their directors, executives and similar officers.
- e) *A register of the entities envisaged under article 65.2 of this Act. (Repealed)*
- f) A register of agents or authorised representatives who habitually act on behalf of investment 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 discipline envisaged in Title VIII of this Act for serious and very serious infringements.
- i) A register of official secondary markets, whose content and modifications shall be notified to the supervisory authorities of the other Member States of the European Union and to the European Securities and Markets Authority.
- j) A register of Spanish multilateral trading facilities.
- k) A register of credit institutions and investment firms that engage in the activity regulated in Chapter III of Title XI of this Act.

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 secondary legislation.

- l) A registry of credit rating agencies established in Spain which have been registered in accordance with the provisions of Regulation (EC) no. 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies.
- m) The systems for clearing, settlement and record-keeping and the central counterparties referred to in articles 44.bis and 44.ter, respectively.

Article 93

The Ministry of Economy and Finance shall, without prejudice to the powers of the Autonomous Communities 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 claims that may be made by the public relating to matters under such bodies' remit, and to advise the public on its rights and the legal channels through which it may exercise them.

Article 94 ¹³⁶

The Minister of Economy and, with his/her express delegation, the National Securities Market Commission, shall determine those cases in which public disclosure of the activities envisaged in this Act shall be subject to approval 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 advertising which is contrary to the provisions referred to in the preceding paragraph or generally that which is deemed unlawful according to the general advertising 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 95 ¹³⁷

Natural and legal persons to which the provisions of this Act apply, and those persons holding de jure or de facto directorships or executive positions in such legal persons, that violate the regulations for the organisation or control of the securities markets shall be held liable under administrative law and may be punished pursuant to the provisions of this chapter.

The rating agencies established in Spain and registered by virtue of Chapter I of Title III of Regulation (EC) no. 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies, the persons that participate in rating actions, rated undertakings and related third parties, third parties to which the credit rating agencies have outsourced some of their functions or activities and the persons related to or connected in any way with the agencies or with credit rating activities, shall also be held liable under administrative law and may be punished 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 entity, are deemed to hold the directorships or executive positions at the entities referred to in the preceding paragraph.

The persons who hold directorships or executive posts will be held liable for serious or very serious violations when such violations result from their malice or negligence.

Notwithstanding the provisions of the preceding paragraph, such persons holding directorships or executive posts shall be held accountable for the very serious or serious violations committed by the undertakings where they hold such positions, except in the following cases:

¹³⁶ Amended by Act 62/2003, of 30 December

¹³⁷ Amended by article 3.6 of Act 15/2001, of 16 June. Amended by final provision 5.16 of Act 2/2011, of 4 March. Amended by Act 37/1998, of 16 November

1. Where the persons comprising the collegiate governing bodies did not attend the corresponding meetings for justified cause, or where they voted against or abstained from voting on resolutions or decisions that give rise to such violations.
2. Where those violations can be attributed exclusively to executive committees, managing directors, general managers and similar bodies, or to other people with similar functions within the undertaking.

Laws and administrative provisions of a general nature containing precepts referring specifically to the undertakings covered by Article 84.1 of this Act or to activities relating to the securities market conducted by the persons or entities 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 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 decision. On resumption of the proceedings, if applicable, any resolution made must respect the court's findings.

Article 97¹³⁸

1. The power to commence and pursue investigations and impose sanctions in the penalty proceedings referred to in this Chapter 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 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 reoccurrence.

b) The imposition of sanctions for serious and minor infringements shall be vested in the National Securities Market Commission.

c) The imposition of sanctions for very serious infringements shall be vested in the Minister of Economy and Finance based on a proposal by the National Securities Market Commission, except sanctions involving the revocation 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 for serious or very serious violations.

¹³⁸ Section 1 was amended by final provision 5.17 of Act 2/2011, of 4 March. The fifth paragraph of section 1 was amended by sole article 65 of Act 47/2007, of 19 December. Amended by Act 37/1998, of 16 November. Amended by Act 3/1994, of 14 April

2. When the power to impose sanctions rests with the Autonomous Communities, 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 Community.

Article 98 ¹³⁹

1. Act 30/1992 of 26 November on the Legal Regime of the Public administrations and Common Administrative Procedure and its secondary legislation, with the specific features set out in articles 21 to 24 of Act 26/1988 of 29 July on control and supervision of credit institutions and in this Act and its secondary legislation, shall be applicable in penalty 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. 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)*

6. Following a report by the National Securities Market Commission, the Minister of Economy and Finance may 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 bankruptcy 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 above 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.

The condonement or deferral shall not take place under any circumstances if the penalised entity's shares were sold for a price or where the entity might be in a position to pay the penalty once the situation of insolvency had been surmounted.

¹³⁹ The first paragraph of section 1 and section 3 were amended by final provisions 5.18 and 19 of Act 2/2011, of 4 March. Section 5 was repealed by sole repealing provision a) of Act 44/2002, of 22 November. Amended by Act 44/2002, of 22 November. Amended by Act 37/1998, of 16 November

Article 99 ¹⁴⁰

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 the activities listed in article 84.1.a) and b) or by investment guarantee fund management companies which are unauthorised or, in general, do not align with their object.
- 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 entities listed in article 84.1.a) and b), of the rules governing such markets or systems, including their own regulations, or of the legislation governing their own activities.
- c.bis) Failure to submit to the National Securities Market Commission, by the entities listed in article 84.1.a) and b) within the period established in the regulations or granted by the Commission, of any documents, data or information must be submitted by virtue of the provisions in the Act and its secondary legislation, or which the Commission requires, in exercise of its functions, where the relevance of that information or the delay occurred severely hampers the assessment of their situation or activity, and the submission of information which is incomplete, inaccurate or untrue, where the impact is material in these cases.
- c ter) Failure by the entities listed in article 84.1.a) and b) to fulfil the obligations related, in each case, to the authorization, approval or non-objection to their Articles, regulations, or any other matter under the preceding rules provided for in this Act and its secondary legislation.
- c.quater) Non-compliance by the entities listed in article 84.1.a) and b) with the requirements regarding capital structure or own funds that apply to them as provided in this Act and its secondary legislation, and non-compliance with the exceptions or limitations on pricing, tariffs or fees imposed on them by the National Securities Market Commission.
- 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.

¹⁴⁰ Item u) was amended by item 5 of the sole article of Act 32/2011, of 4 October. Item t) was amended and item z.quinquies) was added by articles 3.7 and 8 of Act 15/2011, of 16 June. Items a), c), l.bis), m), ñ), p), u), z.bis) and z ter) were amended and items c.bis), c ter), c.quater), e.quinquies), z.quinquies) and z.sexies) were added by final provision 5.20 of Act 2/2011, of 4 March. Item II.bis) was added by Royal Decree-Act 6/2010. *Wording in accordance with the errata published in the Official State Gazette no. 93, 17 April 2010.* Amended by item 66 of the sole article of Act 47/2007, of 19 December. Amended by Royal Decree-Act 5/2005, of 11 March. Amended by Act 44/2002, of 22 November. Amended by Act 5/2005, of 22 April. Amended by Act 50/1998, of 30 December. Amended by Act 37/1998, of 16 November. Amended by Act 13/1992, of 1 June

- 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. quarter) 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.
- e. quinques) Failure by an investment firm or consolidable group to adopt, in the time and conditions established for this purpose by the National Securities Market Commission, the measures required by the latter to strengthen or amend its internal control, accounting or valuation procedures, the methods or strategies for maintaining an appropriate organisation structure or level of resources, when this jeopardises its solvency or viability.
- 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 consolidable 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) Failure to have 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) Failure by investment firms to file with the National Securities Market Commission any data or documents which must be submitted to it under this Act and its secondary legislation or which the Commission demands in the course of discharging its duties, or the submission of inexact, inaccurate or false data where this makes it difficult to evaluate the solvency of the firm or the consolidable group or financial conglomerate to which it belongs.

- ll) Repeated failure to present to the National Securities Market Commission the communiqués referred to in article 59.bis.
- II.bis) The placement of issues referred to in article 30.bis.1 of this Act without fulfilling the requirement of intervention by an authorised entity envisaged in that precept, without fulfilling the basic advertised conditions, omitting relevant data or including inaccuracies, falsehoods or misleading data in advertising, when, in all of these cases, it is not considered a very serious violation in accordance with the provisions of article 99.n.bis (*sic*)¹⁴¹
- 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 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 entails serious harm to market transparency and integrity, 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 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 where the information appears or should have appeared in the registers 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, 53.bis and 84.bis.4 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.

¹⁴¹ There is no n.bis); it was an error in Royal Decree Act 6/2010, of 9 April. The wording of article 99, prior to the Royal Decree Act, is attributable to Act 47/2007, of 19 December, on the transposition of the MiFID, and does not include an n.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 the 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 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 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 material, or the amount of the bid or the number of investors affected is material.
- 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 articles 84 and 85.7 of this Act to submit to inspection by the National Securities Market Commission, provided that express written instructions to that effect have been served (*sic*) ¹⁴²
- u) Failure to comply with the provisions of articles 31.6, 44.bis.3, 44.ter and 69 of this Act in the purchase of a significant stake, and where the holder of such stakes falls under the case envisaged in article 69.11 of the 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 commissioners for oaths 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.

¹⁴² As amended by article 7 of Act 15/2001.

- z) Any serious infringement committed where the offender has been penalised for an infringement of the same kind in the preceding five years.

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 articles 79 and 79.bis of this Act, or lack of the register of contracts regulated in article 79.ter.

- z ter) Lack of policies for managing and executing client orders, or failure to apply them, or their application without the clients' prior consent, where this occurrence is not occasional or isolated.

- z.quarter) Breach, by the entities referred to in additional provision seventeen of this Act, of the authorisation rules contained in that provision.

- z.quinquies) Breach of the precautionary measures imposed in parallel with the penalties measures imposed by the National Securities Market Commission and, in particular, those envisioned in items e), g), i), j) and k) of article 85.2 of this Act.

- [New] z.quinquies) Failure by the credit rating agencies to submit to the National Securities Market Commission any data or documents required to be submitted to it under this Act and Regulation (EC) no. 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies, or demanded by the Commission in exercising the functions delegated to it or under the regime of cooperation with the other competent authorities, and the submission of information to the National Securities Market Commission with inaccurate data which makes it difficult to assess the organisation or the functioning of an entity or they way that it performs its activities. (*sic*)¹⁴³

- z.sexies) Failure to have a customer service department.

Article 100¹⁴⁴

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 bodies listed in article 84.1.a), b) and f), of directors, general managers and similar without the prior approval of the National Securities Market Commission or, as the case may be, of the Autonomous Community with powers in matters regarding regional markets.

- a.bis) The failure to disclose, deposit or publish a regulatory disclosure as referred to in article 112.2 of this Act.

- b) The failure to draft or publish the annual report on corporate governance or the annual report on director remuneration referred to in articles 61.bis and 61.ter, respectively, or the existence

¹⁴³ An error was detected: two acts introduce a new *z.quinquies* section in article 99.

¹⁴⁴ Item k) was amended and item z.sexies) was added by sole article 7 of Act 32/2011, of 4 October. Items b ter) and b.quarter) were added by the final provision of Act 25/2011, of 1 August. Item b) was amended and item b.bis) was repealed by final provisions 2.4 and 5 of Act 21/2011, of 26 July. Items a), b), j), k) and t) were amended and items II.bis), z.quarter) and z.quinquies) were added by final provision 5.21 of Act 2/2011, of 4 March. Item j ter) was added by article 1.5 of Act 5/2009, of 29 June. Amended by item 67 of the sole article of Act 47/2007, of 19 December. Amended by Act 6/2007, of 12 April. Amended by Act 5/2005, of 22 April. Amended by Royal Decree-Act 5/2005, of 1 March. Amended by Act 26/2003, of 17 July. Amended by Act 44/2002, of 22 November. Amended by Act 37/1998, of 16 November. Amended by Act 13/1992, of 1 June. Amended by Act 4/1990, of 29 June

in those reports of omissions or false or misleading data; breach of the obligations set out in articles 512, 513, 514, 516 and 517 of the consolidated text of the Capital Companies Act, approved by Legislative Royal Decree 1/2010, of 2 July; and failure by issuers of securities listed in official secondary markets to have an Audit Committee in the terms of additional provision eighteen of this Act.

b.bis) Repealed

b.ter) Breach of the obligations laid down in article 516 of the consolidated text of the Capital Companies Act, approved by Legislative Royal Decree 1/2010, of 2 July.

b.quater) Breach of the obligations set out in article 525.2 of the consolidated text of the Capital Companies Act, approved by Legislative Royal Decree 1/2010, of 2 July.

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) 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 commissioners for oaths 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 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.

- j ter) The acquisition of a holding as described in article 69.3 without notifying the National Securities Market Commission.
- k) Acquisition of a holding as described in article 69.3 without notifying the National Securities Market Commission, breach of obligations established in article 69.bis, and the increase or decrease of a significant holding without fulfilling the provisions of articles 31.6, 44.bis.3, 44.ter and 69.9 of this Act.
- 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).
- II.bis) the placement of issues as referred to in article 30.bis.1 of this Act without the participation of an authorised entity as required by that article, without fulfilling the basic conditions that were advertised, or while omitting significant data or while advertising data that is inaccurate, false or misleading.
- 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 consolidable 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 undertakings 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) Occasional or isolated 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.
- 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 directors' report, the information required under article 116.bis of this Act, or the existence of omissions or false or misleading data.
- z.quater) Breach, by an investment firms, of the limits envisioned for major risks, when those risks did not occur suddenly but, rather, were the result of actions and decisions adopted by the firm itself.
- z.quinquies) Malfunction of the customer service department.
- z.sexies) Breach, other than on a merely occasional or isolated basis, by the entities listed in article 84.1.a) and b), of the rules governing such markets or systems, including their own regulations, or of the regulations governing their own activities.

The infringement envisaged in item a.bis) shall be deemed to apply jointly and severally to all participants in the shareholder agreement.

Article 101 ¹⁴⁵

1. Infringements by the entities and persons referred to in Article 95 of the duty of due observance 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.

2. There are two types of minor infringements:

a) Failure to submit to the National Securities Market Commission, before the deadline established in the rules and granted by the Commission, any documents, data or information that must be submitted to it by virtue of the provisions of the Act or that the Commission demands in the exercise of its functions and by virtue of Regulation (EC) no. 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies, in exercising the functions delegated to it or under the regime of cooperation with the other competent authorities, and failing in its duty to cooperate with the supervisory activities of the National Securities Market Commission, including non-appearance when summoned by subpoena to make a deposition, when such conduct does not constitute serious or very serious infringements, in accordance with the provisions of the two preceding articles.

b) A one-time breach, within the framework of a relationship with clients, of the rules of conduct envisaged in Chapter I of Title VII of this Act.

Article 101.bis ¹⁴⁶

Serious or very serious violations expire after five years and minor violations after two years.

The period for expiration of violations shall count as from the day that the violation was committed. As regards violations arising from continuous activity, the expiry date will be calculated starting from conclusion of that activity or from the last violation that was committed.

The statute of limitations period will be interrupted by the commencement of disciplinary proceedings, with the knowledge of the interested party, and shall resume if the disciplinary proceedings are halted for three months for reasons not attributable to those against whom they are directed.

Article 102 ¹⁴⁷

One or more of the following sanctions shall be imposed upon any offender committing very serious infringements:

a) Fine of up to the larger 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.

¹⁴⁵ Amended by article 3.9 of Act 15/2011, of 16 June. Amended by final provision 5.22 of Act 2/2011, of 4 March.

¹⁴⁶ Added by final provision 5.23 of Act 2/2011, of 4 March.

¹⁴⁷ Item h) was amended by final provision 2.6 of Act 21/2011, of 26 July. The final paragraph was added by article 3.10 of Act 15/2001, of 16 June. Item h) was amended by final provision 5.24 of Act 2/2011, of 4 March. Amended by sole article 68 of Act 47/2007, of 19 December. Amended by Act 37/1998, of 16 November. Amended by Act 3/1994, of 14 April

- 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 five years.
- c) Suspension of membership of an official secondary market or multilateral trading facility for a period not greater than five years.
- d) Exclusion of a financial instrument from trading on an official secondary market or multilateral trading facility.
- e) Withdrawal of authorization 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 penalty involving withdrawal shall be replaced by prohibition from commencing new operations in Spanish territory.
- f) Suspension of an offender from the directorship or executive post at a financial institution for a period not greater than five years.
- g) Removal from office and disqualification from holding directorships or executive posts at the same entity for a period not greater than five years.
- h) Removal from office and disqualification from holding directorships or executive posts at any similar financial entity envisaged in article 84.1 and 84.2.b), c.bis) and d) for a period not greater than ten years.

In the case of the infringement envisaged in article 99.o), the penalties 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 penalties 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 penalty 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 imposed for very serious infringements shall be published in the Official State Gazette once they have become final in the administrative appeals process.

Where the infringements are committed by the persons referred to in article 85.7, the penalties will be imposed in accordance with the provisions of article 98 of this Act, without prejudice to the capacity of other competent authorities of the European Union to impose penalties in accordance with the provisions of Regulation (EC) no. 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies.

Article 103 ¹⁴⁸

One or more of the following sanctions shall be imposed upon any offender committing a serious infringement:

- a) A fine up to the greater 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

¹⁴⁸ Amended by sole article 69 of Act 47/2007, of 19 December. Amended by Act 44/2002, of 22 November. Amended by Act 37/1998, of 16 November. Amended by Act 3/1994, of 14 April. Amended by Act 9/1991, of 22 March

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 limitation of the type or volume of the transactions or activities which the offender may perform in securities markets during 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 imposed for serious infringements shall be published in the Official State Gazette once they have become final in the administrative appeals process.

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.

Article 104 ¹⁴⁹

A fine of up to 30,000 euros will be imposed upon any offender committing minor infringements.

Where the infringements were committed by the persons referred to in article 85.7, the penalties will be imposed in accordance with the provisions of article 98 of this Act, without prejudice to the capacity of other competent authorities in the European Union to impose sanctions in accordance with the provisions of Regulation (EC) no. 1060/2009 of the European Parliament and the Council of 16 September 2009 on credit rating agencies.

Article 105 ¹⁵⁰

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 greater than three years.
- c) Removal from office and disqualification from holding directorships or executive posts in the same entity for a period not greater than five years.

¹⁴⁹ The second paragraph was added by article 3.11 of Act 15/2011, of 16 June. Amended by item 70 of the sole article of Act 47/2007, of 19 December. Amended by Act 3/1994, of 14 April

¹⁵⁰ Amended by item 71 of the sole article of Act 47/2007 of 19 December. Amended by Act 44/2002, of 22 November. Amended by Act 37/1998, of 16 November. Amended by Act 3/1994, of 14 April. Amended by Act 9/1991, of 22 March

- d) Removal from office and disqualification from holding directorships or executive posts in any firm of the type envisaged in article 84.1 and in credit institutions for a period not greater than ten years.

In all cases, the 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 appeals process.

In the case of the infringement envisaged in article 99.o), the penalties envisaged in item a) of this article shall be imposed in any case, the fine not being less than 30,000 euro.

Article 106 ¹⁵¹

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 150,250 euro.
- b) Removal of the offender from all directorships or executive posts in the firm for a period not greater than one year.

In all cases, the 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 appeals process.

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, the fine being not less than 12,000 euro.

Article 106.bis. ¹⁵²

When the violations envisaged in articles 99, 100 and 101 refer to obligations of consolidated groups of investment firms, the undertaking subject to the obligation and, if applicable, its directors and executives, shall be sanctioned.

Furthermore, when such breaches refer to the obligations of financial conglomerates, the penalties set forth in this Act shall be applied to the entity subject to the 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 empowered to act as coordinator of additional supervision of such financial conglomerate. The aforementioned penalties may be extended, if applicable, to the directors and executives of the entity subject to the obligation.

Article 106.ter. ¹⁵³

1. The applicable sanctions in each case due to very serious, serious or minor infringements shall be determined according to the criteria set out in article 131.3 of Act 30/1992, of 26 November on the

¹⁵¹ Amended by item 72 of the sole article of Act 47/2007, of 19 December. Amended by Act 44/2002, of 22 November. Amended by Act 3/1994, of 14 April

¹⁵² Added by Act 5/2005, of 22 April

¹⁵³ Added by final provision 5.25 of Act 2/2011, of 4 March

Legal System of the Public Administrations and the Common Administrative Procedure, and to the following:

- a) The nature and magnitude of the infringement.
- b) The seriousness of the danger or harm caused.
- c) The gains, if any, resulting from the acts or omissions constituting the infringement.
- d) The importance of the offending institution, measured as a function of the total size of its balance sheet.
- e) The infringement's adverse consequences for the financial system or the national economy.
- f) Whether the infringement was committed on the undertaking's own initiative.
- g) Repair of damage caused.
- h) Collaboration with the National Securities Market Commission, provided that the collaboration provides evidence or information relevant to the clarification of the events being investigated.

In the event of insufficient own funds, the objective difficulties that prevented the legally required level from being attained or maintained.

The undertaking's prior conduct in relation to the rules on order and discipline which affect it, having consideration for the penalties imposed on it in the last five years.

2. To determine the applicable sanction from among those provided by articles 105 and 106 of this Act, the following circumstances will also be taken into consideration:

- a) The party's degree of responsibility for the events.
- b) The party's past conduct at the same or at another entity under the rules of order and discipline, taking into consideration any sanctions that were imposed on him/her during the last five years.
- c) The representative position held by the party.

Article 107 ¹⁵⁴

The provisions for credit institutions in article 17 and Title III of Act 26/1988, of 29 July, 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 control or replacement 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.

Article 107.bis ¹⁵⁵

In the case of conduct classified as minor infringements in accordance with the provisions of article 101.2.b), before commencing the disciplinary proceedings, the National Securities Market Commission may, subject to a reasoned finding that the party's conduct did not have a material impact on the public interests protected by this Act, order that the alleged responsible party do the following within 30 days:

¹⁵⁴ Amended by final provision 5.26 of Act 2/2011, of 4 March. Amended by article 7.18 of Act 37/1998, of 16 November.

¹⁵⁵ Added by final provision 5.27 of Act 2/2001, of 4 March.

1. Adopt the appropriate measures to avoid the continuance or recurrence of the conduct in question.
2. Provide compensation for any pecuniary loss resulting from its conduct to the investors, where they can be identified, and
3. Prove full compliance with the provisions in the two preceding sections.

The demand in this connection, duly served, shall interrupt the statute of limitations on the infringement, which shall recommence the day after the expiry date established by the demand.

Compliance and accreditation of compliance shall be assessed by the National Securities Market Commission for the purposes of considering its supervisory objectives to have been fully met.

Article 107.ter. *Information and notification of administrative infractions and sanctions.*¹⁵⁶

Each year, the National Securities Market Commission shall provide the European Securities and Markets Authority with aggregated information relating to infractions due to non-compliance with the obligations of this Act, and the sanctions imposed.

In the event that an administrative measure or sanction has been disclosed publicly, the National Securities Market Commission shall simultaneously notify the European Securities and Markets Authority.

TITLE IX

TAXATION OF SECURITIES TRANSACTIONS

Article 108 ¹⁵⁷

1. The transfer of securities, whether or not listed on an official secondary market, shall be exempt from Value Added Tax (*Impuesto sobre el Valor Añadido*) and Transfer/Stamp Tax (*Impuesto sobre Transmisiones Patrimoniales y Actos Jurídicos Documentados*).
2. Transfers performed in the secondary market and acquisitions in the primary market as a result of exercising pre-emptive subscription rights and the conversion of bonds into shares or any other form of security are not covered by the exemption in the preceding paragraph and shall be liable for Transfer/Stamp Tax under the heading of Transfers of Real Estate for a Consideration in the following cases:
 - a) When the securities or shares transferred or acquired represent aliquot portions of the capital stock or equity of companies, funds, associations or other entities at least 50 per cent of whose assets consist of real estate located in Spanish territory, or whose assets include securities enabling them to exert control over another entity at least 50 per cent of whose assets consist of real estate located in Spain, provided that, as a result of such transfer or acquisition, the acquirer attains a position such that it can exert control over such entities or, having attained such control, increases

¹⁵⁶ Added by article 3.27 of Royal Decree-Act 10/2012, of 23 March (Wording in accordance with the errata published in the Official State Gazette no. 88, of 12 April 2012).

¹⁵⁷ Section 2 was amended by final provision 6 of Act 11/2009, of 26 October (*Take account of transitory provision 3 with regard to the application of this section 2*). Amended by article 8 of Act 36/2006, of 29 November. Amended by Act 18/1991, of 6 June.

its stake in them. For the purposes of calculating the 50 per cent of assets consisting of real estate, the following rules will apply:

1. For the purposes of this item, administrative concessions and assets assigned under such concessions as regulated by Regulation (EC) No. 254/2009 of the Commission of 25 March 2009, modifying Regulation (EC) No. 1126/2008, adopting certain International Accounting Standards (IAS) in accordance with Regulation (EC) No. 1606/2002 of the European Parliament and of the Council, with respect to Interpretation No. 12 of the International Financial Reporting Standards) Interpretation Committee (IFRIC) shall not be considered real estate.
2. For valuation of assets, the actual value of the assets determined at the date of transfer or acquisition will be used in place of the net book value.
3. Properties, other than sites or vacant lots, which form part of the current assets of entities whose sole corporate purpose is to engage in construction or real estate development will not be counted.

The calculation must be made on the date of the transfer or acquisition of the securities or shares, for which purpose the taxable subject will be obliged to draw up an inventory of assets at that date and provided it to the tax authorities on request.

The amount of borrowing maturing at or under 12 months will be deducted from the total amount of assets provided that it was arranged in the twelve months prior to the date of transfer of the securities.

In the case of companies limited by shares, control will be deemed to exist when ownership (direct or indirect) amounts to over 50 per cent of capital stock. To this end, ownership by the acquirer of securities of other entities in the same group of companies will also be counted as a stake. In the case of the transfer of shares to the company owning the real estate for subsequent amortisation, the taxable event defined in a) above will be deemed to have taken place. In this case, the taxable subject will be the shareholder who, as a result of those transactions, obtains control of the company as defined above.

b) When the securities that are being transferred were received in exchange for a contribution of real estate on the occasion of the creation or expansion of a company, or of a capital increase, provided that no more than three years have elapsed between the contribution date and the transfer date.

3. In the transfers or acquisitions of securities referred to in section 2 above, the tax rate for transfers of real estate for a consideration will be applied to the actual value of the assets, calculated in accordance with the rules in the current regulations on Transfer and Stamp Tax. To that end, the taxable base will be:

- a) In the cases referred to in 2.a) above, the proportion of the actual value of all the asset items that must be counted as real estate, in accordance with this rule, is the percentage of the total that is attained at the time of obtaining control or, where control has already been obtained, free of charge or for a consideration, the percentage by which the holding is increased.

When the securities transferred represent aliquot portions of the capital stock or assets of entities whose assets include a holding that enables them to exert control over other entities, only the real estate of those whose assets consist at least 50% of real estate will be included in calculating the taxable base.

b) In the cases referred to in 2.b) above, the percentage of the actual value of the real estate contributed in the past that corresponds to the shares that are transferred.

4. The exceptions regulated in section 2 of this article will not apply to transfers of securities that are listed on an official secondary market provided that the transfer takes place at least one year after they were listed. Periods in which trading in the securities was suspended will not count towards that one-year period.

Nevertheless, if the transfer of securities takes place in the context of public secondary offerings or tender offers, the period referred in the preceding paragraph need not have elapsed.

Article 109

Securities issuers, broker-dealers and brokers and other financial intermediaries shall be obliged to notify the Tax Authorities of any issue, subscription and transfer of securities in which they may have participated. This notice shall include the submission of the list of names of purchasers and sellers, the class and number of securities transferred, the purchase or sale prices, the date of transfer and the purchaser and transferor's tax identification numbers, in the period and form to be established by regulation.

For the purposes envisaged in the preceding paragraph, anyone who intends to purchase or transfer securities must, when placing the order, notify the respective issuer and financial intermediaries of his/her tax identity number; said issuer and financial intermediaries shall not process the order until this obligation has been met.

The provisions of this Article are without prejudice to the exceptions to this matter contained in Additional Provision One, section 1 of Law 14/1985 of May 29, on Tax Rules for Certain Financial Assets (*Ley 14/1985, de 29 de mayo, de Régimen Fiscal de Determinados Activos Financieros*).

Article 110

The National Securities Market Commission shall enjoy the same tax exemptions as those attributed to the Bank of Spain by current legislation.

TITLE X ¹⁵⁸

LISTED COMPANIES

CHAPTER I

GENERAL PROVISIONS

Article 111. ¹⁵⁹ *Scope.*

Repealed

¹⁵⁸ Title added by Act 26/2003, of 17 July

¹⁵⁹ Repealed by item 4 of the sole repealing provision of Legislative Royal Decree 1/2010, of 2 July.

Article 111.bis. ¹⁶⁰

Repealed

CHAPTER II
SHAREHOLDER AGREEMENTS SUBJECT TO DISCLOSURE

Article 112. *Disclosure of shareholder agreements and other agreements that affect a listed company* ¹⁶¹

Repealed

CHAPTER III
CORPORATE BODIES

Article 113. ¹⁶² *Shareholders' meeting.*

Repealed

Article 114. *Duties of the directors.* ¹⁶³

1. Repealed
2. Repealed
3. Repealed
4. Repealed

Article 115. *Board of Directors.* ¹⁶⁴

Repealed

CHAPTER IV
COMPANY INFORMATION

¹⁶⁰ Repealed by item 4 of the sole repealing provision of Legislative Royal Decree 1/2010, of 2 July. Added by Act 62/2003, of 30 December.

¹⁶¹ Repealed by item 4 of the sole repealing provision of Legislative Royal Decree 1/2010, of 2 July.

¹⁶² Repealed by item 4 of the sole repealing provision of Legislative Royal Decree 1/2010, of 2 July.

¹⁶³ Sections 2 and 3 were repealed by final provision 5.28 of Act 2/2011, of 4 March. Sections 1 and 4 were repealed by item 4 of the sole repealing provision of Legislative Royal Decree 1/2010, of 2 July. Section 4 was added by additional provision four of Act 19/2005, of 14 November.

¹⁶⁴ Repealed by item 4 of the sole repealing provision of Legislative Royal Decree 1/2010, of 2 July.

Article 116. *Annual Report on Corporate Governance.* ¹⁶⁵

Repealed

Article 116.bis. *Additional information to be included in the directors' report.* ¹⁶⁶

Repealed

Article 117. *Reporting instruments.* ¹⁶⁷

Repealed

TITLE XI ¹⁶⁸

OTHER TRADING SYSTEMS: MULTILATERAL TRADING FACILITIES AND SYSTEMATIC INTERNALISERS

CHAPTER I

MULTILATERAL TRADING FACILITIES

Article 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 non-discretionary 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. *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 governing companies, which must have as sole object the management of the system and must be owned 100 per cent by one or more governing companies, meets the requirements of the aforementioned articles 66 and 67.

¹⁶⁵ Repealed by final provision 5.29 of Act 2/2011, of 4 March. Section 6 was added by Act 19/2005, of 14 November, on *Societas Europaeae –European listed company-* domiciled in Spain.

¹⁶⁶ Repealed by final provision 5.29 of Act 2/2011, of 4 March. Added by Act 6/2007, of 12 April.

¹⁶⁷ Repealed by item 4 of the sole repealing provision of Legislative Royal Decree 1/2010, of 2 July. Amended by final provision 4.1 of Act 12/2010, of 30 June.

¹⁶⁸ Title added by item 73 of the sole article of Act 47/2007, of 19 December.

Article 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 per cent 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.

- a) Existence of 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 penalties 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 multilateral trading facility regulation.

Article 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 a multilateral trading facility between its members or participants or between the multilateral trading facility and its members or participants in relation to the use of the multilateral trading facility. 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 a multilateral trading facility.
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 a multilateral trading facility 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 multilateral trading facility.
4. The governing body of a multilateral trading facility must take the necessary measures to facilitate efficient settlement of the trades conducted in the multilateral trading facility, and must clearly inform users of the responsibilities that the body assumes in the settlement of trades executed in the multilateral trading facility.
5. Chapter II of Title VII is applicable to trading on multilateral trading facilities.

Article 122. *Monitoring of compliance with the rules of the multilateral trading facility 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 multilateral trading facility 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. *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 that are traded only in the multilateral trading facility.

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 multilateral trading facility 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. *Post-trade transparency requirements.*

1. In order to provide the multilateral trading facility with transparency and to foster efficient price discovery, multilateral trading facilities 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 multilateral trading facility 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 multilateral trading facility.

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 a multilateral trading facility 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 Communities with powers in the matter may establish any other disclosure requirement relating to transactions performed in their territory.

Article 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.

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. *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, the undertaking 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 a multilateral trading facility 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

PROVISIONS COMMON TO OFFICIAL SECONDARY MARKETS AND MULTILATERAL TRADING FACILITIES

Article 127. *Coercive measures.*¹⁶⁹

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 multilateral trading facility 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 multilateral trading facility.

If, despite the measures adopted by the competent authority of the home Member State, the regulated market or multilateral trading facility persists in acting in a manner that is clearly detrimental to the interests of investors in Spain or the orderly functioning of the markets, the National Securities Market Commission, after informing the competent authority of the home Member State, shall adopt all the appropriate measures to ensure their protection. This shall include the possibility of preventing the regulated market or multilateral trading facility from making their arrangements available to remote members established in Spain. The National Securities Market Commission shall notify the European Commission and the European Securities and Markets Authority promptly of the measures adopted. The National Securities Market Commission may bring the matter to the attention of the European Securities and Markets Authority, which may act in accordance with the powers granted to it under article 19 of Regulation (EU) no. 1095/2010.

2. Any measure adopted pursuant to this article involving sanctions or restrictions on the activities of a regulated market or multilateral trading facility shall be properly justified and communicated to the regulated market or multilateral trading facility concerned.

Chapter III

SYSTEMATIC INTERNALISERS

Article 128. *Scope.*¹⁷⁰

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 multilateral trading facility, 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. The shares shall be grouped in categories 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 category to which each share belongs and shall submit it to the European Securities and Markets Authority.

¹⁶⁹ Item 1 was amended by article 3.28 of Royal Decree-Act 10/2012, of 23 March.

¹⁷⁰ Item 3 was amended by article 3.29 of Royal Decree-Act 10/2010, of 23 March.

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. *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, 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. *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.

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 subparagraphs. 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. *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 for 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.

ADDITIONAL PROVISIONS TO ACT 24/1988

Additional provision one. ¹⁷¹

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 Communities 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 fully by the relevant provisions of this Act.

Additional provision two

At the time of entry into force of the provisions of this Act relating to the Stock Exchanges, the Official Stockbrokers (*Agentes de Cambio y Bolsa*), while retaining their name, will become part of the Body of Chartered Commercial Brokers (*Cuerpo de Corredores de Comercio Colegiados*) and will occupy, in its ranks, the position that corresponds to them on the basis of their seniority as Official Brokers (*Agentes Mediadores Oficiales*) and they shall be subject to all regulations applicable to those Chartered Commercial Brokers. On that date, the Official Association of Official Stockbrokers shall be dissolved and shall go into liquidation. The Government will determine how to dispose of the records and archives of the Official Stockbrokers and all the official documents held by their Associations.

Before the aforementioned date, the Minister of Economy and Finance shall create the Official Associations of Chartered Commercial Brokers of Madrid, Barcelona and Bilbao, and shall determine, in connection with them and the Association in Valencia, the numbers of members and, subject to prior consultation with the Autonomous Communities, as appropriate, their territorial scopes.

Within two years from the entry into force of the provisions of this Act relating to the Stock Exchanges, the government shall enact a new regulation governing the duties and functions of Chartered Commercial Brokers.

Additional provision three ¹⁷²

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.

Additional provision four ¹⁷³

Book II, Title V, Section 2 of the Code of Commerce is amended to read as follows:

(...)

¹⁷¹ Amended by article 8.1 of Act 37/1998, of 16 November.

¹⁷² Amended by article 8.2 of Act 37/1998, of 16 November.

¹⁷³ Amendments made to the Code of Commerce approved by the Royal Decree of 22 August 1885.

Additional provision five ¹⁷⁴

1. Article 1447.2 of the Civil Justice Act shall read as follows:

(...)

Additional provision six ¹⁷⁵

Act 46/1984 of 26 December, regulating Collective Investment Institutions, is amended in the following terms:

(...)

Additional provision seven

The powers that Act 46/1984 of 26 December, regulating Collective Investment Schemes, gives to the Ministry of Economy and Finance under articles 8.6, 20.4, 28.1 and 31.2, and those which Royal Decree 1346/1985, of 17 July, implementing the aforementioned Act, and other supplementary provisions assign to the Directorate General of the Treasury and Finance Policy are hereby transferred to the National Securities Market Commission.

Additional provision eight ¹⁷⁶

For the purposes of the provisions of Article 44 of the Workers' Statute, approved by Act 8/1980 of March 10, a business succession shall be deemed to have taken place:

1. Between the existing Official Associations of Official Stockbrokers and the Companies envisaged in article 48 of this Act, the *Sociedad de Bolsas* established in article 50, the Securities Clearing and Settlement Service established in article 54, the Official Associations of Chartered Commercial Brokers envisaged in the second additional provision and the National Securities Market Commission.

2. Between the current Official Stockbrokers and the Broker-dealer or Broker which each of them joins in accordance with transitory provisions six and seven of this Act. Where they join such Broker-dealers or Brokers solely as owners of capital, this business succession shall not affect the employees working in the areas of intermediation or public authentication in matters other than securities.

Additional provision nine ¹⁷⁷

1. Article 545 of the Code of Commerce is amended to read as follows:

(...)

¹⁷⁴ Amendments made to the Civil Justice Act approved by the Royal Decree of 3 February 1881

¹⁷⁵ Amendments made to Act 46/1984 of 26 December, regulating Collective Investment Institutions

¹⁷⁶ The reference to article 44 should be understood as a reference to the same article of Legislative Royal Decree 1/1995, of 24 March, approving the Consolidated Text of the Workers' Statute.

¹⁷⁷ Amendments made to the Code of Commerce approved by the Royal Decree of 22 August 1885

Additional provision 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.

Additional provision eleven ¹⁷⁸

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 Communities 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.

Additional provision twelve ¹⁷⁹

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.

Additional provision thirteen ¹⁸⁰

The references to investment firms and authorities of European Union Member States also include those of other states in the European Economic Area.

Additional provision fourteen ¹⁸¹

For all intents and purposes, and taking account of the special characteristics of Basque Provincial Treasuries, issues of securities by the Basque Provincial Governments shall be deemed to be equivalent to those issued by an Autonomous Community.

Additional provision fifteen ¹⁸²

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 regulatory disclosures laid down in Article 82 of this Act.

¹⁷⁸ Added by article 8.3 of Act 37/1998, of 16 November

¹⁷⁹ Added by article 8.4 of Act 37/1998, of 16 November

¹⁸⁰ Added by article 8.5 of Act 37/1998, of 16 November

¹⁸¹ Added by article 8.6 of Act 37/1998, of 16 November

¹⁸² Added by additional provision 17.2 of Act 55/1999, of 29 December

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.

Additional provision sixteen ¹⁸³

Listed companies which, at the time of entry into force of this provision, have established, 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, the term "executive" is deemed to mean general managers and similar persons performing senior management functions who report directly to the governing body, executive committee or managing director of a listed company.

Additional provision seventeen ¹⁸⁴

1. Without prejudice to the powers of the Autonomous Communities with regard to securities registry, 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 Communities 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 registry, 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 secondary legislation, requires a takeover bid to be made for all of the company's capital.

Apart from the exceptions to be established by secondary legislation, the articles of association 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 articles, amendments

¹⁸³ Added by additional provision 17.3 of Act 55/1999, of 29 December

¹⁸⁴ Added by additional provision 19 of Act 24/2001, of 27 December. Amended by article 2.5 of Act 12/2006, of 16 May

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 stakes, the system governing such entities so that their articles 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 any 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 Communities with powers in 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 significant holdings contained in articles 31.6 and 44.bis.3 of this Act shall not apply to the transfers subject to the administrative authorisations envisaged in this provision.

4. The National Securities Market Commission is vested with the power to supervise those entities.

Additional provision seventeen (*sic*)¹⁸⁵

Specific references to the "Securities Clearing and Settlement Service" (*Servicio de Compensación y Liquidación de Valores*) 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.

Additional provision eighteen. *Audit Committee*¹⁸⁶

1. Issuing companies whose shares or bonds are listed on official secondary securities markets must have an Audit Committee.

2. A majority of the members of the Audit Committee must be non-executive directors or, in the case of an equivalent body, members without managerial or executive functions in the company, and without any contractual relationship with the company other than that of director. They shall be appointed, in any case, by the Board of Directors or equivalent body, depending on the legal nature of the undertaking. At least one member of the audit committee must be independent and must be appointed on the basis of his/her knowledge and experience in accounting and/or auditing.

¹⁸⁵ Added by article 1.5 of Act 44/2002, of 22 November. That precept adds a new additional provision 17, but one had been added previously by Act 24/2001 of 27 December, so the correct numbering should be additional provision 18 and subsequent provisions should be renumbered accordingly.

¹⁸⁶ Sections 2 and 4 were modified by final provision 4.2 of Act 12/2010, of 30 June. Amended by article 98.3 of Act 62/2003, of 30 December. Added by article 47 of Act 44/2002, of 22 November

3. The chair of the Audit Committee must be appointed from among the non-executive directors or members who do not have managerial or executive functions or any contractual relationship with the company other than that of director.

The Chairperson must be replaced every four years and may be reappointed one year after termination of his/her period of office.

4. The number of members, the competencies and the working rules of that Committee shall be laid down by the company's articles and must foster its independence. Its powers shall include at least the following:

1. Inform the Shareholders' Meeting, General Assembly or equivalent body, according to the undertaking's legal nature, on the questions raised by shareholders regarding matters under its competence.

2. Monitor the effectiveness of the Company's internal control, internal audit, and, where appropriate, risk management systems, and discuss with the company's auditors any significant weaknesses in the internal control system detected during the audit.

3. Supervise the process of drawing up and presenting the regulated financial information.

4. Propose to the governing body, for referral to the General Meeting of Shareholders or corresponding equivalent body, depending on the entity's legal nature, the appointment of auditors or audit firms, in accordance with the regulations applicable to the entity.

5. Establish appropriate relationships with the company's auditors to receive information about matters that might jeopardise their independence, for review by the Committee, and any other matters related to the audit process as well as other communications envisaged in the audit legislation and technical audit standards. In all cases, auditors or audit firms must annually provide written confirmation of their independence from the audited entity and from entities linked directly or indirectly to the audited entity, as well as information concerning additional services of any kind provided to the entity or entities by the aforementioned auditors or audit firms, or by persons or entities linked thereto in accordance with the provisions of Act 19/1988, of 12 July, on Auditing.

6. Issue a report on the independence of the auditors or audit firms each year prior to the issuance of the auditors' report. This report must, in all cases, comment on the provision of the additional services referred to above.

5. In the case of savings banks that issue securities which are listed on official secondary markets, the functions of the Audit Committee may be undertaken by the Oversight Commission.

Additional provision nineteen ¹⁸⁷

1. Portfolio management companies must join the Investment Guarantee Fund under the regime established by the existing regulations on the subject, and they shall be exempt from the obligation to arrange civil liability insurance.

2. References to Broker-dealers and Brokers contained in the provisions referred to in the preceding paragraph shall be understood to refer to all investment firms.

3. Portfolio management companies must join the Investment Guarantee Fund by 1 February 2003.

¹⁸⁷ Added by article 96.1.4 of Act 53/2002, of 30 December.

Additional provision twenty ¹⁸⁸

The National Securities Market Commission is the competent authority in Spain for the purposes of the provisions of Regulation (EC) no. 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies.

Additional provision twenty-one. ¹⁸⁹

1. In addition to performing the activities set out in article 63.1, investment firms and credit institutions authorised to provide investment services may present bids on behalf of their clients in auctions of greenhouse gas allowances that are not financial instruments, as set out in Regulation (EU) No. 1031/2010 of the Commission, of 12 November 2010, on the timing, administration and other aspects of auctioning of greenhouse gas emission allowances pursuant to Directive 2003/87/EC of the European Parliament and of the Council establishing a scheme for greenhouse gas emission allowances trading within the Community. Accordingly, this activity shall be included in the schedule of activities referred to in article 66.

2. The National Securities Market Commission shall be the authority authorised to penalise persons in Spain in breach of articles 37 to 42 of Regulation (EU) No. 1031/2012, on auctions of greenhouse gas allowances that are not financial instruments, organised in Spain or elsewhere.

3. For the purposes of the provisions of the preceding section, the National Securities Market Commission shall have the powers of supervision and inspection envisaged in this legislative text.

4. In the event of non-compliance with articles 37 to 42 of Regulation (EU) No. 1031/2010, the sanctions established in chapter II of Title VIII of this Act in relation with operations with insider dealing and market manipulation shall apply, with the following peculiarities:

a) With the exception of the provisions of article 99.ñ) and article 100.m).

b) The reference contained in article 99.o.bis) shall be construed as referring solely to articles 81.4, 83.1 d), and 83.2.

c) The reference contained in article 100.x.ter) shall be construed as referring solely to articles 81.4, 83.1 d), and 83.2, the auction platforms and auction supervisory entities being the parties to which this obligation refers.

d) The reference contained in article 100.x) shall be construed as referring solely to article 81, except for its section 3.

5. Non-compliance with the rules of conduct set out in article 59 of the Regulation (EU) No. 1031/2010 and with the obligation to adopt the structural provisions referred to in article 42.4 of that Regulation will be considered a very serious infraction when it occurs in the context of a specific transaction which constitutes inside information.

Inadequate adoption of the measures envisioned in article 42.4 of the Regulation (EU) No. 1031/2010 shall be considered a serious infraction.

6. The National Securities Market Commission shall cooperate with other competent authorities in the European Union, with the auction platforms and with the auction supervisory entity provided

¹⁸⁸ Added by final provision 5.30 of Act 2/2011, of 4 March.

¹⁸⁹ Added by article 4 of Royal Decree-Act 17/2012, of 4 May.

that it is necessary to perform the functions established in Regulation (EU) No. 1031/2010 and in relation with the matters and under the terms regulated by that Regulation.

7. The duty of secrecy regulated in article 90 shall not apply to the information that the Commission must provide to the competent authorities, the auction platforms and the auction supervisory entity in connection with auctions of emission allowances, in conformity with Regulation (EU) No. 1031/2010.

8. The definitions of inside information and market manipulation set out in article 37 of the Regulation (EU) No. 1031/2010 shall apply for the purposes envisioned in the preceding sections.

ADDITIONAL PROVISIONS TO ACT 37/1998

Additional provision one ¹⁹⁰

The following amendments are hereby made to Act 46/1984 of 26 December, which regulates collective investment schemes.

(...)

Additional provision two. (Repealed) ¹⁹¹

Additional provision three

In cases of bankruptcy or insolvency of an issuer of securities or an entity registered with the National Securities Market Commission, the obligations under Act 24/1988, of 28 July, on the Securities Market or other laws incumbent upon their directors and executives to submit information to the Commission shall be applicable to the receivers, depositories and liquidators, as appropriate.

Additional provision four

1. The mortgage securitisation trusts referred to in Act 19/1992, of 7 July, which are composed of stakes in overdue mortgage loans may be created provided that such loans and the mortgages securing them meet all other requirements of the mortgage market legislation and that credit enhancement mechanisms or instruments are implemented.

2. In the process of supervision by the National Securities Market Commission of the constitution of such trusts, the Commission may establish specific requirements for reporting and monitoring that they are operating properly.

¹⁹⁰ Amendments made to Act 46/1984 of 26 December, which regulates collective investment schemes (repealed).

¹⁹¹ Repealed by item b) of the sole repealing provision of Act 35/2003, of 4 November.

Additional provision five ¹⁹²

1. Article 9.d) of Act 43/1995, of 27 December, on Corporate Income Tax, is hereby amended to read as follows:

(...)

Additional provision six. (Repealed) ¹⁹³

Additional provision seven ¹⁹⁴

Article 48.1.a) of Act 18/1991 is amended by adding the following paragraph:

(...)

Additional provision eight ¹⁹⁵

The final paragraph of final provision one of Act 19/1988, of 12 July, on Auditing, is amended to read as follows:

(...)

Additional provision nine ¹⁹⁶

1. A new paragraph is added to article 2 of Act 19/1985, of 16 July, on Exchange and Cheques, to read as follows:

(...)

Additional provision ten (Repealed) ¹⁹⁷

Additional provision eleven ¹⁹⁸

Article 6 of Legislative Royal Decree 1298/1986, of 28 June, on the adaptation of current law governing credit institutions to that of the European Community, is amended to read as follows:

(...)

Additional provision twelve. (Repealed) ¹⁹⁹

¹⁹² Amendments to Act 43/1995, of 27 December, on Corporate Income Tax

¹⁹³ Repealed by item b) of the sole repealing provision of Royal Decree Act 5/2005, of 11 March

¹⁹⁴ Amendments to Act 18/1991, of 6 June, on Personal Income Tax

¹⁹⁵ Amendments to Act 19/1988, of 12 July, on Auditing

¹⁹⁶ Amendments to Act 19/1985, of 16 July, on Exchange and Cheques

¹⁹⁷ Repealed by item b) of the sole repealing provision of Royal Decree Act 5/2005, of 11 March

¹⁹⁸ Amendments to Legislative Royal Decree 1298/1986, of 28 June

Additional provision thirteen ²⁰⁰

The following amendments are made to Royal Decree-Act 18/1982, of 24 September
(...)

Additional provision fourteen

The requirement of a public instrument established in Article 6 of Act 24/1988, of 28 July, on the Securities Market shall not apply in the case of issues of commercial paper that are intended to be traded on a secondary market, provided that their characteristics are set out in a prospectus.

Additional provision fifteen ²⁰¹

The following precepts of the consolidated text of the Corporations Act, approved by Legislative Royal Decree 1564/1989, of 22 March, are hereby amended:
(...)

ADDITIONAL PROVISIONS TO ACT 44/2002

Additional provision one. *Regional securities clearing and settlement services.*

With regard to the functions performed to date by the autonomous regions' Securities Clearing and Settlement Services, the Sociedad de Sistemas will only take on such functions as may be allowed under the current regulations in the corresponding Autonomous Community.

Additional provision two. *Measures to improve efficiency, effectiveness and quality of supervision 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 dependence and reporting ability is governed by the principles of impartiality, objectivity and avoidance of conflicts of interest.
2. The National Energy Commission, the Telecommunications Market Commission, the National Stock Exchange and the Bank of Spain shall draw up an annual report on their supervisory function in relation to their actions and procedures undertaken in this area from which information can be obtained about the effectiveness and efficiency of such procedures and actions. Those reports must include a report by the respective internal control bodies on the degree to which the

¹⁹⁹ Repealed by item b) of the sole repealing provision of Royal Decree Act 5/2005, of 11 March

²⁰⁰ Amendments to Royal Decree-Act 18/1982, of 24 September, on Deposit Guarantee Funds for Savings Banks and Credit Cooperatives

²⁰¹ Amendments to Legislative Royal Decree 1564/1989, of 22 March, which approved the consolidated text of the Corporations Act

decisions adopted by their governing bodies conform to the procedural rules applicable in each case. Such reports must be approved by the corresponding governing bodies and forwarded to the Parliament and Government.

3. The Bank of Spain, the National Securities Market Commission and the Ministry of Economy, within their respective legal powers over the oversight and inspection of financial institutions, shall cooperate closely in order to harmonize, to the degree that may be appropriate, and enhance, based on their mutual experience, the criteria and programmes supporting the technical and supervisory practices used in the exercise of those powers. To this end, they shall periodically exchange relevant information, particularly in order to improve the quality of the techniques employed, and they may sign agreements aimed at normalising such exchanges, standardising specific procedures or practices and, if applicable, establishing instruments which shall enable the monitoring of the aforementioned objectives.

Additional provision three. *Restrictions on short-term financial investments by non-profit entities.*

The National Securities Market Commission, the Bank of Spain and the Ministry of Economy, each in its area of supervision, shall approve codes of conduct containing specific rules covering short-term financial investments by non-profit foundations, establishments, institutions and organisations, professional associations, employment promotion funds, mutual insurance companies, mutual providential companies, mutual accident and occupational illness insurance companies attached to the Social Security and, as appropriate, other entities subject to reduced corporate income tax rates that do not have specific legislation on investment diversification in order to optimize the return on cash and which they may allocate to earn returns in accordance with their rules of operation.

The organs of government, administration or management of such entities must submit an annual report on the degree of compliance with these codes, for the information of their boards of trustees or their members.

Additional provision four. *Filing of the internal code of conduct with the National Securities Market Commission.*

Additionally, firms subject to the provisions of articles 82 to 83.bis of Act 24/1988, of 28 July, on the Securities Market must file with the National Securities Market Commission, within a period of nine months, an internal code of conduct which must also include the content required by those articles and that required by other secondary legislation under that Act. They must also file a written commitment to update those internal codes of conduct 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 codes 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 codes.

(.....)

ADDITIONAL PROVISIONS TO ACT 26/2003

Additional provision one. *Notification to the Directorate-General of Insurance and Pension Funds and the Bank of Spain.*

The communication referred to in Article 112.2 of Act 24/1988, of 28 July, on the Securities Market, must also be made to the competent supervisory authorities where the listed corporation is an insurance company, a pension fund management company or a credit institution.

Additional provision two.²⁰²

1. Savings banks that issue securities listed in official securities markets must publish an annual corporate governance report. The corporate governance report must be notified to the National Securities Market Commission, attaching a copy of the document itself. The National Securities Market Commission shall forward a copy of the notified report to the Bank of Spain and to the competent authorities of the Autonomous Communities.

The report must be disclosed in the form of a regulatory disclosure and posted on that entity's website.

2. The content and structure of the savings banks' annual corporate governance report, having regard to the nature of those institutions, must offer detailed information about the entity's governance structure and its working in practice.

In any event, the corporate governance report must contain at least the following:

- a) The undertaking's administrative structure, with information on the remuneration received by the Board of Directors, the Oversight Commission, the Remuneration Committee and Investment Committee, counting meeting attendance fees and wages, and similar compensation, as well as obligations with regard to pension or life insurance payments. The report must also disclose all types of compensation received by members of the governing bodies and executives as a result of representing the savings bank in listed companies or other entities in which the savings bank has a significant presence or stake.
- b) Credit guarantees provided directly or through companies funded by, attached to or affiliated with the savings bank, with a description of the conditions, including the financial conditions, to members of the board of directors and the oversight commission of the savings bank and their relatives of the first degree and to companies or entities in connection with which those persons are in any of the situations described in Article 4 of Act 24/1988, of 28 July, on the Securities Market.
- c) Credit guarantees provided directly or through undertakings funded by, attached to or affiliated with the savings bank, with a description of the conditions, including the financial conditions, to political groups with representation in the city governments and regional parliaments and that participated in the electoral process. In the case of loans, the loan status must be explicitly disclosed.
- d) Lending transactions with public institutions, including territorial public institutions that appoint members of the board.

²⁰² Items b), c) and d) of section 2 were amended by article 99.1 of Act 62/2003, of 30 December

- e) Remuneration for services to the savings bank or entities controlled by it that was paid to members of the board of directors and the oversight commission of the savings banks or its executives.
- f) Business structure and relationships within the savings bank's economic group, with reference to related-party transactions with members of the board of directors, oversight committee, remuneration committee and investment committee and executives, as well as intra-group transactions.
- g) Risk control systems.
- h) Performance of governing bodies, with detailed explanations of the undertaking's governance and management systems, particularly in relation to the acquisition of holdings in companies either directly or through the taking up of business, either directly or through undertakings funded by, attached to or affiliated with the savings bank.

The Ministry of Finance and, with its express authorisation, the National Securities Market in the case of savings banks that issue securities listed on official securities markets, are empowered to determine, subject to the minimum established in the preceding paragraph, the content and structure of savings banks' annual corporate governance report.

3. Without prejudice to the penalties applicable for failure to file the mandatory documentation or report, the National Securities Market Commission, within the sphere of its powers, is entrusted with overseeing the corporate governance rules of savings banks that issue securities listed on an official secondary market, to which end it may obtain any information it requires in this respect and publish any information that it considers relevant regarding an entity's actual degree of compliance with the corporate governance rules.

4. Failure by a savings bank to draw up or publish the annual corporate governance report referred to in paragraph 1 of this provision, or the existence of omissions or false or misleading information in such report, shall be considered a serious violation for the purposes of Article 100.b).bis of Act 24/1988, of 28 July, on the Securities Market.

Additional provision three.

Without prejudice to the provisions of this Act regarding the corporate governance report of the savings banks, the provisions of article 116 of Act 24/1988 of 28 July, on the Securities Market also applies *mutatis mutandis* to the other undertakings that issue securities which are listed on official stock markets.

The Ministry of Economy and, with its express authorisation, the National Securities Market Commission are empowered to establish specific measures on the content and structure of the corporate governance report, having regard to legal nature of the various categories of undertaking to which this provision applies.

(.....)

ADDITIONAL PROVISION TO ACT 6/2007

Additional provision. *Rules governing certain increases in stakes in listed companies.*

Any party that, on the entry into force of this Act, holds 30 per cent or more of the voting rights of a listed company but less than 50 per cent shall be obliged to make a takeover bid under the terms of Chapter V of Title IV of Act 24/1988, of 28 July, on the Securities Market, if, following the entry into force of this Act, any of the following circumstances arises:

- a) It acquires, in one or more acts, shares in that company such as to increase its stake by at least 5 per cent in a period of 12 months.
- b) It attains 50 per cent or more of the voting rights.
- c) It acquires an additional interest and designates a number of directors who, acting together with any directors that the party had already appointed, represent more than half of the members of the company's governing body.

The Government may establish such measures as it deems necessary to implement this provision as well as the transactions exempt from these rules.

In any event, the National Securities Market Commission may, in the terms to be established by secondary legislation, conditionally waive the obligation to present a takeover bid that is established in item a) 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.

ADDITIONAL PROVISION TO ACT 47/2007

Additional provision. *Professional functions of holders of the Diploma in Business Studies.*

The professional functions recognised in Titles III and V of Royal Decree 871/1977, of 26 April, can be equally performed by holders of the Diploma in Business Studies.

ADDITIONAL PROVISIONS TO ACT 11/2009

Additional provision one. *Conversion of Listed Real Estate Investment Companies (Sociedades Anónimas Cotizadas de Inversión en el Mercado Inmobiliario) into Real Estate Investment Trusts (Instituciones de Inversión Colectiva Inmobiliaria), and vice versa.*

Real Estate Investment Trusts may be converted into Listed Real Estate Investment Companies, regulated by this Act, and the latter into the former, by complying with the rules in the consolidated text of the Corporations Act and article 25.3 of Act 35/2003, of 4 November, on Collective Investment Institutions, and their secondary legislation.

(...)

Additional provision three. *Revision of the rules of application of Article 108 of Act 24/1988, of 17 July, on the Securities Market.*

The Government will consider, based on the decision on the infraction investigation commenced by the European Commission, the degree to which Article 108 of Act 24/1988, of 17 July, on the Securities Market conforms to European legislation harmonizing the tax on the raising of capital and value added tax, after consultation with the Autonomous Communities, in their capacity as tax administrations and recipients of the transfer and stamp tax.

(...)

ADDITIONAL PROVISIONS TO LEGISLATIVE ROYAL DECREE 1/2010

Additional provision one. *Prohibition on bond issues.*

Natural persons and civil and collective partnerships and limited partnerships may not issue or underwrite the issuance of bonds or other marketable securities grouped into issues.

Additional provision two. *Taxation of the transfer of holdings in companies.*

The taxation on transfers of shares will be that established for the transfer of securities in Article 108 of Act 24/1988, of 28 July, on the Securities Market.

(...)

Additional provision seven. *Supervisory powers of the National Securities Market Commission* ²⁰³

The provisions contained in Articles 512, 513, 525.2, 526, 528 to 534, 538 and 539 of Title XIV of this consolidated text form part of the rules of order and discipline of the securities market, whose supervision is assigned to the National Securities Market Commission, in accordance with the provisions of Title VIII of Act 24/1988, of 28 July, on the Securities Market.

The National Securities Market Commission shall be competent to initiate and pursue disciplinary proceedings arising from breaches of the obligations established under the articles listed in the preceding paragraph, in accordance with Articles 95 *et seq.* of Act 24/1988, of 28 July, on the Securities Market.

ADDITIONAL PROVISIONS TO ACT 2/2011

Additional provision one. *Liability for breach of EU regulations.*

1. The public administrations and any other entities within the public sector that, in the exercise of their powers, breach obligations deriving from European Union law with the result that the Kingdom of Spain is sanctioned by the European institutions must bear, in the part attributable to them, the liabilities arising from such breach, in accordance with the provisions of this Act and its secondary legislation.

²⁰³ As amended by article three of Act 25/2011, of 1 August.

2. After granting a hearing to the administrations or entities involved, the Cabinet shall be competent to declare the liability for such breach and to decide, as appropriate, to offset such debt against the amounts to be transferred by the State, under any heading, whether budgetary or otherwise, to the administration or entity that is liable. The resolution that is adopted shall take account of the facts and grounds contained in the resolution of the European institutions, shall state the allocation criteria considered for the declaration of liability, and may condone part or all of the debt. The resolution shall be published in the Official State Gazette.

3. The Government is empowered to enact secondary legislation implementing this provision, regulating the special conditions applicable to the various public administrations and entities referred to in section 1 hereof.

(...)

TRANSITORY PROVISIONS TO ACT 24/1988

Transitory provision one

Within two months of publication of this Act, the members of the first Board of Directors of the National Securities Market Commission shall be appointed and the Commission itself shall be created.

From the moment of its establishment, the National Securities Market Commission shall assist in the drafting of secondary legislation under this Act and in studying and proposing the necessary measures to implement the new system it establishes.

Upon entry into force of the relevant provisions of this Act, the National Securities Market Commission shall assume the powers they attribute to it.

Transitory provision two

Of the Commissioners referred to in Article 17.c) of this Act in the first Board of Directors of the National Securities Market Commission, one shall step down one year after his/her date of appointment, a second after two years, and a third after three years. The order of such removals shall be decided by drawing lots.

The term limit envisaged in article 19 shall not apply to the Commissioners that must step down in one or two years, and the former may be re-appointed for two terms.

Transitory provision three

The Official Stockbrokers who, no less than four months prior to the entry into force of the provisions of this Act relating to the Stock Exchanges, make an application to the National Securities Market Commission shall be entitled to acquire the status of individual members of the Stock Exchange of the city to which they are attached; the appointment shall be issued by the Commission itself or the Autonomous Community with devolved powers in this area. Such members shall be subject to the same rules as Brokers (*agencias de valores*), except those relating to legal form and necessary capital. That status shall be deemed to expire once they reach the statutory retirement age for Chartered Commercial Brokers.

Official Stockbrokers who join a Broker-dealer and Broker as holders of more than 10 per cent of its capital, as members of its board of directors or as salaried employees or who have become members of a Stock Exchange on an individual basis shall be deemed to be on voluntary leave from the Body of Chartered Commercial Brokers.

Transitory provision four

The existing Official Stockbrokers will have a preferential right to practice the profession of Commercial Broker in the cities of Madrid, Barcelona, Bilbao and Valencia as members of the corresponding Professional Associations. This preferential right may be exercised once only, in any of the competitions organised following the date on which the headcount of those Professional Associations is determined. In the competitions, preference will be given to those who, at the time of entry into force of this Act, have the status of Official Stockbrokers, and among them, those who, at that time, were attached to the same city, in order of seniority.

Transitory provision five

The Instrumental Companies of Chartered Intermediaries (*Agentes Intermediarios Colegiados*) enrolled in the Special Register of the Ministry of Economy and Finance may be transformed into

Broker-dealers and Brokers, provided that they meet all the requirements under Title V of this Act and make an application in this connection to the National Securities Market Commission at least four months before the entry into force of the provisions hereof relating to the Stock Exchanges. Where such companies make such a request and it is denied, they must be dissolved upon the entry into force of this Act. The aforementioned transformations or dissolutions, as the case may be, shall be not accrue any tax except the capital gains tax on goods acquired by such Instrumental Companies after 4 March 1988. Any capital increase that may be required to fulfil the provisions of Title V of this Act shall also be exempt from transfer and stamp tax.

Broker-dealers and Brokers that are created through the transformation of Instrumental Companies of Chartered Intermediaries referred to in the preceding paragraph may only become members of a stock exchange during the transitional period provided that they also meet the requirements set out in the next transitory provision.

Transitory provision six

Until 1 January 1992, holdings in the equity of Broker-dealers and Brokers that are members of a stock exchange by parties who, at the date of entry into force of this Act, were not Official Stockbrokers may not exceed the following proportions:

30 per cent during 1989, 40 per cent during 1990, and 50 per cent during 1991. From 1 January 1992, there shall be no limit on third parties owning capital in such Broker-dealers and Brokers.

Parties not resident in a Member State of the European Economic Community may not own capital in those companies during the transition period.

Capital holdings in such companies by parties resident in other countries of the EEC shall conform, during the aforementioned transition period, to the schedule set out in the preceding paragraph, to the principle of reciprocity with the provisions of the stock market regulations of such countries, and to the provisions and decisions taken in implementation of the Single European Act. Parties not resident in a Member State of the EEC may not own capital in such companies until the entry into force of the Single European Act, except where the stock market legislation of such countries offers reciprocal treatment of Spanish nationals.

Transitory provision seven

Official Stockbrokers wishing to establish a Broker-dealer or Broker company with entitlement to membership of a stock exchange under the provisions of the preceding transitory provision must submit an application for authorisation in accordance with article 62 of this Act to the National Securities Market Commission within three months from the publication in the Official State Gazette of the provision setting the minimum share capital of such entities. The application must identify the Stock Exchanges of which the planned Broker-dealer or Dealer wishes to be a member.

The share capital of the Broker-dealers and Brokers, in the case referred to in this provision, may be paid not only in cash but also in material goods or listed securities.

The Broker-dealers and Brokers referred to in the preceding paragraph must be formed at least one month prior to the entry into force of the provisions of this Act relating to the Stock Exchanges.

After authorisation has been obtained from the Minister of Economy and Finance and the formalities provided for in Articles 62 and 64 of this Act have been completed, the National Securities Market Commission or, as appropriate, the Autonomous Community with jurisdiction in this area will issue the corresponding certificates of membership of the respective Stock Exchange in the name of the company.

The Stock Exchange Governing Bodies referred to in Article 48 of this Act must be established before the entry into force of the provisions of this Act relating to Stock Exchanges.

No applications from new members will be accepted during the first year after the constitution of the Stock Exchange Governing Bodies.

Transitory provision eight

The Sociedad de Bolsas referred to in article 50 of this Act must be created within three months from the entry into force of the provisions of this Act relating to the Stock Exchanges.

Transitory provision nine

Within three months from the publication of this Act, the Minister of Economy and Finance, acting on a proposal from the National Securities Market Commission, shall appoint a delegate entrusted with promoting the establishment of the Securities Clearing and Settlement Service (*Servicio de Compensación y Liquidación de Valores*).

Until the corporation referred to in Article 54 is established, the system of clearing and settlement of securities will be managed using the organisation and personnel and material resources currently in existence.

Transitory provision ten ²⁰⁴

From the entry into force of the provisions of this Act relating to the Stock Exchanges, new issues may only be included on an exceptional basis in the fungibility system regulated by Decree 1128/1974, of 25 April. That fungibility system shall be phased out and newly-issued securities included in it in the foregoing terms shall be obligatorily converted to book-entries as soon as the new system for registry and management of book-entries is available. The Government shall regulate the transformation of the other securities into book-entries, and shall repeal the aforementioned provision no later than 31 December 1992.

Transitory provision eleven

People who directly or indirectly own the percentages of share capital to be established in implementation of article 53 shall be required, once only, with reference to the date and the period to be established by secondary legislation, to make a disclosure that is similar, in conditions and effects, to that provided in that article, with respect to the effective percentage of share capital in their power.

Transitory provision twelve

Companies that fall under the cases envisaged in the second paragraph of item three of Article 27 of Act 46/1984, of 26 December, regulating Collective Investment Institutions, as amended by item 13 of the sixth additional provision, shall have until 31 December 1991 to adapt their situation to the requirements of that provision.

Transitory provision thirteen ²⁰⁵

Until secondary legislation is enacted implementing the provisions of this Act relating to the representation of securities by book-entries, the provisions of sub-paragraph b) of paragraph two of Article 46 shall not apply.

²⁰⁴ Amended by article 17 of Act 19/1989, of 25 July

²⁰⁵ Added by article 58.2 of Act 4/1990, of 29 June

TRANSITORY PROVISIONS TO ACT 37/1998

Transitory provision one

Tradeable securities represented by certificates listed on an official secondary market may continue to be represented in such manner until the secondary legislation implementing the provisions of this Act requires that they be represented by book-entries.

Transitory provision two

Issues of securities by public entities and corporations other than those specified in article 55 of this Act that are traded on the Book-Entry Government Debt Market shall continue to be traded in that market until maturity.

Transitory provision three

Broker-dealers, brokers and portfolio management companies must adapt their Articles and schedules of activities to the provisions of this Act and its secondary legislation within six months from the entry into force of this Act and the pertinent secondary legislation.

Transitory provision four

The acts and documents that are legally required to enable companies incorporated under the previous legislation to fulfil the provisions of this Act, within the periods prescribed in these transitory provisions, shall be exempt from taxes and levies of any type.

The Government, on proposal of the Minister of Justice, shall establish a reduction in the notary and mercantile registrar fees for granting and registration of the acts and documents required for the adaptation of existing companies to the provisions of this Act

Transitory provision five

Until such time as secondary legislation is enacted implementing the provisions of Act 24/1988 in connection with the Book-Entry Public Debt Market, as amended by this Act, and the Market Regulation referred to in Article 55.4 of that Act is approved, the regulations currently regulating that market shall remain in force.

Transitory provision six

1. Upon the entry into force of this Act, the markets recognised in the past as being organised under Article 77, third paragraph, of this Act shall be designated as official secondary markets.
2. The first resolution that is issued as provided in the eleventh additional provision of Act 24/1988, of 28 July, on the Securities Market, to recognise the markets that are designated as official secondary markets shall include those with that status as of the date of publication of this Act and that had already been authorised under Article 77, third paragraph, of Act 24/1988, of 28 July, on the Securities Market, as amended by Article 58 of Act 4/1990, of 29 June, on the 1990 Central Government Budget.

Transitory provision seven

Upon the entry into force of this Act, the establishment may be authorised of securities investment companies, variable capital securities investment companies and mutual funds of funds, as well as master and feeder funds and companies for investment in unlisted securities as well as funds

whose members are institutional or professional investors. To that end, the rules set out in additional provision one shall be taken into account in addition to such others in current legislation as may be applicable to SIM, SIMCAV and FIM.

TRANSITORY PROVISIONS TO ACT 44/2002

Transitory provision one. *Transitory arrangements for the management of the securities clearing and settlement systems.*

One. Until such time as the new company referred to in article 44.bis.1 of Act 24/1988, of 28 July, on the Securities Market, effectively assumes the functions attributed to it in that precept, the Securities Clearing and Settlement Service and Bank of Spain, as the parties entrusted with managing the registry, clearing and settlement systems for securities traded in markets, shall continue to have the powers which they held at the time of entry into force of this Act.

Two. The Systems Company shall be created by the conversion of the company "*Promotora para la Sociedad de Gestión de los Sistemas Españoles de Liquidación, S.A.*" that has been created with the participation of the Securities Clearing and Settlement Service and the Bank of Spain.

Three. The Systems Company shall effectively take on the functions entrusted to it by this Act in accordance with the following provisions:

- a) "*Promotora para la Sociedad de Gestión de los Sistemas Españoles de Liquidación, S.A.*" shall amend its object and name into line with the provisions of article 44.bis.1 of the Securities Market Act, becoming the "*Sociedad de Gestión de los Sistemas de Registro, Compensación y Liquidación de Valores*" regulated in that paragraph 1.
- b) The change of name and object envisaged in the preceding item shall also include the distribution of the capital of the Systems Company among the shareholders of *Servicio de Compensación y Liquidación de Valores, S.A.* and the Bank of Spain, without prejudice to the subsequent changes which that ownership structure may experience under the legal regime applicable to the Systems Company.

To enable that initial distribution of capital to 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 contributions, the subscription and payment of the corresponding shares shall be made with the following non-monetary contributions: The Bank of Spain shall contribute to the Systems Company the necessary means to carry out the functions relating to Book-Entry Public Debt Market that are attributed to it in this Act, and the shareholders of *Servicio de Compensación y Liquidación de Valores, Sociedad Anónima* shall contribute their shares in the latter to the Systems Company.

Those non-monetary contributions shall be appraised by an expert designated for the purpose by mutual agreement between *Servicio de Compensación y Liquidación de Valores* and the Bank of Spain. The appraisal by the aforementioned expert shall have the effects envisaged in article 38 of the Corporations Act.

The provisions of articles 158, 166 and 169.1 paragraph two of the Corporations Act shall not apply to the aforementioned corporate transactions.

- c) Once the transactions referred to in the preceding paragraph have been made and entered in the Mercantile Register, and after approval by the National Securities Market Commission and

the Bank of Spain, the Systems Company shall assume the functions assigned to it in this Act on the date to be determined in such authorisations, to be published in the Official State Gazette, without prejudice to the possibility of merging *Servicio de Compensación y Liquidación de Valores, Sociedad Anónima* into the Systems Company.

- d) In any case, the Systems Company shall assume the functions referred to in the preceding item within at most six months after the entry into force of this Act.

Four. The appointment of members of the Boards of Directors, General Managers and similar positions in the Systems Company shall require approval by the National Securities Market Commission.

Five. Until such time as the Systems Company establishes other provisions and decisions in the exercise of the functions of management, administration and regulation assigned to it by the Securities Market Act, the provisions and decisions governing the securities registry, clearing and settlement managed so far by *the Servicio de Compensación y Liquidación de Valores* and the Bank of Spain that apply on the date of effective assumption of its functions by the Systems Company shall continue in force.

The Systems Company and the Bank of Spain shall coordinate appropriately to replace the current regulations with the rules of the Systems Company that are approved in the future.

Six. The acts and documents that are legally required for the corporate transactions referred to in paragraph three above shall be exempt from taxes and levies of any type. Additionally, those acts and documents shall not attract notary or registrar fees.

Transitory provision two. *Transitory arrangements for the functions assumed by the Systems Company.*

Article 54 of Act 24/1988, of 20 July, on the Securities Markets, shall be repealed once, in accordance with the provisions of transitory provision one, the functions which article 44.bis of that Act attributes to the Systems Company are actually assumed, all without prejudice to the maintenance of the provisions of the aforementioned article 44.bis.2 with respect to services created in the Autonomous Communities with devolved powers in this area.

(.....)

Transitory provision six. *Transitory arrangements for the establishment and operation of organised trading systems.*

Until such time as the Royal Decree referred to in article 4 is approved, the authorisation of unofficial markets and organised trading systems for securities or financial instruments shall be governed by the rules applicable prior to the entry into force of this Act

(.....)

Transitory provision nine

Until such time as the financial services ombudspersons referred to in article 22 of this Act are appointed, the complaints units or equivalent administrative units of the Bank of Spain, the National Securities Market Commission and the Directorate-General of Insurance and Pension Funds shall continue to carry out the functions entrusted to them on the entry into force of this Act in accordance with their applicable regulations.

(.....)

TRANSITORY PROVISIONS TO ACT 26/2003

Transitory provision one. *Adaptation of organisational aspects and of the Articles.*

The organisational aspects and Articles of listed corporations must be adapted to the provisions of this Act within twelve months from its entry into force.

Transitory provision two

The corporate governance report envisaged in the second additional provision of this Act shall be drawn up for the first time in relation to fiscal year 2004.

Transitory provision three

1. Shareholder agreements and other agreements affecting a listed company, as referred to in Article 112.1 of Act 24/1988, on the Securities Market, provided that they affect more than five per cent of the undertaking's capital or voting rights and they were entered into, renewed or amended before the entry into force of this Act, must be disclosed, filed and published in accordance with the provisions of Article 112 of Act 24/1988, on the Securities Market, within at most three years from the entry into force of this Act, except in the event that a takeover bid is presented for the listed company, in which case any shareholder agreements must be disclosed, filed and published immediately upon presentation of the application for authorisation to the National Securities Market Commission.
2. Without prejudice to the provisions of the previous section and of the other provisions of the applicable regulations, the agreements referred to in paragraph 1 above shall be null and void:
 - a) In any event, with respect to the matters referred to in article 112.1 of Act 24/1988, on the Securities Market, if not disclosed, filed and published by the deadline indicated in paragraph 1 above.
 - b) Likewise, and without prejudice to the provisions of paragraph a), even if disclosed, filed and published, to the extent that they breach the law.
 - c) Also, from the entry into force of this Act and even if the shareholder agreements are disclosed, filed and published, the part of such agreements, including in this case the direct or indirect regulation of voting rights in any body of the company, that was entered into, extended or amended after the general entry into force of Act 24/1988, of 28 July, on the Securities Market, as referred to article 112.1 of that Act, when the parties were bound by them hold, directly or indirectly, at the time of signature, extension or amendment, combined stakes exceeding 25 per cent of the voting rights in the listed company and none of them at that time made a takeover bid that, under the rules then in force, would have been required of any party wishing to acquire a stake equal to the combined stakes of the parties bound by such agreement.
3. Any other agreement implementing shareholder agreements as referred to in paragraph 2 above shall be null and void in the same cases as those agreements.

TRANSITORY PROVISIONS TO ACT 6/2007

Transitory provision one. *Transitory arrangements for disclosure of significant holdings.*

Until such time as secondary legislation is enacted implementing the content of article 53 of the Securities Market Act, issuers and significant shareholders shall be obliged to make disclosures, in the form and conditions established by Royal Decree 377/1991, of 15 March, on disclosure of significant shareholdings in listed companies and acquisition of own shares by them, and by Royal Decree 1333/2005, of 11 November, implementing Act 24/1988, of 28 July, on the Securities Market, in connection with market abuse.

Transitory provision two. *Transitory arrangements for certain takeover bids.*

This Act shall apply to takeover bids whose application for authorisation had been filed with the National Securities Market Commission but which had not been authorised by the entry into force of the Act.

Transitory provision three. *Transitory arrangements for certain increases in stakes in listed companies before the entry into force of this Act.*

Any party that, prior to the entry into force of this Act, had acquired a stake in a company and, following its entry into force, appointed a number of directors that, combined with the number of directors which the party had already appointed, represent more than half the members of the board of directors of the company, shall be required to make a takeover bid under the terms of Chapter V of Title IV of Act 24/1988, of 28 July, on the Securities Market. This provision shall apply if the appointment occurred in the 24 months following the acquisition of the stake.

TRANSITORY PROVISIONS TO ACT 47/2007

Transitory provision one. *Adaptation period for firms providing investment services.*

Firms providing investment services must adapt their Articles of Association, schedules of activities and internal codes of conduct to the provisions of this Act and its secondary legislation within six months from the entry into force of this Act.

Transitory provision two. *Transitory arrangements for organised trading systems or markets.*

Organised trading systems or markets established under Article 31.4 of the Securities Market Act as amended by Act 44/2002, of 22 November, on measures to reform the financial system and those existing on the date of entry into force of this Act must apply for authorisation under Article 119 of this Act to become multilateral trading facilities within six months of its entry into force. If they fail to present the application within that period, their authorisation shall be automatically revoked and they must immediately cease the activity of the market or system in question.

TRANSITORY PROVISIONS TO ACT 11/2009

(...)

Transitory provision three. *Transitory arrangements under the amendment to article 108 of Act 24/1988, of 28 July, on the Securities Market.*

The amendment introduced by this Act into article 108 of Act 24/1988, of 28 July, on the Securities Market shall apply to purchases or transfers that accrue from 29 March 2009 onwards for the purposes of transfer and stamp tax.

TRANSITORY PROVISIONS TO ACT 2/2011

(...)

Transitory provision five. *Procedure for filing complaints with the Bank of Spain, the National Securities Market Commission and the Directorate-General of Insurance and Pension Funds.*

Until the approval of the regulatory provisions referred to in Article 30.2 of Act 44/2002, of 22 November, on Measures to Reform the Financial System, as amended by the eleventh final provision of this Act, the procedure laid down in Articles 7 to 15 of Royal Decree 303/2004, of 20 February, approving the regulation of the financial services ombudspersons shall continue to apply.

(...)

TRANSITORY PROVISIONS TO ACT 6/2011

Transitory provision. *Transitory arrangements for preference shares.*

Preference shares issued before the entry into force of this Act and which do not meet the requirements established herein for such instruments may continue to count as own funds of credit institutions and their groups subject to the limits to be established by secondary legislation. Preference shares subscribed by the Fund for Orderly Bank Restructuring (*Fondo de Reestructuración Ordenada Bancaria*–FROB) in accordance with the provisions of Article 9 of Royal Decree-Act 9/2009, of 26 June, on bank restructuring and reinforcement of credit institutions' own funds, may also continue to count as basic own funds.

Notwithstanding the provisions of the preceding paragraph, the entry into force of this Act shall not affect the tax treatment of preference shares and other debt instruments that had been issued before that date.

TRANSITORY PROVISIONS TO ACT 1/2012

(...)

Transitory provision two.

The additional provision two of this Act shall be applicable to any takeover bid, which has not yet been authorised by the National Securities Market Commission when this new legislation enters into force.

(...)

REPEALING PROVISION OF ACT 24/1988

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 current Commercial Code.
- The Act of 27 December 1910.
- Article 23 of Act 2/1981, of 25 March, 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: Articles 32.2.e), 32.3.i), 32.4.j), and 32.5.2.

Additional provision one.

All provisions of an equal or lower rank that are contrary to the provisions of this Act shall also be repealed.

SOLE REPEALING PROVISION OF ACT 37/1998

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 is also repealed, and other amendments are introduced relating to the financial system.

SOLE 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.

Consolidated Text of the Spanish Securities Market Act

c) Paragraph 6 of additional provision six and paragraph 2 of additional provision twelve of Act 37/1998, of 16 November, reforming Act 24/1988, of 28 July, on the Securities Market.

(.....)

REPEALING PROVISION OF ACT 6/2007

Paragraph 1 of additional provision one of Legislative Royal Decree 1564/1989, of 22 December, which approved the Consolidated Text of the Corporations Act, is hereby repealed as well all provisions of an equal or lower rank that are contrary to the provisions of this Act.

REPEALING PROVISION OF ACT 47/2007

All provisions of an equal or lower rank that are contrary to the provisions of this Act are also hereby repealed.

REPEALING PROVISION OF LEGISLATIVE ROYAL DECREE 1/2010

Sole repealing provision. *Repeal of regulations*

The following provisions are hereby repealed:

1. Section 4 of Title I of Book II (Articles 151 to 157) of the Commercial Code of 1885, concerning limited partnerships by shares.
2. Legislative Royal Decree 1564/1989, of 22 December, approving the consolidated text of the Corporations Act.
3. Act 2/1995, of 23 March, on Limited Liability Companies.
4. Title X (Articles 111 to 117) of Act 24/1988, of 28 July, on the Securities Market with respect to listed companies, except for articles 114.2, 114.3, 116 and 116.bis.

REPEALING PROVISION OF ACT 2/2011

Repealing provision

All provisions of an equal or lower rank that are contrary to the provisions of this Act are also hereby repealed, particularly the following:

- a. Articles 22 to 28 of Act 44/2002, of 22 November, on Measures to Reform the Financial System

Consolidated Text of the Spanish Securities Market Act

- b. Royal Decree 303/2004, dated 20 February, which approves the Regulation on financial services ombudspersons.
- c. The third additional provision of Act 26/2006, of 17 July, on private insurance and reinsurance brokerage.
- d. Paragraph 5 of article 23 of the Regulation governing pension plans and funds, approved by Royal Decree 304/2004, of 20 February.

REPEALING PROVISION OF ACT 21/2011

Repealing provision

Any provisions of equal or lower rank that conflict with the provisions of this Act and in particular, Article 21 of Act 44/2002, of 22 November, on measures to reform the financial system and Royal Decree 322/2008, of 29 February, on the legal regime of electronic money institutions, are hereby repealed.

REPEALING PROVISION OF ACT 25/2011

Articles 289 and 527 and the title of Section II of Chapter IX of Title XIV of the consolidated text of the Capital Companies Act, approved by Legislative Royal Decree 1/2010, of 2 July, are hereby repealed.

FINAL PROVISIONS OF ACT 24/1988

Final provision 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 the 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 Official 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.

Final provision 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 provision three ²⁰⁶

The reporting requirements regarding internal control under article 61.bis.4.h) of this Act and Article 31.bis.two.j) of Act 31/1985, of 2 August, regulating the basic rules on governing bodies of savings banks, shall apply for the annual periods beginning on or after 1 January 2011 and their contents must be included in the Annual Corporate Governance Report published in connection with such annual periods.

FINAL PROVISIONS TO ACT 37/1998

Final provision one

1. This Act shall come into force on day following its publication in the Official State Gazette. Nevertheless, the provision that credit institutions, regardless of nationality, may become members of the Stock Exchanges shall not come into force until 1 January 2000.
2. Regarding the provisions of Title VI of the Act, article 77 on the Investment Guarantee Funds will come into force for the cases to which it applies coinciding with the entry into force of Directive 93/22/EEC of 10 May 1993 on investment services in the securities field.

Final provision two

1. The Government is authorised so that, within, six months after the entry into force of this Act, it may draw up a consolidated text of Act 24/1988, of 28 July, on the Securities Market, incorporating, in addition to the regulation contained in this Act, the following provisions:
 - a) Article 15 of Royal Decree Act 3/1993, of 26 February, on urgent action on budgetary, tax, financial and employment matters.

²⁰⁶ Amended by final provision 5.31 of Act 2/2011, of 4 March, as amended by final provision 9.1 of Act 21/2011, of 26 July. Added by final provision 5.31 of Act 2/2011, of 4 March.

b) Article 13 of Act 22/1993, of 29 December, on tax measures, reforms to the legal framework for the civil service, and unemployment protection.

2. The appropriate updates will be made upon the approval and entry into force of Act 30/1992, of 26 November, on the Legal System of the Public Administrations and the Common Administrative Procedure, and Act 13/1995, of 18 May, on Public Procurements.

3. This delegation includes the power to regularise, clarify and harmonise the legal texts to be consolidated.

Final provision three

No later than six months from the date of publication of this Act, the Government shall submit to Parliament for approval a bill to amend Chapter X of the Corporations Act with regard to the legislation on bonds.

FINAL PROVISIONS TO ACT 44/2002

Final provision one. *Basic nature.*

This Act is basic in nature in accordance with the provisions of articles 149.1.11.a) and 149.1.13.a) of the Constitution, which give the State exclusive power in the areas of regulation of credit, banking and insurance, and the conditions and coordination of general planning of economic activity.

Final provision two. *Empowerment to enact secondary legislation.*

Without prejudice to the specific powers granted to other organs in the articles of this Act, the Government is empowered to enact the secondary legislation envisaged in this Act.

Final provision three. *Entry into force.*

This Act shall come into force on the day following its publication in the Official State Gazette.

Exceptions to the foregoing:

a) The provisions of article 1, paragraph five, which will take effect at the time that the Systems Company assumes the functions entrusted to it by Act 24/1988, of 28 July, on the Securities Market, in accordance with transitory provision one of this Act.

(.....)

Final provision four. *Drafting of consolidated texts.*

One. The Government is authorised to draw up, within one year after the entry into force of this Act, consolidated texts of Act 24/1988, of 28 July on the Securities Market, Act 26/1988, of July 29, on Discipline and Intervention of Credit Institutions, and Act 30/1995, of 8 November, on the Regulation and Supervision of Private Insurance.

Two. This delegation includes the power to regularise, clarify and harmonise the legal texts to be consolidated.

SOLE FINAL PROVISION OF ACT 26/2003

This Act shall enter into force on the day following its publication in the Official State Gazette.

FINAL PROVISIONS TO ACT 6/2007

Final provision one. *Incorporation of European Union law.*

This act partly incorporates into Spanish law Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids and Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC.

Final provision two. *Powers.*

This Act is enacted under the empowerments provided in articles 149.1.6, 149.1.11 and 149.1.13 of the Constitution.

Final provision three. *Regulatory empowerment.*

The Government is empowered to issue such provisions as may be necessary to implement, apply and fulfil the provisions of this Act.

Final provision four. *Entry into force.*

This Act shall come into force **four months** after its publication in the Official State Gazette. (Official State Gazette 13 April).

FINAL PROVISIONS TO ACT 47/2007

Final provision one. *Drafting of consolidated texts.*

1. The Government is authorised so that, within one year from the entry into force of this Act, based on a joint proposal of the Ministries of Justice and Economy and Finance, it may draw up a consolidated text that regularises, clarifies and harmonises this Act with the following legal texts:

- a) Act 37/1998, of 16 November, amending Act 24/1988, of 28 July, on the Securities Market.
- b) Act 6/2007, of 12 April, amending the Securities Market Act 24/1988, of 28 July, in order to amend the rules governing takeover bids and issuer transparency.

2. The Government is also authorised to integrate into that consolidated text, based on a joint proposal by the Ministries of Justice and Economy and Finance, the regularised, clarified and harmonised provisions on securities markets contained in regulations with the rank of law and, expressly, the following Acts:

- a) Act 14/2000 of 29 December on Tax, Administrative and Labour Measures.

- b) Act 24/2001, of 27 December, on Tax, Administrative and Labour Measures.
- c) Act 44/2002, of 22 November, on Measures to Reform the Financial System.
- d) Act 53/2002, of 30 December, on Tax, Administrative and Labour Measures.
- e) Final provision eighteen of Act 22/2003, of 9 July, on Insolvency.
- f) Act 26/2003, of 17 July, amending Act 24/1998, of 28 July, on the Securities Market, and the consolidated text of the Spanish Corporations Act, approved by Legislative Royal Decree 1564/1989, of 22 December, in order to reinforce the transparency of listed companies.
- g) Act 35/2003, of 4 November, on Collective Investment Schemes.
- h) Act 62/2003, of 30 December, on Tax, Administrative and Labour Measures.
- i) Royal Decree Act 5/2005, of 11 March, on urgent reforms to boost productivity and improve government procurements.
- j) Act 5/2005, of 22 April, on the supervision of financial conglomerates and amending other laws on the financial sector.
- k) Act 19/2005, of 14 November, on the Societas Europaea *-European listed company-* domiciled in Spain.
- l) Act 25/2005, of 24 November, regulating venture capital entities and their management companies.
- ll) Act 12/2006, of 16 May, amending the consolidated text of the Legal Statute of the Insurance Consortium, approved by Legislative Royal Decree 7/2004, of 29 October, and Act 24/1988, of 28 July, on the Securities Market.
- m) Act 36/2006, dated 29 November, on measures to prevent tax fraud.

Final provision two. *Incorporation of European Union law.*

This Act incorporates Directive 2004/39/EC of the European Parliament and of the Council of 21 April on markets in financial instruments into Spanish law.

It also partly incorporates Directive 2006/49/EC of the European Parliament and of the Council of 14 June 2006 on the capital adequacy of investment firms and credit institutions and 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.

Final provision three. *Amendment of Act 62/2003, of 30 December, on Tax, Administrative and Labour Measures.*

Section 1 of additional provision eighteen of Act 62/2003, of 30 December, on legal, administrative and labour measures, is hereby amended to read as follows:

"1. The provisions of this additional provision shall apply to the loans of securities mentioned in article 36.3 of Act 24/1988, of 28 July, on the Securities Market, as well as those referring to securities listed on stock exchanges, markets and organised trading systems located in OECD member states that meet the requirements of Article 30 of Act 35/2003 of 4 November, on Collective Investment Institutions, provided that, in both cases, such loans meet the following conditions:

The loan is cancelled by the return of the same number of securities that are homogeneous with the ones that were lent.

Pecuniary consideration is established for the lender and, in any case, it is agreed to deliver to the lender the monetary amounts under the heading of economic rights or any other heading arising from the loaned securities during the term of the loan.

The loan period must not exceed one year.

The loan is made or instrumented with the participation or brokerage of a financial institution established in Spain and payments to the lender are made through that institution."

Final provision four. *Source of powers.*

This Act is enacted in accordance with articles 149.1.6, 149.1.11 and 149.1.13 of the Spanish Constitution.

Final provision five. *Empowerment to enact secondary legislation.*

Without prejudice to the specific empowerment of other bodies in the articles of this Act, the Government is empowered to enact secondary legislation implementing the provisions hereof.

Final provision six. *Entry into force.*

This Act shall come into force on the day following its publication in the Official State Gazette.

FINAL PROVISIONS TO ACT 5/2009

(...)

Final provision two. *Amendment of Act 35/2003, of 4 November, on Collective Investment Schemes.*

One. A new article 28.bis is created in Act 35/2003, of 4 November, on Collective Investment Schemes, which shall read as follows:

"Article 28.bis:

Where, due to exceptional circumstances relating to the financial instruments in which a collective investment scheme has invested, or their issuers or the markets, it is not possible to value those instruments or realise their fair value, resulting in serious consequences in terms of equity for the interests of the unit-holders or shareholders, the management company or investment company, having first informed the depositary, may transfer the assets affected by these circumstances into another newly-created collective investment scheme or compartment with the same legal form as the original collective investment scheme, in the conditions to be determined by secondary legislation.

This transaction shall not require prior authorisation by the National Securities Market Commission, but it must be notified in advance by the management company or investment company, and it shall not give rise to the right of withdrawal referred to in Article 12.2 of this Act.

Secondary legislation shall be enacted to determine the specific features of the collective investment schemes or compartments resulting from the operation, including the rules for

subscription and redemption of units or shares, reporting, disclosure and accounting, and requirements relating to the assets and the unit-holders or shareholders."

Two. Article 45 of Act 35/2003, of 4 November, on Collective Investment Schemes is amended to read as follows:

1. *"For the purposes of this Act, a significant stake in a fund management company shall be one which, directly or indirectly, amounts to at least ten per cent of the company's capital or voting rights.*

Any stake which enables considerable influence to be exerted on the company, in the terms to be determined by secondary legislation, even if it is below the aforementioned percentage, shall also be deemed to be significant.

2. *Any natural or legal person, acting alone or in concert with others, that has acquired, directly or indirectly, a stake in a fund management company, with the result that it owns 5 per cent or more of the voting rights or capital must inform the National Securities Market Commission and the fund management company immediately of this fact in writing, indicating the size of the stake that has been attained.*

3. *Any natural or legal person, acting alone or in concert with others, that seeks to acquire, directly or indirectly, a significant stake in a fund management company or to increase, directly or indirectly, its significant stake such that its percentage of capital or voting rights attains or exceeds 20%, 30% or 50%, must inform the National Securities Market Commission beforehand, indicating the size of the stake, the form of acquisition and the maximum period in which it proposed to complete the transaction. In any case, this obligation shall also apply to any party which might attain control of a fund management company by means of the proposed transaction.*

4. *A relationship of control shall be deemed to exist for the purposes of this Title in any of the cases envisaged in article 4 of Act 24/1988, of 28 July, on the Securities Market.*

5. *The provisions of articles 69.4, 69.5, 69.6 and 69.7 of Act 24/1988, of 28 July, on the Securities Market, as adapted by secondary legislation, shall apply to the acquisition of a significant stake in a management company.*

6. *In the event that, as a result of the acquisition, the fund management company were to fall under any of the forms of control envisaged in article 41.3 of this Act, 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 fund management company will be controlled by a company authorised in a non-EU State and the circumstances envisaged in article 66.4 of Act 24/1988, of 28 July, on the Securities Market, are applicable.

7. *Where an acquisition regulated in section 3 takes place without having been notified beforehand to the National Securities Market Commission, or where it has been notified but the period regulated in the first paragraph of section 5 of this article has not expired, or where the National Securities Market Commission expresses opposition, the following shall occur:*

In any event, the voting rights corresponding to the stakes acquired in an irregular manner shall be automatically suspended. 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 Corporations Act, the National Securities Market Commission being entitled to commence proceedings in this case.

Suspension of activities may be ordered in accordance with the provisions of article 51 of this Act.

If necessary, it may be decided to take charge of the company or replace its directors, as provided in article 72 of this Act.

Moreover, the penalties envisaged in Title VI of this Act may be imposed.

8. Any individual or legal entity seeking, directly or indirectly, to cease to hold a significant stake in a fund management company or seeking to reduce their stake so that it crosses one of the thresholds envisaged in item 3 of this article or which, by virtue of the proposed disposal, may lose control of the company 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 VI of this Act.

9. Management companies must 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. Those companies may not register, in their share register books, any transfers of shares which are subject to the obligation of prior notification requirement established under this article until evidence is obtained that the National Securities Market Commission does not oppose the transaction or that notice has been given to the National Securities Market Commission and the deadline for opposition has passed.

10. Where there are sound accredited reasons to suggest that the influence exerted by persons owning a significant stake in a fund management company may be detrimental to sound prudent management of same so as to seriously impair its financial position, the National Securities Market Commission shall adopt one or more of the following measures:

Those envisaged in items 7.a) and 7.b) of this article, but voting rights may not be suspended for more than three years.

Exceptionally, revocation of authorisation.

Additionally, the appropriate penalties as envisaged in Title VI of this Act may be imposed."

Final provision three. *Amendment of the Corporations Act.*

A new section 3 is hereby added to article 293 of the consolidated text of the Corporations Act, approved by Legislative Royal Decree 1564/1989, of 22 March, reading as follows:

3. "Where the Shareholders' Meeting of a listed company delegates to the directors the power to issue convertible bonds, it may grant them also the power to override the preemptive rights in relation to the issues of convertible bonds that are subject to delegation when this is in the interests of the company. For this purpose, the proposal to override preemptive rights must be stated explicitly in the notice of the meeting and a report by the directors justifying the proposal must be made available to the shareholders. Also, whenever a resolution to issue convertible bonds is passed under this delegation, the directors' report and auditors' report required under paragraphs 2.b and 2.c above must be drawn up in

connection with each specific issue. Those reports shall be placed at the disposal of the shareholders and notified to the first Shareholders' Meeting that is held after the decision to increase."

Final provision four. *Amendment of the Act governing real estate investment companies and trusts and Mortgage Securitisation trusts.*

Act 19/1992, of 7 July, governing real estate investment companies and trusts and mortgage securitisation trusts is hereby amended as follows:

One. Article 5.3 is amended to read literally as follows:

"The constitution of trusts must be verified and registered by the National Securities Market Commission under the terms of Act 24/1988 for the issuance of securities, with the adaptations that may be made by secondary legislation. The trusts and the securities issued under them shall not be registered with the Mercantile Register or be subject to the provisions of Act 211/1964, of 24 December, on the issuance of bonds by legal persons other than corporations.

The trusts shall be extinguished in any event upon full amortisation of the mortgage bonds of which they are comprised. The articles of incorporation may also expressly provide for early liquidation when the amount of mortgage bonds outstanding is less than 10% of the initial amount, in which case the articles must determine the way in which the Fund's remaining assets are to be disposed of."

Two. A new article seven is added, reading as follows:

Article seven. Amendment of the articles of incorporation of mortgage securitisation trusts and asset securitisation trusts.

1. "The public instrument of incorporation of a trust, whether mortgage-backed or asset-backed, may be amended as provided in this article. In any event, the amendment must be requested by the management company entrusted with administering and legally representing the trust.

2. The amendment may not, in any event:

a) alter the nature of the assets assigned to the trust,

b) transform a mortgage-backed trust into an asset-backed trust, or vice versa, or

c) entail, de facto, the creation of a new trust.

3. In order to amend the articles of incorporation of the trust, the management company must accredit:

a) that it has obtained the consent of all holders of the securities issued by the trust and of the lenders and any other creditors, provided that they are affected by the amendment;

b) that any of the cases listed below has arisen, in the case that express consent as set out in the preceding paragraph has not been requested:

i) the amendment is non-material in the opinion of the National Securities Market Commission. In any case, changes affecting the securities issued by the trust, the rules of settlement of the securities issued or the rules for calculating the available funds received by

the trust and their distribution among the payment obligations with respect to securities issued shall not be deemed to be non-material.

In any event, the management company must evidence that the amendment does not impair the guarantees and rights of the holders of the securities issued, that it does not establish new obligations for them, and that the ratings granted to the trust's liabilities are maintained or improved following the amendment.

ii) In the case of an open-ended trust, the amendment affects only the rights and obligations of the holders of securities issued after the date of granting of the public instrument expressing the amendment. In these cases, the management company must accredit that the amendment maintains or improves the rating of the securities issued prior to it.

4. Before granting the public instrument, the management company must evidence compliance with the provisions of this article to the National Securities Market Commission. Once the National Securities Market Commission has verified compliance, the management company shall grant the instrument of amendment and file a certified copy with the National Securities Market Commission for inclusion in the appropriate public register. The amendment to the trust's articles of incorporation shall be publicised by the management company through the periodic public disclosures of the trust, which must be published on the management company's website. Where required, a supplement to the trust prospectus must be drawn up and notified and disclosed as a regulatory disclosure in accordance with the provisions of Article 92 of Act 24/1988, of 28 July, on the Securities Market."

Final provision five. *Amendment of Royal Decree-Act 18/1982, of 24 September, on Deposit Guarantee Funds for Savings Banks and Credit Cooperatives.*

Article 5.1 of Royal Decree-Act 18/1982, of 24 September, on Deposit Guarantee Funds for Savings Banks and Credit Cooperatives, is hereby amended to read as follows:

1. "The Funds shall pay their owners the amount of the guaranteed deposits in any of the following events:

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; or

c. Upon a non-payment of deposits, the Bank of Spain determines that the firm is unable to pay them in the immediate future for reasons directly attributable to its financial situation. The Bank of Spain will make that determination as soon as possible and, in any case, it must make it by the deadline to be determined by secondary legislation, after verifying that the entity has failed to repay deposits which are due and payable."

Final provision six. *Powers.*

This Act is enacted under the provisions of articles 149.1.6, 149.1.11 and 149.1.13 of the Spanish Constitution, which give the State exclusive power in the areas of mercantile law, regulation of credit, banking and insurance, and the conditions and coordination of general planning of economic activity, respectively.

Final provision seven. *Empowerment to enact secondary legislation.*

The Government is empowered to issue such provisions as may be necessary to implement, apply and fulfil the provisions of this Act.

Final provision eight. *Incorporation of European Union law.*

This Act partly incorporates into Spanish law Directive 2007/44/EC of the European Parliament and of the Council of 5 September 2007 amending Council Directive 92/49/EEC, and Directives 2002/83/EC, 2004/39/EC, 2005/68/EC and 2006/48/EC as regards procedural rules and evaluation criteria for the prudential assessment of acquisitions and increases of holdings in the financial sector.

(...)

FINAL PROVISIONS TO ACT 11/2009

(...)

Final provision five. *Amendment to Act 35/2003, of 4 November, on Collective Investment Schemes.*

Article 25.1 of Act 35/2003, of 4 November, on Collective Investment Schemes is hereby amended to read as follows:

1. "Collective investment institutions may only be converted into other collective investment institutions of the same class. Nevertheless, collective investment institutions authorised under Directive 85/611/EC may not be converted into other collective investment institutions."

Final provision six. *Amendment to Act 24/1988, of 17 July, on the Securities Market. XXX*

Article 108.2 of Act 24/1988, of 17 July, on the Securities Market is hereby amended to read as follows:

(...)

(...)

Final provision ten. *Powers.*

This Act is enacted in accordance with articles 149.1.6, 149.1.11, 149.1.13 and 149.1.14 of the Spanish Constitution.

Final provision eleven. *Regulatory empowerment.*

The Government is empowered to issue secondary legislation under this Act.

(...)

FINAL PROVISIONS TO ROYAL DECREE ACT 6/2010

Final provision one. *Powers.*

The articles of this Royal Decree-Act that do not amend other existing legislation are issued in accordance with the following articles of the Spanish Constitution:

(...)

b) Article 12, by virtue of article 149.1.13 of the Constitution, which gives the State exclusive power in the area of the conditions and coordination of general planning of economic activity.

c) Article 15, by virtue of articles 149.1.6 and 149.1.8 of the Constitution, which give the State exclusive power in the area of trial law and civil law.

d) Articles 19 and 24, by virtue of article 149.1.25 of the Constitution, which gives the State exclusive power in the area of energy and mining legislation.

Final provision two. *Powers to enact secondary legislation.*

The Government, the Minister of Economy and Finance, and the Ministers of Justice, Infrastructure and Industry, Tourism and Commerce are hereby empowered, in their areas of competence, to issue the necessary secondary legislation under this Royal Decree-Act.

(...)

FINAL PROVISIONS TO ACT 12/2010

Final provision one. *Powers.* ²⁰⁷

Final provision two. *Regulatory empowerment.* ²⁰⁸

Final provision three. *Incorporation of European Union law.* ²⁰⁹

Final provision four. *Amendment to Act 24/1988, of 28 July, on the Securities Market*

One. Amendment to article 117 of the Securities Market Act ²¹⁰.

(...)

Two. Sections 2 and 4 of additional provision eighteen of Act 24/1988, of 28 July, on the Securities Market are hereby amended as follows:

(...)

Final provision five. *Amendment to the Consolidated Text of the Corporations Act approved by Legislative Royal Decree 1564/1989, of 22 December.* ²¹¹

(...)

²⁰⁷ Repealed by Legislative Royal Decree 1/2011, of 1 July

²⁰⁸ Repealed by Legislative Royal Decree 1/2011, of 1 July

²⁰⁹ Repealed by Legislative Royal Decree 1/2011, of 1 July

²¹⁰ This article 117 of the Securities Market Act was repealed by Legislative Royal Decree 1/2010, of 2 July, approving the consolidated text of the Capital Companies Act (Sole Repealing Provision).

²¹¹ Repealed by Legislative Royal Decree 1/2011, of 1 July

FINAL PROVISIONS TO LEGISLATIVE ROYAL DECREE 1/2010

Final provision one. *Powers*

The consolidated text of the Capital Companies Act is issued under the State's exclusive powers in the area of mercantile law, as established by article 149.1.6 of the Spanish Constitution.

Final provision two. *Authorisation to the Minister of Justice*

The Minister of Justice is authorised to amend the references to numbering in the Mercantile Register Regulation, approved by Royal Decree 1784/1996, of 19 July, of the articles of the texts in provisions that are repealed and replace them with those in the consolidated text of the Capital Companies Act.

(...)

FINAL PROVISIONS TO ACT 2/2011

Final provision one. *Powers*

1. Classification as basic legislation. This Act is classified as basic legislation issued by virtue of article 149.1.13 of the Constitution, which gives the State powers in the area of the conditions and coordination of general planning of economic activity and, consequently, they are applicable to all the public administrations and their dependent bodies and entities.

Chapter III of Title I, transitory provisions one, four and five, and final provisions five through fourteen are also classified as basic in accordance with article 149.1.11 of the Spanish Constitution, which gives the State exclusive powers in the area of regulation of credit, banking and insurance.

Chapters I and V of Title I, articles 40, 41, 42, article 111.5, additional provisions seven and eight shall be basic in nature in accordance with article 149.1.18 of the Spanish Constitution, which gives the State the power to establish the rules governing the Public Administrations and Common Administrative Procedure, except those provisions that refer exclusively to the regulation of the articles, legal rules and functioning of state bodies.

Chapter VII of Title II, with regard to the vocational education system, is enacted under article 149.1.30 of the Constitution, regulating the conditions for obtaining, issuing and recognizing academic and professional qualifications and basic regulations for implementation of article 27 of the Constitution, to ensure compliance with the obligations of the public authorities in this matter.

Title III, except for sections I and II of Chapter III and Chapter IV, is enacted in accordance with articles 149.1.23 and 149.1.25, regarding basic legislation on environmental protection and on mining and energy, respectively.

2. Nevertheless, the following provisions shall not be basic in nature:

- a. The contents of the Act referring to the organisation and functioning of State bodies or organs attached to the Central Government: articles 8 through 24, both inclusive; 34, 35, 113 and 114.

- b. Articles 27, 111.2, 111.4, 110.2 and 110.4 and transitory provisions two and three are enacted under articles 149.1.6 and 149.1.8 of the Constitution, which grant the State powers in the area of commercial and civil law, respectively.
- c. Chapter VII of Title II, in regard to vocational training for employment, is enacted under article 149.1.7 of the Constitution, which grants the State exclusive powers over labour law.
- d. Section II of Chapter V of Title II, enacted under article 149.1.9 of the Constitution, which gives the State the exclusive power over legislation on intellectual and industrial property.
- e. Articles 66, 67, 68, 69, 70 and 71, which are enacted under article 149.1.10 of the Constitution, which gives the State exclusive powers over *foreign trade*.
- f. Articles 43, 44, 45, 46, 87, 92 and additional provision one, which are enacted under article 149.1.14 of the Constitution, which grants the State jurisdiction over *general finance and government debt*.
- g. Sections I and III of Chapter V of Title II, which are enacted under article 149.1.15 of the Constitution, which grants the State jurisdiction over the *development and general coordination of scientific and technical research*.
- h. Chapter IV of Title II, which is enacted under article 149.1.21 of the Constitution, which gives the State exclusive jurisdiction over *telecommunications*.

(...)

Final provision three. *Amendment to Act 15/2007, of 3 July, on the Defence of Competition*

Article 8.1 of Act 15/2007, of 3 July, on the Defence of Competition is amended to read as follows:

(...)

(...)

Final provision five. *Amendment to Act 24/1988, of 28 July, on the Securities Market*²¹²

Act 24/1988, of 28 July, on the Securities Market is hereby amended as follows:

(...)

Final provision six. *Amendment to Act 26/2003, of 17 July, amending Act 24/1998, of 28 July, on the Securities Market, and the consolidated text of the Spanish Corporations Act, approved by Legislative Royal Decree 1564/1989, of 22 December, in order to reinforce the transparency of listed companies.*²¹³

A new item j) is added to article 31.bis.2 of Act 31/1985, of 2 August, regulating the basic rules on the governing bodies of savings banks, with the following wording:

"j) A description of the main characteristics of the internal control and risk management systems in connection with the process of disclosing regulated financial information."

Final provision seven. *Amendment to Act 35/2003, of 4 November, on Collective Investment Schemes.*

Act 35/2003, of 4 November, on Collective Investment Schemes, is hereby amended to read as follows:

²¹² Section 31 amended by Act 21/2011, of 26 July

²¹³ As amended by Act 21/2011, of 26 July.

(...)

Final provision eight. *Amendment to Act 25/2005, of 24 November, regulating venture capital entities and their management companies.*

Act 25/2005, of 24 November, regulating venture capital entities and their management companies, is hereby amended as follows:

(...)

Final provision nine. *Amendment to Act 13/1985, of 25 May, on the investment coefficients, own funds and reporting obligations of financial intermediaries.*

Act 13/1985, of 25 May, on the investment coefficients, own funds and reporting obligations of financial intermediaries is hereby amended as follows:

(...)

Final provision ten. *Amendment to Act 26/1988, of 29 July, on discipline and intervention of credit institutions.*

(...)

Final provision eleven. *Amendment to Act 44/2002, of 22 November, on Measures to Reform the Financial System.*

Article 30 of Act 44/2002, of 22 November, on Measures to Reform the Financial System is hereby amended as follows:

Article 30. *Filing complaints with the Bank of Spain, the National Securities Market Commission and the Directorate-General of Insurance and Pension Funds.*

1. *The complaints units of the Bank of Spain, the National Securities Market Commission and the Directorate-General of Insurance and Pension Funds shall address the grievances and complaints presented by users of financial services that are related to their legally recognised interests and rights and arise from alleged breach, by the respondent entities, of the rules of transparency and customer protection or of good financial practices and customs.*

The complaints units shall also handle queries from users of financial services on the rules regarding transparency and customer protection, as well as on the legal channels for the exercise of their rights.

The organisation and functioning of the complaints units shall conform to the principles of independence, transparency, contrast, effectiveness, legality, freedom and representation.

The complaints units shall operate as one-stop shops and shall forward complaints on matters not under their remit to the appropriate party.

The complaints units shall inform the corresponding supervisors when they receive evidence of serious or repeated breaches of the rules of transparency and customer protection or good financial practices by a given firm.

2. *The complaints units of the Bank of Spain, the National Securities Market Commission and the Directorate-General of Insurance and Pension Funds shall resolve on the complaints and claims referred to in the preceding section by issuing reasoned reports, which shall not in any event constitute administrative acts that may be appealed.*

3. *The Minister of Economy and Finance shall implement the procedure for submitting complaints to the complaints units of the Bank of Spain, the National Securities Market Commission and the Directorate-General of Insurance and Pension Funds, which must conform to the following rules:*

a) *For a complaint to be admissible, evidence must be furnished that it has already been filed, in writing, with the customer care department or unit or the ombudsperson of the respondent institution. Those parties must issue written acknowledgement of any complaints they receive and also resolve upon them or reject them in writing, giving reasons. The complainant must also evidence that two months have elapsed since the date on which the complaint was filed without a resolution being issued and without the complaint being rejected or overruled.*

b) *Upon receipt of a complaint by the complaints unit that is competent in the matter, it shall first verify that the conditions set out in the preceding paragraphs are met and, if the necessary requirements are met, it shall open a file for each complaint, which shall include all activities related to it; otherwise, the complainant shall be asked to complete the information within at most ten days, with the warning that, if he/she fails to do so, the complaint will be deemed to have lapsed.*

c) *Once the corresponding report has been drawn up, if it is unfavourable to the respondent firm, the latter is obliged to inform the competent complaints unit whether it has remedied the matter voluntarily within at most one month from the date of notification.*

4. *The Bank of Spain, the National Securities Market Commission and the Directorate-General of Insurance and Pension Funds shall publish an annual report on their respective complaints units including at least a statistical summary of the inquiries and complaints they handled and the criteria they apply in relation to the complaints, and the respondent firms, indicating whether the findings were favourable or unfavourable. "*

(...)

FINAL PROVISIONS TO ACT 6/2011

Final provision one. *Powers.*

This Act is enacted in accordance with articles 149.1.6, 149.1.11 and 149.1.13 of the Spanish Constitution.

Additionally, article 1.10 is enacted in accordance with article 149.1.14 of the Spanish Constitution.

Final provision two. *Incorporation of European Union law.*

This Act partly incorporates into Spanish law Directive 2009/111/EC of the European Parliament and of the Council of 16 September 2009 amending Directives 2006/48/EC, 2006/49/EC and 2007/64/EC as regards banks affiliated to central institutions, certain own funds items, large exposures, supervisory arrangements, and crisis management.

Final provision three.

The Government is empowered to issue such provisions as may be necessary to implement, apply and fulfil the provisions of this Act.

(...)

FINAL PROVISIONS TO ACT 15/2011

Final provision one. *Implementation of European Union law.*

This Act is enacted in implementation of Regulation (EC) no. 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies.

(...)

FINAL PROVISIONS TO ACT 21/2011

Final provision one. *Amendment to Legislative Royal Decree 1298/1986, of 28 June, on the adaptation of current law governing credit institutions to that of the European Community.*

Article 1. Definition.

1. For the purposes of this provision, and in accordance with Directive 2000/12/EC of the European Parliament and of the Council of 20 March 2000 relating to the taking up and pursuit of the business of credit institutions, the term "credit institution" shall be understood to mean any company whose normal and habitual activity is the receipt of funds from the public in the form of deposits, loans, repos of financial assets and other analogous activities that carry with them the obligation to repay them, and the use of those funds to grant loans and other analogous transactions.

2. The following are classified as credit institutions:

- a) The Official Credit Institute (Instituto de Crédito Oficial).*
- b) Banks.*
- c) Savings banks and the Spanish Confederation of Savings Banks (Confederación Española de Cajas de Ahorros).*
- d) Credit cooperatives.*
- e) Financial credit establishments."*

Final provision two. *Amendment to Act 24/1988, of 28 July, on the Securities Market.*

(...)

Final provision three. *Amendment to Act 26/1988, of 29 July, on discipline and intervention of credit institutions.*

One. Article 28.2 is amended to read as follows:

2. "In particular, the following shall be deemed to be reserved for credit institutions:

a) The activity defined in article 1.1 of Legislative Royal Decree 1298/1986 on the adaptation of current law governing credit institutions to that of the European Community.

b) The capture of reimbursable funds, regardless of the purpose, in the form of deposits, loans, repos or other similar that are not subject to the rules on regulation and discipline of the securities market."

Two. Article 43.1. quater is hereby amended to read as follows:

"1. quater. The Bank of Spain may communicate and require, of the entities subject to its powers of supervision, inspection and discipline provided for in this Act, by electronic means, the information and measures stated in this Act and its secondary legislation. Those entities shall be obliged to establish, in the period established for this purpose, the technical resources required by the Bank of Spain for the efficacy of their electronic notification systems, in accordance with the provisions that the Bank of Spain adopts for this purpose."

Three. A new item ñ) is added to article 52, with the following content:

"ñ) Issuance of electronic money."

Final provision four. *Amendment to Act 35/2003, of 4 November, on Collective Investment Schemes.*

Article 88.1 of Act 35/2003, of 4 November, on Collective Investment Schemes is hereby amended as follows:

"1. The applicable sanctions in each case due to very serious, serious or minor infringements shall be determined according to the criteria set out in article 131.3 of Act 30/1992, of 26 November on the Legal System of the Public Administrations and the Common Administrative Procedure, and to the following:"

(...)

Final provision six. *Amendment to Act 25/2005, of 24 November, regulating venture capital entities and their management companies.*

Article 55 of Act 25/2005, of 24 November, regulating venture capital entities and their management companies is hereby amended as follows:

"Article 55. Other provisions.

The provisions of articles 83, 88.bis, 90 and 94 of Act 35/2003, of 4 November, on collective investment institutions, shall apply with regard to the statute of limitations on violations and penalties, possible exemption from administrative liability, imposition of coercive fines and the enforceability of penalties imposed under this Act."

(...)

Final provision eleven. *Incorporation of European Union law.*

This Act partly incorporates into Spanish law Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on the taking up, pursuit and prudential supervision of

the business of electronic money institutions amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC.

(...)

FINAL PROVISIONS TO ACT 25/2011

Final provision one. *Amendment to Act 24/1988, of 28 July, on the Securities Market.*

Articles 100.b.ter and 100.b.quater are added to Act 24/1988, of 28 July, on the Securities Market with the following wording:

(...)

Final provision two. *Amendment to Act 35/2003, of 4 November, on Collective Investment Schemes.*

A new additional provision four is added to Act 35/2003, of 4 November, on Collective Investment Schemes with the following wording:

"Additional provision four. Key investor information document.

For those collective investment institutions referred to in article 2.1.a) of this Act that are deemed to be financial collective investment institutions, with the exception of those registered with the Register of Hedge Funds (Registro de Instituciones de Inversión Colectiva de Inversión Libre) or the Register of Funds of Hedge Funds (Registro de Instituciones de Inversión Colectiva de Instituciones de Inversión Colectiva de Inversión Libre) at the National Securities Market Commission, the key investor information document referred to by Commission Regulation (EU) No 583/2010 of 1 July 2010 implementing Directive 2009/65/EC of the European Parliament and of the Council as regards key investor information and conditions to be met when providing key investor information or the prospectus in a durable medium other than paper or by means of a website, shall be obligatory from 1 July 2011 in place of the simplified prospectus. The key investor information document must conform to the provisions of the aforementioned EU Regulation.

The collective investment institutions covered by Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) shall have a period of one year from 1 July 2011 in which to adapt their simplified prospectus to the key investor information document. From 1 July 2011, those collective investment institutions within the scope of this provision that are newly created or whose prospectus is updated at the request of the collective investment institution itself or its management company will be required to have the key investor information document.

Regarding those collective investment institutions to which this additional provision is applicable, all references to the form and content of the prospectus contained in this Act shall be construed as referring to the key investor information document, provided that this does not contravene the provisions of the aforementioned Regulation of the Commission."

Final provision three. *Amendment to article 34.4 and 34.5 of Act 3/2009, of 3 April, on structural modifications of commercial companies.*

Articles 34.4 and 34.5 are hereby amended as follows:

“4. The report by the expert(s) shall be divided into two parts: the first must set out the methods used by the directors to establish the exchange ratio for the shares or holdings of shareholders in companies to be extinguished, state whether these methods are adequate, indicating the values to which they lead and any particular difficulties of valuation, and express an opinion as to whether or not the exchange ratio is justified; the second must express an opinion as to whether the equity contributed by the companies to be extinguished is at least equal to the capital of the new company or the amount of the capital increase by the acquiring company.

5. The content of the report by the expert(s) on a proposed merger shall consist only of the second part in the following cases:

a) When so agreed by all the voting shareholders of all the companies involved in the merger and by any other persons with that right under the law or the articles of association.

b) Where the acquiring company directly or indirectly owns all of the shares into which the capital of the absorbed company or companies is divided.”

(...)

FINAL PROVISIONS TO ACT 32/2011

Final provision one. *Adaptation of the Stock Exchange Governing Companies and the Systems Company to the new regulations.*

The Government shall determine the period within which the governing bodies of the Stock Exchanges must take all necessary measures to comply with the provisions of Article 31.bis.2.g) of the Securities Market Act in connection with paragraph 7 of that article as amended by this Act, including the necessary action to incorporate the new conditions of transaction registry, clearing and settlement into their regulations. The Government shall also determine the period within which the Systems Company must adopt all necessary measures to adapt its rules and regulations of operation and its operational and technical procedures to the new regulation.

Final provision two. *Supervision of the technical process*

The National Securities Market Commission shall supervise the technical changes needed to reform the existing systems for clearing, settlement and registry in the official secondary markets in securities.

(...)

Final provision four. *Unification of the registry system for fixed-income, public debt and equity securities.*

Secondary legislation shall be enacted to adopt the necessary measures to unify the registry systems based on balances for equity, fixed-income and book-entry public debt securities, without prejudice to the peculiarities of each of those classes of securities. The regulations of the Systems Company and the clearing, settlement and registry services of the Autonomous Communities must be modified to incorporate the necessary changes resulting from the provisions of this Act and its secondary legislation.

Final provision five. *Empowerment to enact secondary legislation.*

The Government is empowered to issue secondary legislation under this Act.

Final provision six. *Entry into force.*

This Act shall come into force on the day following its publication in the *Official State Gazette*.

Nevertheless, sections two and three of the sole article, which introduce a new item 7 into article 31.bis and amend article 44.bis, respectively, shall come into force on the dates to be determined in the secondary legislation enacted under this Act, with the exception of section 7 of article 44.bis, which shall come into force on the day following its publication in the *Official State Gazette*.

FINAL PROVISIONS TO ROYAL DECREE-ACT 10/2012

(...)

Final provision three. *Incorporation of European Union law*

This Royal Decree-Act incorporates into Spanish law the Directive 2010/78/EU of the European Parliament and of the Council, of 24 November 2010, amending Directives 98/26/EC, 2002/87/EC, 2003/6/EC, 2003/41/EC, 2003/71/EC, 2004/39/EC, 2004/109/EC, 2005/60/EC, 2006/48/EC, 2006/49/EC and 2009/65/EC in respect of the powers of the European Supervisory Authority (European Banking Authority), the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority).

FINAL PROVISIONS TO ROYAL DECREE-ACT 17/2012

Final provision one. *Regulatory empowerment*

(...)

2. Article four, amending Act 24/1998, of 28 July, on the Securities Market, is issued under the provision of articles 149.1.6, 149.1.11 and 149.1.13 of the Constitution.

(...)

Final provision two. *Implementation of European Union Law.*

Article four of this Royal Decree-Act, which incorporates additional provision twenty-one into Act 24/1998, on 28 July, on the Securities Market, is issued in implementation of Regulation (EU) No. 1031/2010 of the Commission, of 12 November 2010, on the timing, administration and other aspects of auctioning of greenhouse gas emission allowances pursuant to Directive 2003/87/EC of the European Parliament and of the Council establishing a scheme for greenhouse gas emission allowances trading within the Community.

FINAL PROVISIONS TO ACT 1/2012

Final provision one. *Regulatory empowerment*

This Act is enacted under the powers conferred exclusively on the State by article 149.1.6.^a of the Constitution in matters of commercial law

(...)

Final provision three. *Entry in force*

The Act shall come into force on the day following its publication in the *Official State Gazette*



Analysis of the Securities Market Actⁱ

Previous references

- Derogates:
 - Article 23 of Act 2/1981, of 25 March (Ref. [BOE-A-1981-8598](#)).
 - Decree-Act 7/1964, of 30 April (Ref. [BOE-A-1964-7560](#)).
 - Act of 23 February 1940 (Gazeta).
 - Act of 27 December 1910.
- Repeals the aforementioned part of article 32 and amends the bulk of the articles and transitory provisions of Act 46/1984, of 26 December (Ref. [BOE-A-1984-28136](#)).
- Annuls Article 16.1 of the Foreign Investment Act, as approved by Legislative Royal Decree 1265/1986, of 27 June (Ref. [BOE-A-1986-17103](#)).
- Amends:
 - Articles 320 through 324 and 545 and repeals articles 64 through 80 and 100 through 105 of the Commerce Code, published by the Decree of 22 August 1885 (GAZETA) (Ref. [BOE-A-1885-6627](#)).
 - Articles 1447.2 and 1482 of the Civil Justice Act approved by the Decree of 3 February 1881 (GAZETA) (Ref. [BOE-A-1881-813](#)).
- Cites:
 - Act 26/1988, of 29 July (Ref. [BOE-A-1988-18845](#)).
 - Act 19/1988, of 12 July (Ref. [BOE-A-1988-17704](#)).
 - Legislative Royal Decree 1298/1986, of 28 June (Ref. [BOE-A-1986-17236](#)).
 - Act 14/1985, of 29 May (Ref. [BOE-A-1985-9862](#)).
 - Act 11/1977, of 4 January (Ref. [BOE-A-1977-466](#)).
 - Royal Decree 1128/1974, of 25 April (Ref. [BOE-A-1974-699](#)).
- Repealed articles
 - Articles 116 and 116.bis were repealed, and certain precepts were amended by Act 2/2011, of 4 March (Ref. [BOE-A-2011-4117](#)).
 - Legislative Royal Decree 1/2010, of 2 July, repealed the marked text in Title X (Ref. [BOE-A-2010-10544](#)).
 - Act 47/2007, of 19 December, amended article 56.3 (Ref. [BOE-A-2007-21913](#)).
 - Royal Decree-Act 5/2005, of 11 March, repealed article 61 and amended articles 6, 8, 9, 32, 92, 99, 100 and title III (Ref. [BOE-A-2005-4172](#)).
 - Act 44/2002, of 22 November, repealed articles 55.3, 58.6, 58.7, 98.5, 100.n) and 100.r) and, 54 as indicated, amended certain precepts, and added articles 44.bis, 44.ter, 83.bis, 83.ter and additional provisions 17 and 18 (Ref. [BOE-A-2002-22807](#)).
 - Act 37/1998, of 16 November, repealed article 86.bis, amended titles I through VIII, and additional provisions 1 and 3, and added additional provisions 11 through 14 (Ref. [BOE-A-1998-26345](#)).
- Royal Decree 647/1994, of 15 April, annulled the fees in the annex (Ref. [BOE-A-1994-9263](#)).
- Amendments:
 - Articles 32/2011, of 4 October, amended articles 31.bis, 44.bis, 44.ter, 92, 99 and 100 and added article 12.bis (Ref. [BOE-A-2011-15622](#)).
 - Act 25/2011, of 1 August, amended art. 100 (Ref. [BOE-A-2011-13240](#)).
 - Act 21/2011, of 26 July, amended final provision 3, as amended by final provision 5.31 of Act 2/2011, of 4 March, and articles 22, 23, 87.bis.3, 100 and 102.h) (Ref. [BOE-A-2011-12909](#)).

Consolidated Text of the Spanish Securities Market Act

- Act 15/2011, of 16 June, amended arts. 70.2, 84, 85, 91, 92, 95, 99, 102 and 104 (Ref. BOE-A-2011-10531).
- Act 6/2011, of 11 April, amended arts. 70, 70.bis, 87.bis and added arts. 91.quinquies through septies (Ref. BOE-A-2011-6548).
- Act 12/2010, of 30 June, amended art. 117 and additional provisions 18.2 and 18.4 (Ref. BOE-A-2010-10421).
- Royal Decree-Act 6/2010, of 9 April, amended arts. 30.bis)1 and 99.II.bis) (Ref. BOE-A-2010-5879).
- Act 11/2009, of 26 October, amended art. 108.2 (Ref. BOE-A-2009-17000).
- Act 5/2009, of 29 June, amended arts. 60.quater, 69, 90 and 92 (Ref. BOE-A-2009-10751).
- Act 6/2007, of 12 April, amended arts. 34, 35, 53, 82, 85, 92, 99, 100 and chapter V of Title IV, and added arts. 35.bis, 35.ter, 53.bis, 53.ter and 116.bis (Ref. BOE-A-2007-7787).
- Act 36/2006, of 29 November, amended art. 108 (Ref. BOE-A-2006-20843).
- Act 12/2006, of 16 May, amended arts. 31.6, 44.bis.3, 48.1, additional provision 17 and added art. 83.quater (Ref. BOE-A-2006-8637).
- Act 25/2005, of 24 November, amended art. 30.ter (Ref. BOE-A-2005-19412).
- Act 19/2005, of 14 November, amended arts. 114 and 116 (Ref. BOE-A-2005-18667).
- Act 5/2005, of 22 April, amended arts. 66, 67, 70, 86, 99, 100 and added art. 100.bis (Ref. BOE-A-2005-6561).
- Act 62/2003, of 30 December, amended art. 94 and additional provision 18 and added art. 111.bis (Ref. BOE-A-2003-23936).
- Act 26/2003, of 17 July, amended art. 100 and added a Title X (Ref. BOE-A-2003-14405).
- Act 22/2003, of 9 July, amended arts. 44.bis, 58, 67, 73 and 76.bis (Ref. BOE-A-2003-13813).
- Act 53/2002, of 30 December, amended art. 77 and added additional provision 19 (Ref. BOE-A-2002-25412).
- Act 14/2000, of 29 December, amended arts. 47 and 48.1 (Ref. BOE-A-2000-24357).
- Article 55/1999, of 29 December, amended art. 53 and added additional provisions 15 and 16 (Ref. BOE-A-1999-24786).
- Act 50/1998, of 30 December, amended art. 99 (Ref. BOE-A-1998-30155).
- Act 13/1996, of 30 December, amended art. 24 (Ref. BOE-A-1996-29117).
- Act 3/1994, of 14 April, amended articles 97, 99, 100 and 102 through 106 (Ref. BOE-A-1994-8489).
- Act 22/1993, of 29 December, amended article 24 (Ref. BOE-A-1993-31153).
- Act 13/1992, of 1 June, amended articles 4, 73, 84, 86, 99 and 100 and added article 86.bis (Ref. BOE-A-1992-12545).
- Act 18/1991, of 6 June, amended article 108 (Ref. BOE-A-1991-14391).
- Act 9/1991, of 22 March, amended articles 81, 99, 100, 102, 103 and 105 (Ref. BOE-A-1991-7736).
- Act 5/1990, of 29 June, amended the Annex (Ref. BOE-A-1990-15348).
- Royal Decree-Act 7/1989, of 29 December, amended the Annex (Ref. BOE-A-1989-30591).
- Act 19/1989, of 25 July, amended transitory provision 10 (Ref. BOE-A-1989-17832).
- Act 4/1990, of 29 June, amended certain articles (Ref. BOE-A-1990-15347).
- Act 24/2001, of 27 December, added additional provision 17 (Ref. BOE-A-2001-24965).
- Update by conversion of monetary amounts to euro: Resolution of 28 September 2001 (Ref. BOE-A-2001-18591).

- Corrigendum in Official State Gazette no. 122, of 23 May 1989 (Ref. [BOE-A-1989-11627](#)).
- Secondary legislation:
 - The Order of 28 May 1999 implemented art. 25 (Ref.1999/12490) (Ref. BOE-A-1999-12490).
 - Royal Decree 629/1993, of 3 May, implemented articles 38, 44, 78 and 86 (Ref. BOE-A-1993-13176).
 - Royal Decree 1079/1992, of 11 September, implemented article 21 (Ref. BOE-A-1992-22221).
 - Royal Decree 291/1992, of 27 March, implemented Title III (Ref. BOE-A-1992-7493).
 - Royal Decree 377/1991, of 15 March, implemented article 53 (Ref. BOE-A-1991-7649).
 - Royal Decree 139/1990, of 2 February, implemented article 57 regulating the composition and working of the Advisory Board (Ref. BOE-A-1990-3018).
 - The Order of 14 November 1989 implemented article 25, regulating administrative intervention in the issuance of securities (Ref. BOE-A-1989-27950).
 - The Order of 26 July 1989 implemented article 86, establishing the powers of the National Securities Market Commission (Ref. BOE-A-1989-17970).
- Royal Decree-Act 1/1989, of 22 March, completed article 108 (Ref. [BOE-A-1989-6683](#)).
- Issued in conformity:
 - with regard to probative value in the supervision by certain units: the Resolution of 28 July 2011 (Ref. BOE-A-2011-13458).
 - with art. 59, on secondary markets and other financial instruments: Royal Decree 1282/2010 of 15 October (Ref. BOE-A-2010-15785).
 - on procedures for relevant information: ORDER EHA/1421/2009, of 1 June (Ref. BOE-A-2009-9109).
 - in connection with the requirements for transparency imposed on issuers whose securities are listed on an official secondary market or other regulated market in the European Union: Royal Decree 1362/2007, of 19 October (Ref. BOE-A-2007-18305).
 - on the rules of takeover bids: Royal Decree 1066/2007, of 27 July (Ref. BOE-A-2007-14483).
 - with articles 31.6, 44.bis.3 and additional provision 17, concerning holdings in the equity of the indicated companies: Royal Decree 361/2007, of 16 March (Ref. BOE-A-2007-5676).
 - on market abuse: Royal Decree 1333/2005, of 11 November (Ref. BOE-A-2005-19251).
 - with article 27.4, on the content of the various types and forms of prospectus: Order EHA/3537/2005, of 10 November (Ref. BOE-A-2005-18771).
 - on admission to trading on official secondary markets, primary and secondary public offerings and the required prospectuses, by Royal Decree 1310/2005, of 4 November (Ref. BOE-A-2005-18769).
 - with art. 36.7, regulating certain aspects of securities lending: Order ECO/0764/2004, of 11 March (Ref. BOE-A-2004-5484).
 - with art. 14, approving the internal regulation of the National Securities Market Commission: the Resolution of 10 July 2003 (Ref. BOE-A-2003-14411).
 - with art. 22, regulating the National Securities Market Commission Advisory Board: Royal Decree 504/2003, of 2 May (Ref. BOE-A-2003-9993).
 - on the legal regime for investment firms: Royal Decree 867/2001, of 20 July (Ref. BOE-A-2001-15380).
 - with art. 77 on investor compensation schemes: Royal Decree 948/2001, of 3 August (Ref. BOE-A-2001-15221).

- on amendments to the legal system: Royal Decree 2590/1998, of 7 December (Ref. BOE-A-1998-29219).
- on penalty procedures applicable to parties acting in the financial markets: Royal Decree 2119/1993, of 3 December (Ref. BOE-A-1993-30466).
- on the representation of securities and clearing and settlement of stock market trades: Royal Decree 116/1992, of 14 February (Ref. BOE-A-1992-4036).
- with articles 31.c) and 59, regulating the official markets in futures and options: Royal Decree 1814/1991, of 20 December (Ref. BOE-A-1991-30761).
- with articles 36, 37 and 43, regulating trades in securities and prices both on and off the stock exchanges: Royal Decree 1416/1991, of 27 September (Ref. BOE-A-1991-24431).
- Regulating takeover bids: Royal Decree 1197/1991, of 26 July (Ref. BOE-A-1991-19740).
- with article 108, on the withdrawal and exchange of trade tickets, by the Order of 29 June 1990 (Ref. BOE-A-1990-16144).
- Additional Provision Two, regulating the destination of the books and official documentation of the Official Stockbrokers: Royal Decree 689/1990, of 1 June (Ref. BOE-A-1990-12619).
- with articles 58 and 76.a), regulating direct accounts in book-entry public debt at the Bank of Spain: the Order of 22 January 1990 (Ref. BOE-A-1990-1967).
- Establishing rules for the audit of broker-dealers and brokers: Circular 9/1989, of 20 December (Ref. BOE-A-1989-30482).
- regulating the stock exchange governing companies, the Sociedad de Bolsas, and the collective collateral: Royal Decree 726/1989, of 23 June (Ref. BOE-A-1989-14442).
- Regulating the National Securities Market Commission Advisory Board: Royal Decree 341/1989, of 7 April (Ref. BOE-A-1989-7767).
- Regulating broker-dealers and brokers: Royal Decree 276/1989, of 22 March (Ref. BOE-A-1989-6684).
- Regulating the creation of debt for 1988: Royal Decree 91/1989, of 27 January (Ref. BOE-A-1989-2060).
- Appeals 1712, 1716 and 1724/1988 (Refs. 1988/26614, 1988/26616, 1988/26619) found that the contents of articles 45, 48 and 64.1 and additional provision 1 are inapplicable to the Autonomous Communities of the Basque Country and Catalonia; and Decision 133/1997, of 16 July, found that articles 31.c), 34, 47, 59 and 78 do not encroach upon the powers of the Autonomous Communities that had appealed (Ref. [BOE-T-1997-17718](#)).

Notes

- Entry into force, on a general basis, on 29 January 1989.
- Specifically, a 1-year grace period was established for certain precepts, and the provisions of article 42 did not come into force until 1 January 1992.

Matters dealt with

- Brokers (Agencias de valores)
- Official stockbrokers (Agentes de Cambio y Bolsa)
- Banks (Banca)
- Bank of Spain (Banco de España)
- Commerce Exchanges (Bolsas de Comercio)
- Stock Exchanges (Bolsas de Valores)

Consolidated Text of the Spanish Securities Market Act

- Postal Savings Bank (Caja Postal de Ahorros)
- Savings Banks (Cajas de Ahorro)
- Code of Commerce (Código de Comercio)
- Associations of Official Stockbrokers (Colegios de Agentes de Cambio y Bolsa)
- Official Associations of Commercial Brokers (Colegios Oficiales de Corredores de Comercio)
- National Securities Market Commission (Comisión Nacional del Mercado de Valores)
- Autonomous Communities (Comunidades Autónomas)
- Spanish Confederation of Savings Banks (Confederación Española de Cajas de Ahorro)
- Accounting (Contabilidad)
- Credit cooperatives (Cooperativas de crédito)
- Official credit (Crédito Oficial)
- Body of Commercial Brokers (Cuerpo de Corredores Colegiados de Comercio)
- Public Debt (Deuda Pública)
- Civil Justice (Enjuiciamiento Civil)
- Money funds (Fondos de dinero)
- Mutual funds (Fondos de inversión)
- Money market mutual funds (Fondos de Inversión en Activos del Mercado Monetario)
- Securities mutual funds (Fondos de Inversión Mobiliaria)
- Value Added Tax (Impuesto sobre el Valor Añadido)
- Transfer & Stamp Tax (Impuesto sobre Transmisiones Patrimoniales y Actos Jurídicos Documentados)
- Incompatibilities (Incompatibilidades)
- Collective investment institutions (Instituciones de Inversión Colectiva)
- Investments (Inversiones)
- Foreign investment (Inversiones extranjeras)
- Ministry of Economy and Finance (Ministerio de Economía y Hacienda)
- Organisation of the State Administration (Organización de la Administración del Estado)
- Prices (Precios)
- Mercantile loans (Préstamos mercantiles)
- Compensation (Retribuciones)
- Companies (Sociedades)
- Portfolio companies (Sociedades de Cartera)
- Investment companies (Sociedades de Inversión)
- Securities investment companies (Sociedades de Inversión Mobiliaria)
- Broker-dealers (Sociedades de valores)
- Collective investment institution management companies (Sociedades Gestoras de Instituciones de Inversión Colectiva)
- Non-tax levies and charges (Tasas y exacciones parafiscales)
- Securities (Títulos valores)

ⁱ Source of analysis: IBERLEX (BD oficial del BOE).