

**This text provided by the CNMV is an unofficial translated English version. In case of any difference in meaning between the original Spanish text and the English translation, the Spanish text shall apply.**

Royal Legislative Decree 4/2015, of 23 October, approving the Consolidated  
Text of the Securities Market Act.

Ministry of Economy and Competitiveness  
Official State Gazette number 255, of 24 October 2015  
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RECAST TEXT  
Last amended: 18 December 2018

Article 1(a) of the Consolidated Texts (delegation under Article 82 *et seq.* of the Spanish Constitution) of Act 20/2014, of 29 October, enables the government to issue a consolidated text of Act 24/1988, of 28 July, on the securities market. Such enablement, valid for a period of twelve months, shall affect legislation with statutory force and effect that has amended the said Act 24/1988, of 28 July, as well as that which, affecting its material scope, may be enacted before the adoption of this Royal Legislative Decree; and shall also entail the inclusion into the text itself, duly regularised, clarified and systematised, of a series of legal provisions relating to securities markets.

Act 24/1988, of 28 July, has been, from the date of its approval, the regulatory pillar on which the functioning of the Spanish securities market rests. In fact, its numerous amendments have been a faithful reflection of the evolution that the securities market has undergone over the years and that have their origin in various factors, such as the growing complexity and dynamism associated with the unified regulation of banking and finance, which require a constant effort to adapt the regulatory system to the reality of the markets; the profound process of internationalisation of securities legislation carried out in recent years, especially intense in the European internal market; and, of course, the need to respond to the consequences of the recent financial and economic crisis, which demanded that credit and financial authorities be given the necessary powers and duties to face a new and demanding scenario.

It is for this reason that, after a few years of extensive changes in the legal system, it is now time to take the necessary steps to reinforce the clarity and coherence of the legislation applicable to the securities market, to reduce its fragmentation and to strengthen its systematics, making it a better instrument for use both by the regulator and the actors who intervene every day in commercial transactions; being aware that this shall result in a better and more flexible functioning of the financial markets and in greater legal certainty. This Consolidated Text thus continues the efforts already made by the legislator through, *inter alia*, Act 10/2014, of 26 June, on credit institutions (unified regulation, supervision and solvency) and Act 20/2015, of 14 July, on the organisation, supervision and solvency of insurance and reinsurance undertakings, to simplify, clarify and harmonise the set of rules applicable to the financial markets.

This Consolidated Text has been drawn up by integrating a set of rules with statutory force and effect relating to securities markets, which have been duly regularised, clarified and systematised in accordance with the enablement under Act 20/2014, of 29 October, and in particular following the criteria provided for below.

Firstly, the more than forty amendments made to Act 24/1988, of 28 July, on the securities market, since its approval, have been incorporated. Particularly noteworthy are the amendments introduced by Act 47/2007, of 19 December, which incorporated into Spanish law various European Directives and in particular Directive 2004/39/EC, of the European Parliament and of the Council, of 21 April 2004, on markets in financial instruments, also

known as MiFID, which represented a true revolution in the conception of a harmonised European securities market.

Secondly, in accordance with the mandate of the legislator, the following have been integrated into the text. In particular, the Third and Fourteenth Additional Provisions and the First, Second, Fifth and Sixth Transitional Provisions of Act 37/1998, of 16 November, amending the Act 24/1998, of 28 July on the securities market; the Third Additional Provision of Act 41/1999, of 12 November, on securities payment and settlement systems; the First, Second, Third and Fourth Additional Provisions and the First, Second and Sixth Transitional Provisions of Act 44/2002, of 22 November, on the financial system (reform measures); the Third Additional Provision of Act 26/2003, of 17 July, amending Act 24/1998, of 28 July, on the securities market, and the Consolidated Text of the Corporate Enterprises Act, approved by Royal Legislative Decree 1564/1989, of 22 December; the Additional Provision of Act 6/2007, of 12 April, amending Act 24/1988, of 28 July, on the securities market; the First, Second and Fourth Final Provisions of Act 32/2011 of 4 October, amending Act 24/1998, of 28 July, on the securities market; the Thirteenth Additional Provision of Act 9/2012, of 14 November, on credit institutions (restructuring and resolution); the Ninth Transitional Provision of Act 5/2015, of 27 April, on the promotion of business financing and the Sixth and Seventh Transitional Provisions of Act 11/2015, of 18 June, on credit institutions and investment firms (recovery and resolution).

As a consequence of the foregoing, certain adjustments have been made to the structure of the text by modifying the numbering of the articles and, therefore, of the references and concordances between them, which has been taken advantage of, under the cover of legislative delegation, to improve the systematics of the text and to adjust certain discrepancies.

Without prejudice to the fact that this consolidated text complies with the objectives of systematisation and unification of securities markets legislation, over the coming months the adaptation of Spanish legislation to a series of legislative texts adopted at a European level such as Regulation (EU) No. 596/2014, of the European Parliament and of the Council, of 16 April 2014, on market abuse, which shall apply as from 3 July 2016, shall have to be addressed; and, above all, the new MiFID2 Regulation which replaces the aforesaid MiFID, which consists of Directive 2014/65/EU, of the European Parliament and of the Council, of 15 May 2014, on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU, and Regulation (EU) No. 600/2014, of the European Parliament and of the Council, of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No. 648/2012, legislation that shall result in substantial changes to the body of rules governing financial instruments and the new regulation on trading venues.

At any event, this consolidation work makes it possible to prepare securities market legislation for these imminent amendments, anticipating future changes and creating a text that facilitates the work of the legislator at the time of transposition of European standards. With the introduction of new parts and articles and compliance with the guidelines on legislative drafting, a legislative structure has been created that is more permeable to the incorporation of EU law.

By virtue thereof, at the proposal of the Minister for Economy and Competitiveness, in agreement with the Council of State and after deliberation of the Council of Ministers at its meeting on 23 October 2015,

I PROVIDE:

**Sole Article.** *Approval of the Consolidated Text of the Securities Market Act.*

Approval of the Consolidated Text of the Securities Market Act, incorporating the contents of the following provisions:

- (a) Act 24/1988 of 28 July 1988, on the securities market.
- (b) The Third and Fourteenth Additional Provisions and the First, Second, Fifth and Sixth Transitional Provisions of Act 37/1998, of 16 November, amending Act 24/1988, of 28 July, on the securities market.
- (c) The Third Additional Provision of Act 41/1999, of 12 November, on payment and securities settlement systems.
- (d) The First, Second, Third and Fourth Additional Provisions and the First, Second and Sixth Transitional Provisions of Act 44/2002, of 22 November, on the financial systems (reform measures).
- (e) The Third Additional Provision of Act 26/2003, of 17 July, amending Act 24/1988, of 28 July, on the securities market and the Consolidated Text of the Corporate Enterprises Act, approved by Royal Legislative Decree 1564/1989 of 22 December.
- (f) The Additional Provision of Act 6/2007, of 12 April, amending Act 24/1988, of 28 July on the securities market.
- (g) The First, Second and Fourth Final Provisions of Act 32/2011, of 4 October, amending Act 24/1988, of 28 July, on the securities market,.
- (h) The Thirteenth Additional Provision of Act 9/2012, of 14 November, on credit institutions (restructuring and resolution).
- (i) The Ninth Transitional Provision of Act 5/2015, of 27 April, on the promotion of business financing.
- (j) The Sixth and Seventh Transitional Provisions of Act 11/2015, of 18 June, on credit institutions and investment firms (recovery and resolution).

**Sole additional provision.** *Legislative references.*

1. The legislative references made in other provisions to Act 24/1988, of 28 July, on the securities market, shall be understood to be made to the relevant provisions of the approved Consolidated Text.

2. In order to facilitate the application of this Consolidated Text, a table of correspondence with the provisions of Act 24/1988, of 28 July, on the securities market, shall be published on the website of the General Secretariat of the Treasury and Financial Policy ([www.tesoro.es](http://www.tesoro.es)) for information purposes only. This publication shall take place within 15 days following the publication in the "Official State Gazette" of this Royal Legislative Decree.

**Sole Derogatory Provision.** *Regulatory repeal.*

The following provisions are repealed:

- (a) Act 24/1988, of 28 July, on the Securities Market.

(b) The Third and Fourteenth Additional Provisions and the First, Second, Fifth and Sixth Transitional Provisions of Act 37/1998, of 16 November, amending Act 24/1988, of 28 July, on the Securities Market.

(c) The Third Additional Provision of Act 41/1999, of 12 November, on payment and securities settlement systems.

(d) The First, Second, Third and Fourth Additional Provisions and the First, Second and Sixth Transitional Provisions of Act 44/2002, of 22 November, on financial systems (reform measures).

(e) The Third Additional Provision of Act 26/2003, of 17 July, amending Act 24/1988, of 28 July, on the Securities Market and the Consolidated Text of the Corporate Enterprises Act, approved by Royal Legislative Decree 1564/1989 of 22 December.

(f) The Additional Provision of Act 6/2007, of 12 April, amending Act 24/1988, of 28 July, on the Securities Market.

(g) The First, Second and Fourth Final Provisions of Act 32/2011, of 4 October, amending Act 24/1988, of 28 July, on the Securities Market.

(h) The Thirteenth Additional Provision of Act 9/2012, of 14 November, on credit institutions (restructuring and resolution).

(i) The Ninth Transitional Provision of Act 5/2015, of 27 April, on the promotion of business financing.

(j) The Sixth and Seventh Transitional Provisions of Act 11/2015, of 18 June, on credit institutions and investment firms (recovery and resolution).

**Single Final Provision.** *Entry into force.*

This Royal Legislative Decree and the Consolidated Text it approves shall enter into force twenty days after its publication in the "Official State Gazette".

However, paragraph 2 of the Sole Additional Provision of this Royal Legislative Decree shall enter into force on the day following its publication in the "Official State Gazette".

Oviedo, 23 October 2015.

FELIPE R

The Minister for Economy and Competitiveness,  
LUIS DE GUINDOS JURADO

## RECAST TEXT OF THE SECURITIES MARKET ACT

### TITLE I

#### General provisions

### PART I

## Scope of the Act

### **Article 1.** *Purpose and content.*

The purpose of this Act is to regulate the securities market and investment services and activities in Spain and refers, among other matters, to the issuance and offer of financial instruments, to trading venues and systems for clearing, settlement and registration of financial instruments, to the system of authorisation and operating conditions of investment firms, to the provision of investment services and performance of investment activities in Spain by third country companies, to the authorisation and operation of data reporting services providers and to the system of supervision, inspection and sanction by the National Securities Market Commission (CNMV).

### **Article 2.** *Financial instruments subject to this Act.*

1. The scope of this Act includes the financial instruments listed in its Schedule. The government is empowered to amend by royal decree the list of financial instruments appearing in this article in order to adapt it to the amendments provided for in European Union (EU) law.

2. For financial instruments other than transferable securities, the rules provided for in this Act for transferable securities shall apply, with any necessary adaptations.

3. Paragraphs (b), (f), (g) and (j) of the Schedule to this Act shall be applied in accordance with Commission Delegated Regulation (EU) 2017/565, of 25 April 2016, supplementing Directive 2014/65/EU, 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.

4. Any multilateral system with financial instruments shall operate either in accordance with the provisions of Royal Decree-Law 21/2017, of 29 December, on urgent measures for the adaptation of Spanish law to EU law on the securities market for Multilateral Trading Facilities (MTFs) or for Organised Trading Facilities (OTFs), or in accordance with the provisions of the said Royal Decree-Law and of this Act for regulated markets.

5. Any investment firm which, on an organised, frequent and systematic basis, deals on its own account when executing client orders outside a regulated market, MTF or OTF, shall operate under Title III of Regulation (EU) No. 600/2014, of the European Parliament and of the Council, of 15 May 2014.

6. Without prejudice to Articles 23 and 28 of Regulation (EU) No. 600/2014, of the European Parliament and of the Council, of 15 May 2014, all transactions in financial instruments referred to in the preceding points which are not concluded in multilateral systems or systematic internalisers must comply with the relevant provisions of Title III of Regulation (EU) No. 600/2014, of the European Parliament and of the Council, of 15 May 2014.

### **Article 3.** *Other provisions on financial instruments.*

**(Deleted)**

### **Article 4.** *Scope of application.*

1. The provisions of this Act shall apply to all financial instruments issued, traded or marketed in Spain, to investment firms domiciled in Spain, to the market management companies of regulated markets, MTFs or OTFs domiciled in Spain, and to data reporting services providers domiciled in Spain.

2. This Act and its implementing regulations shall also apply to third country investment firms or undertakings that perform investment activities either through the establishment of a branch or the provision of services without a branch.

**Article 5.** *Group of companies.*

For the purposes of this Act, "group of companies" shall be as defined under Article 42 of the Code of Commerce.

PART II

**Transferable securities represented by book-entries**

**Article 6.** *Representation of securities.*

1. Transferable 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 issuance.

2. Securities admitted to trading on official secondary markets or on multilateral trading facilities shall necessarily be represented by book-entries.

As an exception to the provisions of the previous paragraph, the necessary particularities shall be established by regulation so that foreign securities represented through certificates may be traded on official secondary markets or on multilateral trading facilities and be registered in the central securities depositories established in Spain.

3. Both the representation of securities through book-entries and the representation through certificates shall be reversible. The reversion of the representation by means of book-entries to certificates shall require the prior authorisation of the National Securities Market Commission, in the terms provided for by regulation. The changeover to the book-entry system may be made as the certificate holders give their consent to the transformation.

4. The conditions shall be established by way of regulation for the securities represented by book-entries to be fungible for the purposes of clearing and settlement transactions.

**Article 7.** *Issuance document.*

1. Representation of securities by book-entry shall always require that the issuer draft a document stating the information needed to identify the securities making up the issuance.

In the case of equity securities, the aforementioned document shall be recorded in a public instrument that may be the deed of issuance.

In the case of non-equity securities, the recording in a public instrument of the issuance document shall be optional. This document may be replaced by any of the following documents that shall be considered the issuance document:

(a) The prospectus approved and registered by the National Securities Market Commission, in accordance with the provisions of this Act.

(b) The publication of the characteristics of the issuance in the appropriate official gazette, in the case of State or regional government debt issuances, as well as in those other cases in which it is established.

(c) The certificate issued by authorised persons in accordance with the legislation in force, in the case of issuances that are to be admitted to trading on a multilateral trading facility established in Spain, in accordance with the provisions of Article 41(4).

Equity securities shall be understood to mean shares and transferable securities equivalent to shares, as well as any other type of transferable securities giving the right to acquire shares or securities equivalent to shares, by their conversion or by exercising the rights they confer, provided that such securities are issued by the issuer of the underlying shares or by an entity belonging to the issuer's group.

2. The issuer shall deposit one copy of the issuance document and its amendments with the entity responsible for the accounting records and another with the National Securities Market Commission. For securities admitted to trading on an official secondary market or on a multilateral trading facility, a copy of the instrument shall also be deposited with the market's management company.

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

4. The content of the securities represented by means of book-entries shall be determined by the issuance document.

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

**Article 8.** *Entities in charge of accounting records.*

1. The keeping of accounting records of the securities represented by book-entries relating to an issuance shall be attributed to a single entity which shall ensure the integrity of the issuance.

2. In the case of securities not admitted to trading on official secondary markets or on multilateral trading facilities, the said entity shall be freely designated by the issuer among the investment firms and credit institutions authorised to carry on the activity provided for under Article 141(a). The designation must be registered with the Register of the National Securities Market Commission provided for under Article 238, as a prerequisite for the commencement of the keeping of the accounting records. Central securities depositories may also assume such function in accordance with the requirements, if any, established in applicable legislation and in their regulations.

3. In the case of securities admitted to trading on official secondary markets or on multilateral trading facilities, the entity in charge of keeping the accounting records of the securities shall be the designated central securities depository which shall exercise such function together with its participating entities.

4. The entities referred to in this article shall be liable to those who suffer damage as a result of non-performance of the appropriate registrations, inaccuracies and delays therein and, in general, as a result of an intentional or negligent breach of their legal obligations. Compensation for damage caused shall, as far as possible, be paid in kind.

**Article 9.** *System of registration and holding of securities.*

1. Any central securities depository providing services in Spain shall adopt a registration system consisting of a central register and the detailed registers kept by the entities participating in that system.

2. The central register shall be maintained by the central securities depository and shall recognise the following account types for each participating entity which so requests:

(a) One or more of its own accounts on which the balances of securities held by the participating entity shall be recorded.

(b) One or more general third-party accounts on which are recorded, on a global basis, the securities balances for the clients of the participating entity, or for the clients of a third entity that has entrusted the requesting entity with the custody and detailed recording of the securities of these clients.

(c) One or more individual accounts in which the balances of securities for those clients of the participating entities who request the keeping of this type of accounts in the central register shall be recorded in a segregated manner.

3. Each participating entity with third-party general accounts shall keep a detailed record showing which clients the balances of securities booked in those accounts in the central register correspond to.

4. The government shall implement, in relation to the different entities entrusted with keeping accounting records and the different types of securities, whether or not admitted to trading on official secondary markets or on multilateral trading facilities, the rules for the organisation and operation of the relevant registers, the legal status of the different accounts of eligible securities, the guarantees and other requirements that may be applicable to them, the systems for the identification and control of securities represented by book-entries, as well as the relations of those entities with issuers and their involvement in the administration fees. The conditions and cases in which central securities depositories may be authorised to carry out the direct keeping of client securities accounts in the central register may be determined by regulation.

**Article 10.** *Creation of the securities represented by means of book-entries.*

1. Securities represented by book-entry shall be classified as such by virtue of their entry in the relevant accounting records of the entity in charge of the accounting records and from which point they shall be subject to the provisions of this Part.

2. Subscribers for securities represented by book-entry shall be entitled to have the relevant entries made in their favour free of charge.

**Article 11.** *Transfer.*

1. 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.

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

3. 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

accounting records shall not be liable for any claim for their recovery unless the said third party acted in bad faith or with gross negligence at the time of purchase.

4. *Vis-à-vis* a purchaser in good faith of securities represented by book-entries, an issuer may only raise the objections arising from the registration in connection with the issuance document provided for under Article 7 and those which the issuer would have been able to raise had the securities been represented by certificates.

5. In order to be valid, the subscription for, or transfer of, securities shall only require the intervention of a notary when such securities, not admitted to trading on an official secondary market, are represented by bearer certificates, and the subscription or transfer is not performed with the participation or intermediation of a broker-dealer or broker, or a credit institution.

**Article 12.** *Creation of limited rights in rem and other liens.*

1. The creation of limited rights *in rem* or liens of any other kind on securities represented by book-entry shall be recorded in the relevant book. The recording of a pledge is equivalent to delivery of possession of the security.

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

**Article 13.** *Registered entitlement and chain of title.*

1. Any person appearing as the legitimate owner according to the accounting 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.

2. Any issuer which, in good faith and without gross negligence, provides a benefit to such certified owner shall be held harmless even if the said person is not the owner of the security.

3. 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 14.** *Certificates of entitlement.*

1. The entitlement to transfer and exercise the rights deriving from securities represented by book-entry may be substantiated by showing certificates duly issued by the entities responsible for accounting records, in accordance with their entries.

2. These certificates shall confer no rights other than those relating to the said entitlement. Any dispositions made of such certificates shall be null and void.

3. No more than one certificate may be issued for the same securities and for the exercise of the same rights.

4. Entities entrusted with keeping accounting records and members of securities markets may not process transfers or pledges or make the relevant entries until the person making the disposition returns the certificates previously issued to them. The obligation to return the certificate lapses when the certificate has expired.

**Article 15.** *Transfer of securities and pro rata rule.*

1. In the event of insolvency of an entity responsible for keeping accounting records of securities represented by book-entries or of an entity participating in the record-keeping system, the holders of securities recorded in those registers shall 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 102(2) and 193(2)(e).

2. For the purposes of this article, the insolvency judge and the insolvency administrators shall safeguard the rights deriving from the settlement transactions under way at the time that any of the entities to which the above paragraph refers to declares their insolvency, according to the rules on clearing, settlement and registration.

3. Central securities depositories and other entities responsible for keeping records of securities represented by book-entries shall ensure the integrity of securities issuances. Registration systems operated by central securities depositories shall offer sufficient guarantees that there are no discrepancies between the central register and the detailed registers. To this end, in addition to the provisions of this Act, the supervisory mechanisms available to the central securities depositories and the control systems of their participating entities, the situations in which possible incidents that have occurred shall be notified to the supervisory authorities, as well as the mechanisms and time limits for their resolution shall be established by regulation.

4. At any event and without prejudice to the provisions of the previous paragraph, when the balances of securities with the same ISIN (International Securities Identification Number) entered in the set of general third-party accounts of a participating entity in the central register are not sufficient to fully satisfy the rights of the holders of securities with the same ISIN entered in the detailed register maintained by the said participating entity, the balance recorded in the said set of general third-party accounts shall be distributed pro rata according to the rights of the holders registered in the detailed register. Aggrieved holders shall have a claim against the participating entity for undelivered securities.

5. 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 apply to the result of the pro rata rule and the debt claims *vis-à-vis* the participating entity which, where applicable, exist for the part not paid in securities.

## TITLE II

### National Securities Market Commission

#### PART I

##### General provisions

##### **Article 16.** *Legal nature and regime.*

1. The National Securities Market Commission (CNMV) 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 the exercise of its public functions, and in the absence of the provisions of this Act and the regulations that complete or implement it, the National Securities Market Commission shall act in accordance with the provisions of Act 39/2015, of 1 October, on the common administrative procedure of the public administrations, and Act 40/2015, of 1 October, on the legal system of the public sector.

3. The contracts entered into by the National Securities Market Commission shall comply with the provisions of the Consolidated Text of the Act governing public administration contracts, approved by Royal Legislative Decree 3/2011 [repealed], of 14 November.

4. The CNMV shall also be governed by the provisions applicable to it under Act 47/2003, of 26 November, on the general budget.

5. Property acquisitions by the CNMV shall be subject, without exception, to private law.

6. The government and the Ministry of Economy and Competitiveness shall exercise *vis-à-vis* the National Securities Market Commission the powers attributed thereto by this Act, with strict respect for its sphere of autonomy.

**Article 17.** *Functions of the National Securities Market Commission.*

1. The National Securities Market Commission is the competent body for the supervision and oversight of the securities markets and for 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.

2. 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.

3. The National Securities Market Commission shall advise the government and the Ministry of Economy and Competitiveness and, as appropriate, the equivalent regional government bodies 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.

4. 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 and Competitiveness. 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 Parliament may require.

The report indicated in the previous paragraph shall include a report on the supervisory function of the National Securities Market Commission in relation to the actions and procedures carried out in this area and from which information may be deduced on the effectiveness and efficiency of such procedures and actions. This report shall include a report by the internal control body on the conformity of the resolutions adopted by the governing bodies of the National Securities Market Commission with the procedural regulations applicable in each case. This report must be approved by the Board of the National Securities Market Commission and shall be sent to the Spanish Parliament and Government of the Nation.

**Article 18.** *Personnel at the service of the National Securities Market Commission.*

1. Personnel serving at the National Securities Market Commission shall be attached to the CNMV by means of a relationship subject to employment law rules. 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.

2. The National Securities Market Commission shall decide on the advisability of calling personnel selection processes intended to cover the vacancies of the staff approved in the operating budget and capital of the entity, such processes being exempt from the Public Employment Offer.

3. National Securities Market Commission personnel shall be subject to Act 53/1984, of 26 December, on the incompatibilities of personnel serving the public administration services.

4. National Securities Market Commission personnel shall be obliged to disclose any transactions 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. This provision shall determine the limits to which the said personnel shall be subject in relation to the acquisition, sale or availability of such securities.

**Article 19.** *Budget and economic and financial control.*

1. The National Securities Market Commission shall prepare a draft budget on a yearly basis, the structure of which shall be provided for by the Ministry of the Treasury and Public Administration Services, and the CNMV shall send this draft to the said ministerial department for approval by the government in order for it to be put before Parliament within the General State Budget. Changes to the budget of the National Securities Market Commission that do not exceed 5% of the budget must be authorised by the Minister for the Treasury and Public Administration Services; any other changes must be authorised by the government.

2. 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 Central Government Comptroller General, without prejudice to the functions of the Spanish Court of Auditors.

**Article 20** *Internal Regulation of the National Securities Market Commission and internal control.*

1. The Internal Regulation must be approved by the National Securities Market Commission Board, in which it shall establish:

- (a) The organic structure of the CNMV.
- (b) The allocation of powers among the various bodies.
- (c) The internal procedures.

(d) The specific system applicable to personnel when they cease to provide services at the CNMV, without prejudice in this case to the provisions of Article 18(3) and Article 29, with regard to incompatibility systems.

(e) Procedures to hire personnel, in accordance with the principles referred to under Article 18.

(f) And any questions relating to the functions and actions of the National Securities Market Commission that are required by the provisions of this Act.

2. The National Securities Market Commission shall have an internal control body whose functional dependence and reporting capacity shall be governed by the principles of impartiality, objectivity and avoidance of conflicts of interest.

**Article 21.** *Regulatory capacity of the National Securities Market Commission.*

1. 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 Minister for Economy and Competitiveness, provided that such statutory instruments expressly empower it to do so.

2. The provisions issued by the National Securities Market Commission referred to in the preceding paragraph shall be drafted by the CNMV on the basis of the appropriate technical and legal reports from its competent departments. Such provisions shall be known as Circulars. They shall be approved by the CNMV Board and shall not take effect until their publication in the Official State Gazette, and they shall enter into force in accordance with the provisions provided for under Article 2, paragraph 1 of the Civil Code.

3. The National Securities Market Commission may prepare technical guidelines, addressed to the supervised entities and groups, indicating the criteria, practices, methodologies and procedures it considers adequate for compliance with the legislation applicable thereto. These guidelines, which must be made public, may include the criteria that the National Securities Market Commission shall follow in the exercise of its supervisory activities. The National Securities Market Commission may require the supervised entities and groups to provide an explanation of the reasons, if any, why they have departed from such criteria, practices, methodologies and procedures.

4. The National Securities Market Commission may adopt, and transmit as such to entities and groups, as well as develop, supplement or adapt the guidelines on such matters approved by international bodies or committees active in the regulation and supervision of the securities market.

**Article 22.** *Appeals against provisions and resolutions of the National Securities Market Commission.*

1. 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 judicial review courts.

2. However, the following are exempt from the rule provided for in the previous paragraph:

(a) Resolutions dealing with sanctions shall be subject to the system provided for under Article 273.

(b) Resolutions dealing with questions of the intervention and replacement of directors shall be subject to the system provided for under Article 311.

PART II

**Organisation**

**Article 23.** *The Board of the National Securities Market Commission.*

1. 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 for Economy and Competitiveness in implementation of this Act.

2. The Board of the National Securities Market Commission shall consist of:

(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 for Economy and Competitiveness.

(b) The Secretary General of the Treasury and Financial Policy and the Deputy Governor of the Bank of Spain shall automatically be Board members.

(c) Three Board members appointed by the Minister for Economy and Competitiveness from among persons of acknowledged competence in securities market matters.

3. The Secretary, who shall not have voting rights, shall be appointed by the Board from among the persons employed by the CNMV.

**Article 24.** *Powers of the Board of the National Securities Market Commission.*

1. Within the framework of the functions attributed to the National Securities Market Commission by Article 17 and for the exercise of the powers conferred on the Board by Article 23, the Board of the National Securities Market Commission shall have the following powers:

(a) Approve the Circulars referred to under Article 21.

(b) Approve the Internal Regulation of the National Securities Market Commission referred to under Article 20.

(c) Approve the CNMV's draft budget.

(d) Constitute the Executive Committee, regulated under Article 26.

(e) Make appointments to the executive positions of the National Securities Market Commission, at the proposal of its President.

(f) Approve the annual reports referred to under Article 17.

(g) Approve or propose all matters that correspond to it according to law.

2. Within three months from the time when any Board member 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, the Vice-President and the Executive Committee.

**Article 25.** *Duties of the President and Vice-President of the National Securities Market Commission.*

1. The President of the National Securities Market Commission shall have the following duties:

- (a) Legally represent the CNMV.
- (b) Convene the ordinary and extraordinary meetings of the Board and Executive Committee of the National Securities Market Commission.
- (c) Direct and coordinate the activities of all the management bodies of the National Securities Market Commission.
- (d) Allocate the CNMV's costs and payments.
- (e) Sign contracts and agreements on behalf of the National Securities Market Commission.
- (f) Lead the CNMV's entire workforce.
- (g) Exercise the powers expressly conferred thereon by the Board.
- (h) Execute the other duties assigned to them by prevailing legislation.

2. 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 under Article 30.
- (c) Act as Vice-President of the National Securities Market Commission Executive Committee.
- (d) Execute the duties delegated thereon by the President or the Board.

3. In the event of vacancy, absence or illness, the Vice-President shall be replaced by the most senior of the Board members provided for under Article 23(2)(c) of this Act or, in the event of two or more Board members having the same seniority, by the eldest.

**Article 26.** *The Executive Committee of the National Securities Market Commission.*

1. The Executive Committee shall consist of the President, the Vice-President and the Board members provided for under Article 23(2)(c). The Secretary of the Board of the National Securities Market Commission shall be the Secretary of the Executive Committee, but shall not have voting rights.

2. 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 CNMV's various management bodies, without prejudice to the powers conferred on the President.
- (d) Approve, within the scope of private law, the CNMV's asset acquisitions and disposals.

(e) Grant the administrative authorisations for which it is empowered by the Board and exercise the powers expressly conferred thereon it by the Board.

**Article 27.** *Mandate of the President, Vice-President and Board members.*

1. The President, Vice-President and Board members, as provided for under Article 23(2)(c), shall hold office for four years. Upon expiry, they may be re-appointed for one further term only.

2. If the President, Vice-President or any of the Board members provided for under Article 23(2)(c) should retire or be removed during their term of office, their successor's term shall expire at the end of the predecessor's term of office. Should such expiry take place within one year from appointment to office, the limit provided for in the last sentence of the preceding paragraph shall not apply and the said term may be renewed twice.

**Article 28.** *Removal of the President, Vice-President and Board members.*

1. The President and Vice-President shall leave office on the following grounds:

- (a) Expiry 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 Competitiveness.

2. The same grounds for removal shall be applicable to the Board members provided for under Article 23(2)(c) and the Minister for Economy and Competitiveness shall have the powers to accept their resignation or decide upon their removal.

**Article 29.** *System of incompatibilities.*

1. The President, Vice-President and Board members of the National Securities Market Commission shall be subject to the system of incompatibilities applicable to Senior Public Officers.

2. Upon removal 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 system of incompatibilities shall be provided for by regulation.

**Article 30.** *The National Securities Market Commission Advisory Committee.*

1. The National Securities Market Commission Advisory Committee is the Board's advisory body.

2. The said Committee shall be chaired by the Vice-President of the Commission, who shall not have a vote on its reports. The number of Committee members and the manner in which they are appointed shall be determined by regulation.

3. The Committee members shall be appointed in representation of the market infrastructures, issuers, investors, credit institutions, insurance and reinsurance entities,

professional groups designated by the National Securities Market Commission and investment guarantee funds, plus another representative from each of the regional governments with jurisdiction in securities market matters and in whose territory there is an official secondary market.

**Article 31.** *Report of the Advisory Committee.*

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

2. The Committee's report shall be mandatory with regard to the following:

(a) The provisions issued by the National Securities Market Commission referred to under Article 21.

(b) The authorisation, revocation and corporate transactions of investment firms and other persons or entities acting under the scope of Article 145(2), when so required by regulation, 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 Member States of the European Union, and other parties subject to the securities market, when so required by regulation, based on the economic and legal importance of such parties.

3. 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 Competitiveness, in order to implement the principle of the right of affected sectors to a hearing as part of the procedure for drawing up administrative provisions.

**Article 32.** *Economic resources of the National Securities Market Commission.*

1. The initial capital of the National Securities Market Commission shall consist of an initial provision of EUR 3,005,060.52.

2. 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 Competitiveness from the State Budget.

3. 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 provided for under Article 17.

(c) Create reserves to ensure the availability of sufficient working capital for its operating needs.

(d) Transfers to the State as revenues for the year in which the accounts corresponding to the year in which the said surplus was registered were approved.

4. Together with the accounts for the year, the Board of the National Securities Market Commission shall submit, for approval by the government, a proposal for the distribution of any surplus and an explanatory report to the effect that the said proposal meets the requirements provided for in paragraphs a), b) and c) above.

### TITLE III

#### **The primary securities market**

#### PART I

#### **General provisions**

**Article 33.** *Freedom of issue.*

1. Issuances of securities shall not require prior administrative authorisation and may be placed using any appropriate technique at the choice of the issuer.

2. Notwithstanding the provisions of the preceding paragraph, the issuer must be validly incorporated in accordance with the law of the country in which it is domiciled and must operate in accordance with its deed of incorporation and articles of association or equivalent documents.

In addition, the securities must comply with the legal regime to which they are subject and, in cases where the issuer is obliged to draw up a prospectus, their placement must comply with the terms thereof.

3. The securities shall be freely transferable.

**Article 34.** *Obligation to publish a prospectus.*

1. The prior registration and publication of a prospectus approved by the National Securities Market Commission shall be obligatory for:

- (a) The making of a public offer for the sale or subscription of securities.
- (b) The admission of securities to trading on an official secondary market.

2. Notwithstanding the provisions of the preceding paragraph, exceptions to the obligation to publish a prospectus in public offers for sale or subscription shall be established by regulation, depending on the nature of the issuer or of the securities, the value of the offer or the nature or number of the investors for whom they are intended, as well as the adaptations of the requirements established in the regulation of admissions that are necessary for public offers.

3. For public offers for the sale or subscription of securities not exempted from the obligation to publish an prospectus, all regulations relating to the admission of securities to trading on regulated markets contained in this title shall apply to them, with the adaptations

and exceptions that are determined by regulation. For these purposes, it should be noted that Article 33(3) may not be applied to public offers for the sale or subscription of securities.

**Article 35.** *Public offer for the sale or subscription of securities.*

1. A public offer for the sale or subscription of securities is any communication to persons in any form or by any means that presents sufficient information on the terms of the offer and of the securities being offered, so as to enable an investor to decide on the acquisition or subscription of these securities.

2. The obligation to publish a prospectus shall not apply to any of the following types of offers, which, consequently for the purposes of this Act, shall not be considered a public offer:

(a) An offer of securities addressed exclusively to qualified investors.

(b) An offer of securities addressed to fewer than 150 natural or legal persons by a Member State, not including qualified investors.

(c) An offer of securities addressed to investors acquiring securities for a minimum amount of EUR 100,000 per investor, for each separate offer.

(d) An offer of securities the denomination per unit of which is at least EUR 100,000.

(e) An offer of securities for a total amount in the European Union of less than EUR 5,000,000, which shall be calculated over a period of 12 months.

3. In the case of the placement of issuances referred to in letters (b), (c), (d) and (e) of the preceding paragraph, addressed to the general public using any form of marketing communication, an investment firm must intervene for the purposes of marketing the securities issued. This obligation shall not apply to the exercise of the activity proper to duly authorised crowdfunding platforms.

**Article 36.** *Information requirements for admission to trading on an official secondary market.*

1. The admission of securities to trading on an official secondary market shall not require prior administrative authorisation. Nonetheless, the following requirements must be previously met:

(a) The documents certifying that the issuer and the securities are subject to the legal regime which is applicable thereto must be presented and registered with the National Securities Market Commission.

(b) The issuer's accounts, authorised and audited pursuant to the legislation applicable to the issuer, must be presented and registered with the National Securities Market Commission. The number of financial years to be included in the accounts shall be determined by regulation.

(c) A prospectus must be presented to, vetted by and registered with the National Securities Market Commission, and it must be made public.

2. In the case of non-equity securities issued by the State, regional governments and local authorities, compliance with the foregoing requirements shall not be necessary.

Nevertheless, these issuers may draw up a prospectus in accordance with the provisions of this Part. This prospectus shall have cross-border enforceability pursuant to Article 39.

3. In addition, the government may grant partial or total exemption from the requirements provided for under Article 33 and paragraph 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 addressed. 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 on secondary markets should help ensure that securities are traded in a correct, efficient, and orderly fashion. The said procedure, and the conditions that must be satisfied for approval of the prospectus to be granted by the National Securities Market Commission and for its publication, shall be determined by regulation. The absence of an express resolution by the National Securities Market Commission regarding the prospectus during the term provided for by regulation is tantamount to rejection.

5. Advertising relating to admission to trading on a regulated market shall comply with the provisions of Article 240.

**Article 37.** *Contents of prospectus.*

1. The prospectus shall contain information concerning the issuer and the securities to be admitted to trading on an official secondary market.

According to the particular nature of the issuer and of the securities, the information in the prospectus shall 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 the 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. Except for admissions to trading of non-equity securities whose unit nominal value is equal to or greater than EUR 100,000, the prospectus shall contain a summary which, drawn up in a standardised format, in a concise manner and in non-technical language, shall provide key information in order to aid investors when considering whether to invest in the securities.

4. The key information referred to in the preceding paragraph shall be understood to be the essential and properly structured information to be provided to investors so that they can understand the nature and risks inherent in the issuer, the guarantor and the securities offered to them or to be admitted to trading on a regulated market, and that they can decide which offers of securities should continue to be examined.

Without prejudice to what is determined by regulation, at least the following elements shall form part of the fundamental information:

(a) A brief description of the essential characteristics and risks associated with the issuer and potential guarantors, including assets, liabilities and financial position.

(b) A brief description of the essential characteristics and risks associated with the investment in the securities concerned, including the rights attached to the securities.

(c) The general terms of the offer, including the estimated expenses imposed on the investor by the issuer or the offeror.

- (d) Information on admission to trading.
- (e) The reasons for the offer and the use of the proceeds.

5. Likewise, in the summary referred to in paragraph 3, it shall be noted that:

- (1) It should be read as an introduction to the prospectus.
- (2) Any decision to invest in the securities must be based on the investor's consideration of the prospectus as a whole.
- (3) No civil liability shall attach to any person solely on the basis of the summary, unless the summary is misleading, inaccurate or inconsistent with the other parts of the prospectus, or does not provide, when read together with the other parts of the prospectus, key information in order to aid investors when considering whether to invest in the securities.

6. The content of the different types of prospectus 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, the CNMV shall be entitled to implement or update the contents of the order.

The Minister for Economy and Competitiveness or, with their express authorisation, the National Securities Market Commission, shall also have the power to determine the forms for the different types of prospectus, the documents which must be attached thereto, and the situations in which the information contained in the prospectus may be incorporated by reference.

**Article 38.** *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.

The following persons shall also be liable:

- (a) The guarantor of the securities in respect of the information to be drawn up.
- (b) The lead entity for the audits it carries out in accordance with terms to be provided for by regulation.
- (c) Other persons 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 authorised the contents of the prospectus.

The conditions governing the liability of the persons mentioned in this paragraph shall be established by regulation.

2. The persons responsible for the information which appears in the prospectus shall be clearly identified in the prospectus with their name and position in the case of natural persons or, in the case of legal persons, 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 the said document.

3. In accordance with the conditions provided for by regulation, any of the persons indicated in the previous paragraphs 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 liability shall expire three years from the time when the claimant was in a position to be aware of the inaccuracy or omissions in the contents of the prospectus.

4. It shall not be possible to claim any liability from the persons mentioned in the previous paragraphs on the basis of the summary or the translation thereof, unless it is misleading, inaccurate or inconsistent with the other parts of the prospectus, or does not provide, when read together with the other parts of the prospectus, key information in order to aid investors when considering whether to invest in the securities.

**Article 39.** *Cross-border validity of prospectus.*

1. Notwithstanding the provisions of Article 40, a prospectus approved by the National Securities Market Commission, and any supplements thereto, shall be valid for admission to trading in any other Member State of the European Union, 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 by law.

2. Likewise, without prejudice to the provisions of the aforementioned Article 40, the prospectus approved by the competent authority of the home State, as well as its supplements, shall be valid for admission to trading in Spain, provided that the said competent authority notifies 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.

3. 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.

**Article 40.** *Preventive measures.*

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 offer have committed irregularities or if it observes a breach of the issuer's obligations imposed due to admission to trading 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 offer persists with its infringement of the law or regulations, the National Securities Market Commission shall, 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.

PART II

**Issuances of bonds or other securities recognising or creating debt claims**

**Article 41.** *Exemption from requirements.*

1. The provisions of this article shall be applicable to issuances of bonds or other securities which recognise or create a debt claim issued by Spanish companies that:

(a) Are to be the object of a public offer for sale or are to be admitted to trading 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 provided for in the preceding Part, or

(b) are to be admitted to trading on a multilateral trading facility established in Spain.

Issuances of bonds or other securities that recognise or create a debt claim which are referred to in Title XI of the Consolidated Text of the Corporate Enterprises Act, approved by Royal Legislative Decree 1/2010, of 2 July, shall also be subject to the provisions of the preceding paragraph provided that they meet the conditions established therein.

The equity securities referred to in the last paragraph of Article 7(1), 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 article shall not require a public instrument to be granted.

Advertising of all the acts concerning the issuances of securities referred to in paragraph 1(a) must comply with the provisions of this Act and its implementing regulations.

The advertising of all acts relating to issuances of securities referred to in paragraph 1(b) shall be made through the systems established for that purpose by multilateral trading facilities.

3. For the issuances referred to in paragraph 1(a), the conditions of each issuance, and the capacity of the issuer to impose such conditions, when not regulated by law, shall be subject to the clauses contained in the articles of association of the issuer and the provisions of the issuance agreement and prospectus.

4. For the issuances referred to in paragraph 1(b), the legally required terms for the issuance and the characteristics of the securities shall be stated in a certificate issued by the authorised persons in accordance with the legislation in force. This certification shall be considered apt to register the values in book-entries in accordance with the provisions of Article 7.

**Article 42.** *Scope of application of the syndicate of bond-holders.*

Part VI of Title XI of the Consolidated Text of the Corporate Enterprises Act, approved by Legislative Royal Decree 1/2010, of 2 July, shall apply to issuances of bonds or other securities that recognise or create debt and that have the condition of a public offer for subscription when:

(a) Their terms and conditions are governed by Spanish law or by the law of a State that is neither a member of the European Union nor a member of the Organisation for Economic Co-operation and Development, and

(b) this takes place in Spanish territory or its admission to trading occurs on a Spanish official secondary market or a multilateral trading facility established in Spain.

#### TITLE IV

### Official secondary securities markets

#### PART I

### General provisions

#### **Article 43.** *Definition.*

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 for in this Part and its implementing regulations, subject at any event to conditions of access, admission to trading, operating procedures, reporting and advertising.

2. The regulated markets in Spain are called official secondary markets. For these purposes, the following shall be considered to be official secondary markets:

- (a) The stock exchanges.
- (b) The Public-Debt Book-Entry Market .
- (c) The futures and options markets, whatever the underlying asset, whether financial or nonfinancial.
- (d) The AIAF fixed-income market.
- (e) Any other State-wide markets which, due to meeting the requirements provided for in paragraph 1, are authorised within the framework of the provisions of this Act and its implementing regulations, and those regional markets which are authorised by the regional governments with jurisdiction in this area.

3. In the terms provided for in this Act and its implementing regulations, securities and other financial instruments of suitable characteristics may be traded on 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 changes in the list.

#### **Article 44.** *Authorisation.*

**(Repealed).**

**Article 45.** *Requirements for obtaining authorisation.*

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

(a) Designate a market operator in the form of a public limited company whose basic functions shall be to organise, manage and supervise market activity.

(b) Present the draft articles of association of the market operator.

(c) Draw up a programme of activities detailing the market's organic structure, the financial instruments that may be traded thereon and the services which the market operator plans to provide.

(d) The market operator's Board members 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 participation in the market operator must be suitable, as provided for under Article 182.

(f) The market operator must meet the minimum requirements as to share capital 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 the negotiation of financial instruments, issuers, members, guarantee system, types of transactions, negotiation, rules on clearing, settlement and registration of transactions, distribution of dividends and other corporate activities, and supervision and discipline of the market, as well as organisational measures relating to conflicts of interest and risk management, among other matters. Provision shall also be made for consultation with issuers of financial instruments admitted to trading on the market and with members of the market when a substantial amendment to its regulation is proposed.

2. Except as provided for by regulation, any amendment to the articles of association of the market operator or to the market regulation shall require prior approval from the National Securities Market Commission.

3. The rules necessary for the application of this article shall be implemented by way of regulation.

**Article 46.** *Conditions for exercise of business.*

To retain the authorisation, official secondary markets must at all times fulfil the requirements established in the preceding article and the provisions of this Part.

**Article 47.** *Appointment of Board members and executives.*

1. Once authorisation to commence operations has been obtained, appointments of Board members and executives of the market operator must be approved by the National Securities Market Commission or, as the case may be, by the regional governments with jurisdiction in this matter, in order to ascertain whether the appointees fulfil the conditions provided for under Article 152(1)(f) and 152(1)(g).

2. 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.

**Article 48.** *Holdings in companies that manage official secondary markets or regulated markets outside Spain.*

1. The direct or indirect holding of capital in the companies that manage Spanish official secondary markets shall be subject to the system governing significant holdings provided for in Part IV of Title V for investment firms, in the terms established by regulation; a significant holding shall be deemed to be any holding which, directly or indirectly, amounts to at least 1% of the share capital 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 regulation.

Without prejudice to the power to object to a significant holding in the terms of Article 176, the National Securities Market Commission may oppose the acquisition of a significant holding in those companies when it deems this necessary in order to safeguard the orderly functioning of the markets or to avoid distortions therein, or, in the case of buyers from third countries, if Spanish entities do not receive equivalent treatment in the buyer's home country. The National Securities Market Commission shall notify the Ministry of Economy and Competitiveness of its opposition to the acquisition of the significant holding and the reasons on which it is based.

2. The direct or indirect holding by companies which manage Spanish official secondary markets of a holding in other companies that manage regulated markets outside Spain shall require prior authorisation from the National Securities Market Commission, which may, as appropriate, oppose the said holding within a period of two months from the date on which it was informed thereof. If the Commission makes no statement within the said period, it shall be understood to have accepted the request.

**Article 49.** *Revocation of the authorisation.*

1. The National Securities Market Commission 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 a 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 unlawful means.

(d) Where the requirements, on the basis of which the authorisation was granted, are no longer met.

(e) In the event of a very serious infringement, as provided for in Title VIII.

2. The National Securities Market Commission shall notify the Ministry of Economy and Competitiveness of the revocation of the authorisation. Any revocation of an authorisation

shall be notified by the National Securities Market Commission to the European Securities and Markets Authority.

3. The precise rules for the application of this article shall be implemented by regulation.

**Article 50.** *Replacement of the market operator.*

1. Replacement of the market operator of an official secondary market shall require authorisation from the National Securities Market Commission.

2. The deadline for resolutions in this case shall be three months from the presentation of the application or the completion of the required documentation. If no resolution is issued by the deadline, the application is understood to have been rejected.

3. The National Securities Market Commission shall notify the Ministry of Economy and Competitiveness of the opening of the authorisation procedure, indicating the essential elements of the file to be processed and its completion, indicating the meaning of the resolution adopted by the National Securities Market Commission.

PART II

**Official secondary markets in particular**

**Article 51.** *Regional official secondary markets.*

1. In the case of regional markets, the authorisation referred to under Article 44 shall be granted by the regional government with jurisdiction in the matter.

2. Except as provided by regulation, any amendment to the articles of association of the market operator or to the market regulation shall require prior approval by the regional government with jurisdiction in this matter, in connection with markets in their territory.

3. In the case of regional markets, the authorisation for the replacement of an official secondary market operator shall be granted by the regional government with jurisdiction in the matter.

4. The regional governments with jurisdiction in the matter may establish such additional organisational measures as they deem appropriate with respect to regional markets.

**Section 1. Stock exchanges**

**Article 52.** *Creation.*

The authority to create stock exchanges lies with the National Securities Market Commission, in accordance with the provisions of Article 44, except in the case of stock exchanges located in autonomous regions with a statute of autonomy that grant them jurisdiction in this area. In this case, the authority to create stock exchanges shall rest with the corresponding regional government.

**Article 53.** *Purpose.*

1. The purpose of the stock exchanges shall be to trade those categories of transferable securities and other financial instruments provided for under Article 2 whose characteristics make them suitable for this purpose in accordance with the market regulation, as provided for under Article 45.

2. Financial instruments admitted to trading on 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 registration, clearing and settlement systems must be established.

**Article 54.** *Market Operator.*

1. The stock exchanges shall be managed and administered by a market operator, as provided for under Article 45, which shall be responsible for their internal organisation and functioning, and shall own the necessary resources for such ends, this being their main purpose.

2. The market operators may perform other ancillary services, although they shall not have the legal status of members of the relevant stock exchanges, nor may they carry out any financial intermediation activities, nor the activities listed under Articles 140 and 141.

3. Market operators shall have a share capital represented by nominative shares and must have a board of directors composed of not less than five persons, and at least one managing director.

4. The regional governments with jurisdiction in this matter may establish the organisation that they deem appropriate for stock exchanges located in their region.

**Article 55.** *Members.*

The entities which comply with the provisions of Article 69 may become members of the stock exchanges.

**Article 56.** *Stock Exchange Interconnection System.*

1. The stock exchanges shall establish a nationwide Stock Exchange Interconnection System linked by a computer network, on which those securities determined by the National Securities Market Commission from among those previously admitted to trading on at least two stock exchanges shall be traded, at the request of the issuer and on the basis of a favourable report from the *Sociedad de Bolsas* as referred to in the following article, in accordance with the provisions to be established by regulation.

2. The National Securities Market Commission may order that inclusion of an issuance of securities in the Stock Exchange Interconnection System entails trading of the issuance through that system alone, and it may demand as a prerequisite that the issuance be included in a central securities depository.

**Article 57.** *The Sociedad de Bolsas.*

1. The Stock Exchange Interconnection System shall be managed by the *Sociedad de Bolsas*, which shall consist of the market operators of the stock exchange existing at any given time.

2. The *Sociedad de Bolsas* shall own the necessary resources for the functioning of the Stock Exchange Interconnection System and shall be responsible for the said system as its market operator, this being its sole purpose.

3. The capital of the *Sociedad de Bolsas* shall be distributed equally among the said market operators. Its Board of Directors shall consist of one representative from each stock exchange plus one further representative, elected by a majority of those market operators, who shall act as President.

4. The *Sociedad de Bolsas*' articles of association, any amendments thereto, and the appointment of its Board members shall require approval by the National Securities Market Commission, on the basis of a report by the regional governments with jurisdiction in this matter.

**Article 58.** *Transactions on the stock exchange.*

1. Each stock trade shall be allocated to a sole stock exchange or to the Stock Exchange Interconnection System.

2. In the case of transactions in which members of different stock exchanges take part, the criteria to be followed for the said allocation shall be established by regulation.

**Section 2. The Public-Debt Book-Entry Market**

**Article 59.** *Purpose.*

1. The Public-Debt Book-Entry Market 's exclusive purpose shall be to trade fixed-income securities represented by book-entries and issued by the State, the Official Credit Institute and, at their request, the European Central Bank, the national Central Banks of the European Union, or the regional governments 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 regulation, as well as trading in other financial instruments, in all the foregoing cases in accordance with the provisions of the market regulation as provided for under Article 45. At any event, the securities must conform to the technical specifications to be established for this purpose in the market regulation.

2. Securities admitted to trading on this market may be traded on other official secondary markets, in the terms to be established in the corresponding market regulation.

**Article 60.** *Market operator.*

1. The Bank of Spain shall have the status of market operator of the Public-Debt Book-Entry Market .

2. The Bank of Spain shall carry out the financial services for book-entry securities when it arranges to do so with the issuers and on their behalf, in the terms to be established by the market regulation.

3. The replacement of the market operator of the Public-Debt Book-Entry Market shall be governed by the provisions of Article 50.

4. The Public-Debt Book-Entry Market shall be governed by this Act and its implementing regulations, and by a regulation, as provided for under Article 45.

5. The regional governments with jurisdiction 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 61. *Members.***

1. In addition to the Bank of Spain, membership of the Public-Debt Book-Entry Market may be granted to those entities that meet the requirements provided for under Article 69 of this Act, in the terms of this article and in accordance with the provisions of the market regulation.

2. Market members may operate on their own account or on that of third parties, with or without representation, in accordance with the legislation governing their activities.

**Article 62. *Registration of securities.***

1. The *Sociedad de Gestión de los Sistemas de Registro, Compensación y Liquidación de Valores* (The Management Company of the Securities Registration, Clearing and Settlement Systems) referred to in the Sixth Additional Provision, hereinafter referred to as the *Sociedad de Sistemas*, and its member entities so authorised by virtue of their status as registered dealers in the Public-Debt Market shall be responsible for the registration of the securities admitted to trading on the Public-Debt Book-Entry Market .

2. 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 registration system of the *Sociedad de Sistemas*.

**Article 63. *Market operators.***

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 registration system under the supervision of the *Sociedad de Sistemas*, 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 *Sociedad de Sistemas* which shall be the exact counterparty of the aforementioned record 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 *Sociedad de Sistemas*, totally separate from the omnibus account provided for in the preceding paragraph.

4. In the terms to be established by regulation, 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 Competitiveness, 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 existence of insolvency proceedings shall not prevent the owners of the securities from receiving the cash generated from the exercise of their economic rights or the sale thereof.

6. If, in accordance with the provisions of Article 60(3), the Bank of Spain ceases to be the market operator, the powers attributed thereto in paragraphs 4 and 5 of this article shall lie with the National Securities Market Commission.

### *Section 3. Official secondary markets in future and options represented by book-entries*

#### **Article 64. Creation.**

1. Official secondary markets in future and options represented by book-entries may be created at a State level.

2. The authority to approve their creation shall lie with the Minister for Economy and Competitiveness, at the proposal of the National Securities Market Commission, in accordance with the provisions of Article 44.

3. In the case of regional markets, the authorisation for the creation of the market, as well as the other authorisations and approvals indicated in this article, shall lie with the regional governments with jurisdiction in the matter.

#### **Article 65. Purpose.**

1. The official secondary markets for futures and options shall cover futures contracts, options contracts and other derivative financial instruments, whatever the underlying asset, as defined by the market operator. The market operator shall organise the trading of such contracts.

2. The market operator shall ensure that all the contracts it issues are cleared by a central counterparty, subject to approval by the National Securities Market Commission.

#### **Article 66. Members.**

1. The entities provided for under Article 69 of this Act may be members of the secondary markets in futures and options.

2. Those entities whose principal purpose is to invest in organised markets and which meet the conditions as to resources and solvency established by the market regulation provided for under Article 68 may also be members, with capacity exclusively restricted to trading, either on their own account or on the account of entities of their group.

3. In the markets in futures and options with non-financial underlyings, attainment of membership by entities other than those provided for above may be determined by regulation,

provided that those entities meet the specialisation, professionalism and solvency requirements

**Article 67.** *Market operator.*

1. As provided for under Article 45, within the official secondary markets in futures and options, there shall be a market operator in the form of a public limited company whose basic functions shall be to organise, manage and supervise market activity.

2. Market operators may not carry out any brokerage activities or any of the activities provided for under Articles 140 and 141, except as provided for in this Act.

3 The amendment of the articles of association of the market operator shall require prior approval from the National Securities Market Commission, as provided for under Article 45, subject to the exceptions to be provided by regulation.

4. The market operator shall have a board of directors, consisting of at least five Board members, and, at least, one managing director. 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 regional government with jurisdiction in this matter, to ensure that the appointees meet the requirements of Article 152(1)(f).

**Article 68.** *Internal regulation.*

1. In addition to the rules of this Act and its implementing regulations, the secondary markets in futures and options 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 provided for under Article 45.

2. This 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 on the market, the contracts traded on the market, the legal relations between the market operator and the market members, on the one hand, and the clients operating on the market, the rules of supervision, the trading rules and any other aspects to be determined by regulation.

PART III

**Participation in official secondary markets**

**Article 69.** *Members of the official secondary markets.*

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 its implementing regulations or, in the case of markets subject to regional government jurisdiction, by the rules established by the regional governments with jurisdiction in this matter, provided that they conform to the provisions of this Title; and

(c) the conditions of access established by each market, which must, at any event, be transparent, non-discriminatory and based on objective criteria.

1 *bis*. The rules on access established by each market shall contain at least the internal operating rules applicable to the following matters:

- (a) The creation and administration of the regulated market.
- (b) Provisions relating to transactions carried out on the market.
- (c) Professional standards imposed on the staff of investment firms or credit institutions operating on the market.
- (d) The conditions established under the provisions of this Act for members or participants other than investment firms and credit institutions.
- (e) The rules and procedures for the clearing and settlement of transactions conducted on the regulated market.

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 169 of Title V, in the case of investment firms, or in accordance with Article 12 of Act 10/2014, of 26 June, on credit institutions (unified regulation, supervision and solvency) 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 the 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 provided for in Title V 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 National Securities Market Commission 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 General Secretariat 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 market operator of the official secondary market, having regard in particular to the special market functions which such persons may fulfil:

- (1) are suitable;
- (2) have a sufficient level of trading ability and competence;
- (3) have, where applicable, adequate organisational arrangements in place; 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 operator shall notify the list of its members to the National Securities Market Commission or the regional government with jurisdiction in this matter, 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 under Articles 209 to 218 and 221 to 224 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 70.** *Remote access.*

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 shall provide that information to the European Securities and Markets Authority, upon the latter's request, in accordance with the procedure and conditions provided for under 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 referral by the competent authority of the home Member State to the National Securities Market Commission of the market communication. 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 71.** *Member transactions on behalf of clients.*

1. All members of official secondary markets shall be obliged to comply, on behalf of their clients, with any orders they receive from the said clients for the trading of securities on the corresponding market.

2. Nevertheless, compliance with such obligations may be conditional:

(a) In the case of spot trades, 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.

(b) In forward transactions, upon the client furnishing such collateral or margin as the member may deem advisable, which must be at least those to be provided by regulation, if any.

3. 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 72.** *Member transactions on their own behalf.*

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.

**Article 73.** *Management of conflicts of interest of members of official secondary markets.*

1. All members of official secondary markets must disclose to the National Securities Market Commission any financial 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.

2. 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 74.** *Member fees.*

1. The members of an official secondary market shall freely determine the remuneration they receive for their participation in the trading of securities.

2. 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 Book-Entry Market, to the Bank of Spain, shall be a prerequisite for the application of such fees.

**Article 75.** *Performance of activity by members.*

1. With the aim of protecting investor interests and ensuring market integrity, the government may:

(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) Establish the rules 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 transpiring. 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 the said standard forms.

(c) Regulate which documents evidencing the performance of transactions on official secondary markets are to be provided to third parties by the members of the said markets.

(d) Establish the form and content 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 market operators or clearing and settlement systems of the relevant market.

2. The government may authorise the Minister for Economy and Competitiveness to implement the regulations to be established in application of this article. With regard to the provisions of paragraph d) above, the 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.

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

#### PART IV

### **Trading and transactions on an official secondary market**

**Article 76.** *Admission to trading on an official secondary market.*

1. The admission to trading 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 stock exchanges, the said vetting shall only be carried out once and shall be valid for all stock exchanges. Admission to trading on each of the official secondary markets shall also require the agreement of the market operator of the market in question, at the request of the issuer, which may make the request, 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 admitted to trading on official secondary securities markets and the necessary publication of the resolutions to be admitted to trading shall be determined by regulation. The requirements may differ for different categories of securities or markets. The requirements and procedure for continued admission to trading 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 shall be considered to be admitted to trading 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 regional governments shall be deemed to be admitted to trading 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 provided for in the foregoing paragraphs shall correspond to the regional governments with jurisdiction in the matter, with regard to securities traded exclusively on markets in the corresponding autonomous region, subject to fulfilment of the specific requirements demanded by the said markets.

**Article 77.** *Special features of the admission to trading on an official secondary market from a multilateral trading facility.*

1. Entities whose shares change from being traded on a multilateral trading facility to being traded on an official secondary market for a maximum transitional period of two years shall not be obliged to comply with the following obligations:

(a) The publication and dissemination of the second half-yearly financial report, provided for under Article 119(2).

(b) The publication and dissemination of the interim directors' statement, provided for under Article 120.

2. In order to benefit from the exemption provided for in the previous paragraph, the prospectus for admission to trading on the official secondary market must specify the entity's intention to take full or partial advantage of it, determining its duration. This indication shall be considered as necessary information for the purposes of Article 37(1).

3. Where the capitalisation of shares which are exclusively traded on a multilateral trading facility exceeds EUR 500,000,000 over a continuous period of more than six months, the issuer shall apply for admission to trading on a regulated market within a period of nine months. The operator of the multilateral trading facility shall ensure compliance with this obligation.

The National Securities Market Commission may set the terms under which companies of a strictly financial or investment nature shall be exempted from the above obligation, such as those regulated by Act 35/2003, of 4 November, on collective investment institutions and Act 22/2014, of 12 November, regulating venture capital firms, other closed-ended collective investment institutions and the management companies of closed-ended collective investment institutions and amending Act 35/2003, of 4 November, on collective investment institutions and Act 11/2009 of 26 October, on real estate investment listed companies.

4. In the cases covered in this article, the entity shall not be obliged to carry out measures aimed at avoiding a loss of shareholders in terms of the liquidity of the securities.

**Article 78.** *Additional rules established by the markets for admission to trading of financial instruments.*

**(Repealed).**

**Article 79.** *Obligations in the area of market abuse.*

**(Repealed).**

**Article 80.** *Suspension of financial instruments from trading.*

**(Repealed).**

**Article 81.** *Removal from trading.*

**(Repealed).**

**Article 82.** *Exclusion of voluntary trading.*

1. The issuer may request that a financial instrument be excluded from trading on an official secondary market.

Transactions by which shareholders of a listed company may become, wholly or partly, shareholders of an unlisted company shall be treated as equivalent to exclusions from trading.

2. When a company decides to exclude its shares from trading on the official secondary markets, it must announce a takeover bid for all the shares that it wishes to exclude.

3. The decision to exclude from trading and the decisions regarding the bid and the price must be approved by the general shareholders' meeting.

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 shall be provided with a report by the directors giving a detailed justification of the proposal and the price that is offered.

4. The National Securities Market Commission may grant a waiver of the obligation to announce 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 the right to their subscription.

5. In the case of a bid prior to exclusion from trading, the limit on acquisition of own shares provided for in the Consolidated Text of the Corporate Enterprises Act, approved by Royal Legislative Decree 1/2010, of 2 July, for shares admitted to trading on an official secondary market shall be 20% 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.

6. The conditions for pricing and other requirements for the takeover bids provided for in this paragraph shall be established by regulation.

**Article 83.** *Transactions.*

**(Repealed).**

**Article 84.** *Securities lending.*

1. Without prejudice to other forms of lending, securities admitted to trading on a secondary market may be lent for the purpose of subsequent disposal, for lending or to serve as collateral for a financial transaction.

2. 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.

3. Collateral shall not be required for loans of securities resulting from monetary policy transactions or public offers.

4. The Minister for Economy and Competitiveness and, with their 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.

## PART V

### **Limits on positions in commodity derivatives**

**Article 85.** *Limits on positions and controls on the management of positions in commodity derivatives.*

1. The CNMV shall establish and apply, under the terms established in Commission Delegated Regulation (EU) 2017/591, of 1 December 2016, and in the implementing regulations of this Act, position limits on the size of a net position that a person may hold at any time in commodity derivatives traded on Spanish trading venues and economically equivalent contracts traded outside the trading venue.

2. The limits on the position referred to in the previous paragraph shall be adopted in order to:

- (a) Prevent market abuse; and
- (b) facilitate orderly price formation and settlement conditions, including the prevention of market distorting positions, and ensure, in particular, convergence between the prices of derivatives in the month of supply and the spot prices of the underlying commodities, without prejudice to price formation in the market of the underlying commodities.

3. Position limits shall not apply to positions held by or on behalf of a non-financial company that reduce in an objectively measurable manner the risks directly related to the business activity of that non-financial company.

4. Investment firms or market operators of a trading venue dealing in commodity derivatives shall apply position management controls, for which purpose they shall have at least the following powers:

- (a) Supervision of open interest positions of persons,
- (b) access to information, including all relevant documentation, held by persons on the size and purpose of the position or exposure contracted, on the ultimate or underlying beneficial owners, on concerted actions and on the corresponding assets and liabilities of the underlying market,
- (c) to require a person to close or reduce a position temporarily or permanently, on a case-by-case basis, and unilaterally take appropriate measures to ensure closure or reduction in the event of non-compliance by the person concerned; and

(d) where appropriate, to require a person to temporarily provide liquidity to the market at an agreed price and size with the express intention of reducing the effects of a broad or dominant position.

Investment firms and market operators of a trading venue shall notify the CNMV of the details of the controls they intend to apply.

5. The limits on the positions referred to in paragraphs 1 and 2 and the controls on the management of the positions referred to in paragraph 4 shall meet with the following requirements:

- (a) They shall be transparent and non-discriminatory,
- (b) they shall specify how they apply to persons; and
- (c) they shall take account of the nature and composition of market participants and their use of the contracts subject to trading.

6. Any person situated or operating in Spanish territory must comply with the limits established in other Member States by the competent authorities for commodity derivative contracts.

7. The CNMV shall notify the European Securities and Markets Authority (ESMA) and other competent authorities in accordance with Articles 244 and 245 *bis* of the details of the exact position limitations that it intends to fix in accordance with the calculation method established by ESMA in paragraphs 1 and 2 and of the position control systems referred to in paragraph 4.

**Article 86.** *Communication of positions in commodity derivatives, emission allowances or derivatives thereof by category of holders of positions.*

1. Investment firms and market operators of a trading venue that trades commodity derivatives, emission allowances or derivatives thereof:

(a) Shall publish a weekly report on the aggregated positions held by the different categories of persons and entities in respect of the different commodity derivatives or emission allowances or derivatives thereof traded on its trading venue; and

(b) shall provide the CNMV, at least on a daily basis, with a full breakdown of the positions held by all persons and entities, including members or participants and their clients, on its trading venue.

2. Investment firms which trade commodity derivatives or emission allowances or derivatives thereof outside a trading venue shall provide the national competent authority of the trading venue with the largest turnover in respect of these same financial instruments, at least on a daily basis, with a full breakdown of their positions, as well as those of their clients and the clients thereof, up to the last client.

3. The minimum thresholds as of which the obligation to publish the weekly report provided for in paragraph 1(a) shall apply are those provided for in Commission Delegated Regulation (EU) 2017/565, of 25 April 2016, supplementing Directive 2014/65/EU, 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.

4. The publication of the reports and communication of the positions regulated in the previous paragraphs shall be carried out in accordance with Commission Delegated Regulation (EU) 2017/1093, of 20 June 2017, providing implementing technical standards with regard to the format of position reports by investment firms and market operators. The CNMV, by way of a resolution issued thereby, shall determine the format of the position reports of the investment firms and market operators provided for in the said paragraphs, in accordance with the provisions of Commission Delegated Regulation (EU) 2017/1093, of 20 June 2017.

5. For the purposes of fulfilling the disclosure obligations under this article, investment firms and market operators of a trading venue shall classify persons who hold positions in a commodity derivative, an emission allowance or a derivative into the categories and in accordance with the criteria to be determined by regulation.

6. The obligations provided for in this article may be implemented by regulation.

**Article 87.** *Breakdown of information.*

The information referred to in the preceding article shall distinguish between:

- (a) Positions identified as positions that, in an objectively measurable manner, reduce risks directly related to business activities; and
- (b) other positions.

**Article 88.** *Supervision of position limits to the size of a net position in commodity derivatives.*

For the purposes of monitoring compliance with Article 86, members or participants of regulated markets and MTFs, as well as clients of OTFs, shall communicate, at least daily, to the market operator of the trading venue concerned, details of their own positions held through contracts traded on that trading venue, as well as those of their clients and the clients thereof, up to the last client.

**Article 89.** *Transparency for trading venues.*

The regulatory regime for pre- and post-trade transparency requirements for trading venues, in respect of equity and similar instruments, as well as non-equity instruments, is provided for in Regulation (EU) No. 600/2014, of the European Parliament and of the

Council, of 15 May 2014, and in delegated and implementing acts of the European Commission implementing this.

**Article 90.** *Communication procedure.*

**(Repealed).**

**Article 91.** *Content of the communication.*

**(Repealed).**

**Article 92.** *Storing of information and forwarding.*

**(Repealed).**

## PART VI

### **Clearing, settlement and registration of securities and post-trading infrastructure**

**Article 93.** *Regime for clearing, settlement and registration of securities.*

1. The transferable securities shall be determined by regulation, whose transactions carried out in the multilateral trading segments of the official secondary markets shall be subject to mechanisms that allow their orderly settlement and conclusion through the necessary intervention of a central counterparty.

2. In order to provide for the settlement of transactions in securities executed on official secondary markets, their market operators shall enter into agreements with at least one central securities depository and, where applicable, one or more central counterparties, without prejudice to the right of issuers to arrange for their securities to be registered with any central securities depository in accordance with Article 49 of Regulation (EU) No. 909/2014, of the European Parliament and of the Council, of 23 July 2014, on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No. 236/2012, and the right of members of official secondary markets to designate the settlement system in accordance with Article 112 of this Act.

**Article 94.** *Settlement of transactions.*

1. Buyers and sellers of transferable securities admitted to trading on official secondary markets shall be obliged, in accordance with the rules of the said market, to deliver cash and transferable securities as soon as their respective orders are executed, even if their effective settlement is carried out subsequently.

2. The purchaser of transferable securities admitted to trading on an official secondary market shall acquire ownership of them when they are entered in their name in the securities accounts in accordance with the rules of the registration system.

3. The official secondary markets shall determine in their regulations the theoretical settlement date of the transactions executed, and may establish different dates depending on the securities to be settled, the trading segments and other criteria, in accordance with applicable EU law and in coordination, where appropriate, with the central counterparties and central securities depositories involved in the settlement processes.

**Article 95.** *Settlement of rights or obligations of a financial nature associated with securities.*

1. The issuing entity shall give sufficient notice to the market operator of the official secondary markets on which its securities are admitted to trading at its request, and to the central securities depository responsible for registering them, of the rights or obligations of a financial nature generated by the securities as soon as the appropriate agreement has been adopted.

2. Taking into account the rules applicable to the trading, clearing, settlement and registration of transactions in securities admitted to trading on such markets, these communications shall specify the relevant dates for the recognition, exercise, enforcement and payment of the relevant rights and obligations.

3. Without prejudice to the foregoing, the benefits, rights or obligations inherent in the ownership of shares and securities equivalent to shares shall be for the account and benefit of the acquirer from the date of purchase on the relevant official secondary market, whereas they shall be for the account and benefit of the acquirer from the date of settlement of the relevant purchase transaction in the case of fixed-income securities and other securities not equivalent to shares. In the event of delays or other incidents that have occurred in the settlement process, appropriate adjustments may be made to the settlement of such rights or obligations.

**Article 96.** *Guarantees aimed at mitigating settlement risk.*

1. Members of official secondary markets, members of central counterparties and entities participating in central securities depositories shall have, *ex lege*, a pledge of those provided for in Royal Decree-Law 5/2005, of 11 March, on urgent reforms to boost productivity and improve public procurement, exclusively on securities or cash resulting from the settlement of transactions on behalf of natural or legal persons when those entities had to anticipate the cash or securities necessary to meet the settlement of such transactions due to non-compliance of their clients or their clients entering insolvency proceedings.

2. This pledge shall fall exclusively on the securities and the cash resulting from the transactions not satisfied by the clients and shall exclusively guarantee the amount that the entities benefiting from this right would have had to advance in order to attend to the settlement of the aforementioned transactions, including, where applicable, the price of the securities that they should have delivered and the possible sanctions that they should have paid as a consequence of the non-compliance of their clients.

3. The creation and enforcement of the aforementioned pledge shall not require any formality, without prejudice to the duty of the beneficiary entities to keep at the disposal of their clients the information evidencing the concurrence of the requirements under this paragraph and previous ones.

4. The members of official secondary markets, in the event of any of their clients entering insolvency proceedings, may introduce in the said markets and on behalf of the insolvent party, securities purchase or sale orders in the opposite direction to the transactions contracted on behalf of the former, when the opening of insolvency proceedings occurs while

the said transactions are in the course of settlement. Members of central counterparties and entities participating in central securities depositories shall enjoy the same right *vis-à-vis* their clients, who shall exercise this right by requesting from members of official secondary markets the introduction of orders in the opposite direction to those referred to in this paragraph.

5. The provisions of the previous paragraphs are understood to be without prejudice to the settlement discipline measures referred to under Articles 6 and 7 of Regulation (EU) No. 909/2014, of 23 July 2014, and without prejudice to the guarantees referred to in this Act in favour of official secondary markets, central securities depositories and central counterparties, which shall have preference over the rights mentioned in the previous paragraphs.

**Article 97.** *Legal regime and authorisation of central securities depositories.*

1. Central securities depositories shall be governed by the following provisions:

(a) By Regulation (EU) No. 909/2014, of the European Parliament and of the Council, of 23 July 2014, on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No. 236/2012 and its implementing regulations.

(b) By this Act and its corresponding implementing regulations.

(c) On a supplementary basis, by the Consolidated Text of the Corporate Enterprises Act, approved by Royal Legislative Decree 1/2010, of 2 July.

(d) By any other provisions of national law or EU law that may be applicable to them.

2. Authorisation as a central securities depository, its revocation and its operation when the said entity is established in Spain shall be governed by the provisions of Regulation (EU) No. 909/2014, of 23 July 2014, by the provisions of this Act and by any other applicable Spanish or EU law.

3. The National Securities Market Commission shall be the competent authority responsible for authorising, supervising and sanctioning central securities depositories in accordance with Regulation (EU) No. 909/2014, of 23 July 2014.

**Article 98.** *Requirements, duties, powers and functions of central securities depositories.*

1. Central securities depositories incorporated in Spain shall take the form of a public limited company. Their articles of association and amendments thereto, with the exceptions that may be established by regulation, shall require the prior approval of the National Securities Market Commission. The appointment of members of the board of directors, general managers and similar positions of central securities depositories shall be subject to the prior authorisation of the National Securities Market Commission.

2. Central securities depositories shall provide the National Securities Market Commission and the various public supervisory bodies, within the scope of their respective powers, with information on the clearing, settlement and registration activities in the systems managed by them as requested, provided that such information is at their disposal and in accordance with applicable legislation.

3. Central securities depositories shall have the bodies and committees provided for in Regulation (EU) No. 909/2014, of 23 July 2014.

4. Central securities depositories may outsource their basic services, enter into agreements with central counterparties, official secondary markets and multilateral trading facilities or establish links with other central securities depositories in accordance with Regulation (EU) No. 909/2014, of 23 July 2014, with this Act, its implementing regulations and the internal rules referred to under Article 101.

5. The specific monitoring and control functions to be exercised by central securities depositories over their participating entities, the solvency requirements applicable to their participating entities, the types of entities that may qualify as participating entities, the accounting organisation requirements, technical means, specific reporting obligations to the National Securities Market Commission and such other aspects as may be deemed necessary for its proper functioning, taking into account, among others, proportionality criteria depending on their level of activity.

**Article 99.** *Holdings in central securities depositories.*

1. The direct or indirect holding of capital of central securities depositories shall be subject to the rules on major holdings provided for in Part IV of Title V for investment firms, under the terms established by regulation, it being understood that, at any event, any holding that directly or indirectly amounts to at least 1% of the capital or of the voting rights of the central securities depository or that, without reaching that percentage, allows a significant influence to be exercised over it, under the terms established in the regulations, shall be considered as such.

2. Without prejudice to the provisions of Article 176, the National Securities Market Commission may oppose the acquisition or transfer of a significant holding in the capital of the central securities depository when it deems it necessary to ensure the proper functioning of the markets or of the securities clearing, settlement and registration systems or to avoid distortions therein, as well as because Spanish entities in the acquirer's home country are not treated in an equivalent manner.

**Article 100.** *Report and budget of central securities depositories.*

1. Central securities depositories shall prepare a report detailing how they shall comply with the technical, organisational, operational and risk management requirements of Regulation (EU) No. 909/2014, of 23 July 2014 in order to carry out their functions. The Minister for Economy and Competitiveness and, with their express authorisation, the National Securities Market Commission, may regulate the model to which the said report must conform. The central securities depository shall keep the said report updated, the amendments to which shall be sent to the National Securities Market Commission, duly explained.

2. Central securities depositories shall send to the National Securities Market Commission, under the terms provided for by regulation, their estimated annual budget, in which the prices and fees to be applied shall be expressed in detail, as well as any subsequent modifications they may make to their financial rules. The National Securities Market Commission may require the central securities depository to expand the documentation received and may establish exceptions and limitations to the maximum prices of such services when they may affect the financial solvency of the central securities depository, cause disruptive consequences for the development of the securities market or the principles that govern it, or introduce unjustified discrimination between the different users of the depository's services.

**Article 101.** *Internal rules for central securities depositories.*

1. Central securities depositories shall be governed by internal rules, the approval of which and any amendments thereto, with the exceptions, if any, established by regulation, shall be the responsibility of the National Securities Market Commission, following a report from the Bank of Spain. The said internal rules shall regulate the functioning of central securities depositories, the services provided by them, their financial rules, the procedures for setting and communicating rates, the conditions and principles under which they shall provide the aforementioned services, the registers relating to the services provided and the legal regime of their participating entities. Likewise, the rules shall regulate the procedures for managing the delivery of securities and their payment, the determination of the moment of finality of the settlement instructions, the risk management policy as well as the guarantees of all kinds that the participating entities may have to create depending on the activities they carry on.

2. The internal rules may be completed by means of circulars approved by the central securities depository itself. Such circulars must be communicated to the National Securities Market Commission and the Bank of Spain, under the terms provided for by regulation. The National Securities Market Commission may oppose them, suspend them or render them void when it deems that they infringe applicable legislation, or prejudice the prudent and safe functioning of the central securities depository and of the securities markets or the protection of investors.

3. The internal rules and articles of association referred to under Article 98 and paragraph 1 of this article shall have the nature of rules for the unified regulation and discipline of the securities market, and shall specify the obligations and the organisational and procedural requirements necessary to comply with the provisions of Regulation (EU) No. 909/2014, of 23 July 2014. The Minister for Economy and Competitiveness and, with their express authorisation, the National Securities Market Commission, may implement the structure and minimum content that the internal rules must contain.

**Article 102.** *Rules applicable in the event of an entity participating in a central securities depository entering insolvency proceedings.*

1. When an entity participating in the systems managed by the central securities depositories enters insolvency proceedings, the former shall enjoy the absolute right of separation with respect to the goods or rights in which the guarantees created by the said entities participating in the systems managed by the central securities depositories materialise. Without prejudice to the foregoing, the surplus remaining after the settlement of the guaranteed transactions shall be incorporated into the insolvent participant's estate in bankruptcy.

2. When an entity participating in the systems referred to in this article enters insolvency proceedings, the National Securities Market Commission, without prejudice to the powers of the Bank of Spain and the FROB [Fund for Orderly Bank Restructuring], may immediately and at no cost to the investor, order the transfer of its accounting records of securities to another entity qualified to carry on this activity. If no entity is in a position to take charge of the aforementioned records, this activity shall be assumed by the appropriate central securities depository on a provisional basis, until the holders request the transfer of the registration of their securities. For these purposes, both the insolvency judge and the

insolvency practitioners shall facilitate access, by the entity to which the securities are to be transferred, to the documentation and accounting and computer records necessary to make the transfer effective.

The existence of the insolvency proceedings shall not prevent the securities purchased in accordance with the rules of the clearing, settlement and registration system or the cash arising from the exercise of the financial rights or from the sale of the securities from being delivered to the client.

**Article 103.** *Legal regime and authorisation of central counterparties.*

1. Central counterparties shall be governed by the following provisions:

(a) Regulation (EU) No. 648/2012, of the European Parliament and of the Council, of 4 July 2012, on OTC derivatives, central counterparties and trade repositories and its implementing regulations and rules of application.

(b) This Act and its implementing regulations.

(c) On a supplementary basis, the Consolidated Text of the Corporate Enterprises Act approved by Royal Legislative Decree 1/2010, of 2 July.

(d) Any other provisions of national law or EU law that may be applicable to them.

2. The authorisation to provide clearing services as a central counterparty, its revocation and its operation when such entities are established in Spain shall be governed by the provisions of Regulation (EU) No. 648/2012, of 4 July 2012, by the provisions of this Act and by any other applicable rules of EU law or of the legal system.

3. The National Securities Market Commission shall be the Spanish authority responsible for the authorisation and supervision of central counterparties established in Spain in application of Regulation (EU) No. 648/2012, of 4 July 2012.

**Article 104.** *Requirements, duties, powers and functions of central counterparties.*

1. Central counterparties must have the form of a public limited company and must be recognised as a system for the purposes of Act 41/1999, of 12 November, on payment and securities settlement systems.

2. Central counterparties may not be authorised as central securities depositories.

3. In order to facilitate the performance of their tasks, central counterparties may become participants in central securities depositories which admit them as such, in any other securities and financial instruments settlement system or in a regulated market or multilateral trading facility, provided that they fulfil the conditions required by each system and provided that the participation of the central counterparty in that system does not jeopardise the safety or solvency of the central counterparty.

4. Central counterparties shall keep the central accounting records for cleared financial instruments together with, where applicable, the members authorised to keep detailed records for their clients' contracts.

5. Subject to the provisions of this Act and other applicable national or EU law, the central counterparty may enter into agreements with other resident and non-resident entities whose functions are analogous or which operate securities clearing and settlement systems. The said agreements, as well as those that may be entered into with multilateral trading facilities or markets, shall require the approval of the National Securities Market Commission,

following a report from the Bank of Spain, and must comply with the requirements determined by regulation and in the internal rules of the institution itself.

**Article 105.** *Holding in central counterparties.*

The Minister for Economy and Competitiveness and, with their express authorisation, the National Securities Market Commission, may develop the information that shall be necessary to provide in order to assess the suitability of shareholders acquiring a qualifying holding in the capital of the central counterparty in accordance with Regulation (EU) No. 648/2012, of 4 July 2012.

**Article 106.** *Annual report and budget of the central counterparty.*

1. Central counterparties shall prepare a report detailing how they shall comply with the technical, organisational, operational and risk management requirements of Regulation (EU) No. 648/2012, of 4 July 2012, to carry out their tasks. The Minister for Economy and Competitiveness and, with their express authorisation, the National Securities Market Commission, may regulate the model to which the said report must conform. The central counterparty shall keep the said report updated, the amendments to which shall be sent to the National Securities Market Commission, duly explained and incorporating, when they affect risk management in accordance with the provisions of the said Regulation, the mandatory report of the risk committee and of the internal unit or body that assumes the risk management function.

2. The central counterparty shall send to the National Securities Market Commission, before 1 December each year, its estimated annual budget, in which the prices and fees to be applied shall be expressed in detail, as well as any subsequent modifications to its financial rules. The National Securities Market Commission may require the central counterparty to expand the documentation received and may establish exceptions or limitations to the maximum prices of such services when they may affect the financial solvency of the central counterparty, cause disruptive consequences for the development of the securities market or the principles that govern it, or introduce unjustified discrimination between the different users of the entity's services.

**Article 107.** *Articles of association and internal rules of central counterparties.*

1. Central counterparties shall draw up their articles of association and internal rules, which shall have the nature of unified regulation and discipline of the securities market.

2. With the exceptions indicated by regulation, the alteration of the articles of association of the central counterparty or of its internal rules shall require, following a report from the Bank of Spain, the authorisation of the National Securities Market Commission.

3. The internal rules shall regulate the operation of the central counterparty and the services it provides. The articles of association shall regulate the internal functioning of the central counterparty as a company. The rules and articles of association shall contain the obligations and the organisational and procedural requirements necessary to comply with the provisions of Regulation (EU) No. 648/2012, of 4 July. The Minister for Economy and Competitiveness and, with their express authorisation, the National Securities Market Commission, may implement the structure and minimum content that the internal rules must have.

4. The internal rules may be completed by means of circulars approved by the central securities depository itself. Such circulars must be communicated to the National Securities Market Commission and the Bank of Spain within 24 hours of adoption. The National Securities Market Commission may oppose them, suspend them or render them void when it deems that they infringe applicable legislation, or prejudice the prudent and safe functioning of the central securities depository and of the securities markets or the protection of investors.

**Article 108.** *Organisational requirements.*

1. Central counterparties must have at least an audit committee, a risk committee as provided for under Article 28 of Regulation (EU) No. 648/2012, of 4 July, and an appointments and remuneration committee. In addition, they must have an internal unit or body to assume the risk management function, proportionate to the nature, scale and complexity of their activities. This unit or body shall be independent of the operational functions, shall have sufficient authority, rank and resources, and shall have appropriate access to the board of directors. They must also have mechanisms and organic structures 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, members and clients.

The provisions of this sub-paragraph may be implemented by regulation.

2. The appointment of Board members, general managers and similar positions in the central counterparty shall require prior approval from the National Securities Market Commission.

**Article 109.** *Members of central counterparties.*

1. Only the entities referred to under Article 69(2)(a) to (d) and (f), the Bank of Spain and other resident or non-resident entities that carry on similar activities under the terms and with the limitations provided for by regulation and in the internal rules of the central counterparty may become members of the central counterparty. The latter's access to membership shall be subject to the provisions of this Act, its implementing regulations and internal rules, as well as to the approval of the National Securities Market Commission.

2. The central counterparty shall establish in its internal rules the solvency conditions and the technical means required for members to be authorised to keep records of their clients' contracts, as well as the procedures that safeguard the correspondence between the central accounting record and the detailed records. Solvency conditions and technical means may differ depending on the financial instruments in respect of which those members are involved in record-keeping or clearing. In addition, the central counterparty shall establish mechanisms for access to information in the detailed registers in which members keep records of their clients' contracts in order to identify, monitor and manage potential risks to the entity arising from dependencies between members and their clients.

3. The collateral that members and clients create in accordance with the internal rules of the central counterparty and in relation to any transactions carried out within the scope of their activity shall only be applicable to the entities in whose favour they were created and only for obligations arising out of such transactions with the central counterparty or its members, or arising out of membership of the central counterparty.

**Article 110.** *Rules applicable in the event of non-compliance or insolvency proceedings.*

1. 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 internal rules.

2. The entity's internal rules and circulars may provide for cases which determine early termination of all contracts and positions of a member, whether on its own behalf or on behalf of clients, which, under the terms provided for in those rules and circulars, shall give rise to their clearance and the creation of a single legal obligation covering all transactions included, under which the parties shall only be entitled to claim the net balance of the proceeds of clearing such transactions. The foregoing cases may include the non-payment of obligations and the opening of insolvency proceedings in relation to members and clients or the central counterparty itself. That clearing regime shall be considered a contractual clearing agreement in accordance with the provisions of Royal Decree-Law 5/2005, of 11 March, on urgent reforms to boost productivity and improve public procurement, and without prejudice to the application of the specific rules contained in Act 41/1999, of 12 November, on payment and securities settlement systems.

3. The central counterparty shall establish in its internal rules the rules and procedures to deal with the consequences resulting from non-compliance by its members. These rules and procedures shall specify how the various guarantee mechanisms available to the central counterparty shall be applied and the means of replacing them in order to enable the central counterparty to continue to operate in a sound and secure manner.

4. If a member of a central counterparty or one of its clients should enter insolvency proceedings, the central counterparty shall have an absolute right of separation with respect to the collateral that such members or clients have provided to that central counterparty. Without prejudice to the foregoing, the surplus remaining after the liquidation of the guaranteed transactions shall be incorporated into the client's or member's estate in bankruptcy.

5. 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 internal rules. Without prejudice to the foregoing, any surplus remaining after settlement of the transactions shall be incorporated into the client's estate in bankruptcy.

6. 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. For these purposes, both the competent judge and the insolvency proceeding bodies shall provide the entity to which the contracts, accounting records and collateral are to be transferred with the documentation and computer records necessary to effect the transfer. 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.

7. If a central counterparty enters insolvency proceedings and all contracts and positions of a member are settled, whether on its own account or on behalf of clients,

members and clients who have not breached their obligations with the central counterparty shall have an absolute right of separation from the surplus collateral which, having been provided to the central counterparty in accordance with its internal rules, results from the settlement of collateralised transactions with the exception of contributions to the default guarantee fund.

**Article 111.** *Choice of clearing and settlement or central counterparty system.*

**(Repealed).**

**Article 112.** *Right to designate a settlement system.*

**(Repealed).**

**Article 113.** *Access to central counterparty, clearing and settlement facilities.*

1. 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 on a Spanish official secondary market or multilateral trading facilities or on regulated markets or multilateral trading facilities of other Member States of the European Union.

2. Access to such systems shall be subject to the same non-discriminatory, transparent and objective criteria as apply to local members.

3. 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.

**Article 114.** *Information system for the supervision of trading, clearing, settlement and registration of transferable securities.*

1. Central securities depositories providing services in Spain shall establish a data information, transfer and storage system that serves as a tool for the exchange and processing of information for the performance of the activities of clearing, settlement and registration of securities admitted to trading on an official secondary market and that enables the correct keeping of the securities register to be supervised, both at the level of the central register and at the level of detailed registers.

2. The system provided for in the previous paragraph must include, at least, the transactions, events and entries likely to give rise to variations in the balances of each holder's securities, both in the central register and in the detailed registers.

3. The information system for the supervision of trading, clearing, settlement and registration of transferable securities shall comply with the following:

(a) Guarantee the traceability of transactions carried out in securities admitted to trading on an official secondary securities market, from trading to entry in the securities register and *vice versa*, as well as know their status.

(b) Facilitate the transfer of the information necessary to carry out the clearing, settlement and registration of securities, as well as know the status of the said transactions.

(c) Facilitate the control of the risks and collateral required by the appropriate entities and market infrastructures.

(d) Inform issuing entities on a daily basis of the ownership of the securities issued by them when they so request.

4. The information stored in the system may not be used or transferred for purposes other than those provided for in the Act, except with the authorisation of the respective supplying entity, without prejudice to the information obligations *vis-à-vis* the National Securities Market Commission or the Bank of Spain in the exercise of their respective powers.

**Article 115.** *Obligations of the central securities depository in relation to the information system.*

1. The central securities depository, in its capacity as the entity responsible for and manager of the data information, transfer and storage system, shall comply with the following obligations:

(a) Establish the means necessary for the information to be entered into the system in accordance with the established rules and so as to be complete.

(b) Allow the introduction of the necessary information in the period provided for.

(c) Provide sufficient security and confidentiality to the information supplied, so that the entities that enter information into the system only have access to the data strictly necessary for their activity or to those for which they are authorised.

(d) Ensure the maintenance and continuity of the system.

(e) Allow non-discriminatory access to market infrastructures and entities involved in securities clearing and settlement processes.

2. Central securities depositories shall sign the appropriate contracts in which they shall establish the legal relationships necessary for the proper functioning of the system. They shall also publish the rules for the operation of the information system, establishing the rights, obligations and responsibilities of the persons who shall manage and make use of the information stored in the system. The National Securities Market Commission shall approve these rules and their amendments. Both the rules and their amendments shall be previously examined by the users' committee of the central securities depository, which may send its observations on the matter to the National Securities Market Commission.

**Article 116.** *Legal regime of the rest of the agents in relation to the information system.*

1. The information system shall be fed by the information that official secondary markets, central counterparties, central securities depositories and their respective members or participating entities shall be obliged to provide according to regulatory provisions. Such entities shall be responsible for the completeness and accuracy of the information communicated by each of them through that system and shall retain ownership of that information.

2. With full respect for the principles of equal treatment and non-discrimination, foreign central counterparties and central securities depositories with which central securities depositories enter into agreements or establish links may access this system and shall be obliged to provide the information necessary for its purposes to be fulfilled, in accordance

with the provisions of Articles 114 to 116. These infrastructures must ask their members or participating entities for the necessary information so as to suitably perform their functions

**Article 117.** *Monitoring and control of the proper functioning of the trading, clearing, settlement and securities registry systems.*

1. Without prejudice to the powers of supervision, inspection and sanction that lie with the National Securities Market Commission pursuant to Title VIII, the operators of the official secondary markets, the central counterparties and the central securities depositories that provide services in Spain shall ensure, within the scope of their respective powers, the proper functioning and efficiency of the processes of trading, clearing and settlement of transactions and registration of securities.

2. The government is empowered to implement by way of regulation the content of the function provided for in the previous paragraph, including the obligations and powers for its proper exercise.

## PART VII

### **Periodic reporting obligations of issuers**

**Article 118.** *Annual report and audit report.*

1. Where Spain is the home Member State, issuers whose securities are admitted to trading on an official secondary market or another regulated market domiciled in the European Union shall submit their annual accounts to the accounts auditor and publish and disseminate their annual financial report and the audit report on the annual accounts.

The maximum time limit for complying with the obligation to publish and disseminate this shall be four months from the end of each financial period, the issuers having to ensure that the said reports are kept available to the public for at least ten years.

2. The annual financial report shall comprise the annual accounts and the directors' report, reviewed by the auditor with the scope defined under Article 268 of the Consolidated Text of the Corporate Enterprises Act, approved by Royal Legislative Decree 1/2010, of 2 July, and the declarations of responsibility for its content.

3. The report of issuers whose shares are admitted to trading on an official secondary market or on another regulated market domiciled in the European Union must disclose transactions by directors and members of the supervisory board of a European public limited 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 accounts refer, where the transactions fall outside the ordinary course of business or were not performed on an arm's-length basis.

**Article 119.** *Half-yearly financial reports.*

1. Where Spain is the home Member State, issuers whose shares or debt securities are admitted to trading on 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.

The maximum time limit for complying with the obligation to publish and disseminate this shall be three months from the end of the appropriate financial period, and issuers must ensure that the aforementioned report is kept available to the public for at least ten years.

2. Where Spain is the home Member State and the annual financial report provided for under Article 118 has not been made public within two months of the end of the financial period to which it relates, issuers whose shares are admitted to trading on 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 two months of the end of the corresponding period. This obligation shall not apply where the annual financial report has been made public within two months following the end of the annual period in question.

3. The half-yearly financial report shall comprise: the summarised annual accounts, an interim directors' report, and the declarations of responsibility for its content.

**Article 120.** *Interim directors' declaration.*

1. Without prejudice to the provisions of Article 228, where Spain is the home Member State, issuers whose shares are admitted to trading on 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' declaration containing at least:

- (a) an explanation of the significant events and transactions that have taken place during the corresponding period and their impact on the financial situation of the issuer and its associate companies, and
- (b) a general description of the financial situation and of the results of the issuer and its associate companies during the corresponding period.

2. The interim directors' declaration shall not be required from those issuers that publish quarterly financial reports.

**Article 121.** *Situations of non-application.*

1. The provisions in the foregoing Articles 118 and 120 shall not apply to:

(a) Member States of the European Union, 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, the European Financial Stability Facility (EFSF) established by the EFSF Framework Agreement and any other mechanism established with the aim of preserving the financial stability of the European Monetary Union by providing temporary financial assistance to Member States whose currency is the euro 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 that only issue debt securities admitted to trading on an official secondary market or another regulated market whose unit nominal value is at least EUR 100,000 or, in

the case of debt securities not denominated in euros, whose unit nominal value is, at the date of issue, equivalent to at least EUR 100,000.

(c) Without prejudice to paragraph b) above, issuers which only have outstanding issuances of debt securities admitted to trading on an official secondary market or another regulated market domiciled in the European Union before 31 December 2010, whose unit nominal value is at least EUR 50,000 or, in the case of debt securities not denominated in euros, whose unit nominal value was, at the date of issue, equivalent to at least EUR 50,000, for as long as such debt securities are outstanding.

2. Where Spain is the home Member State, the provisions of Article 119 shall not apply to issuers incorporated before 31 December 2003 which only have debt securities admitted to trading on an official secondary market or another regulated market in the European Union, where such securities are unconditionally and irrevocably guaranteed by a State, a regional government or a local corporation.

3. The provisions of this Part shall not apply to the mutual investment funds and open-ended collective investment institutions referred to in Act 35/2003, of 4 November, on collective investment institutions.

**Article 122.** *Other provisions.*

1. The following shall 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 periodic reports.

(c) The periods for publication of quarterly reports.

(d) The content of the declaration of responsibility, and the bodies or persons at the issuer that must make this declaration.

(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.

2. The periodic information referred to in the preceding Articles 118 to 120 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 under Article 238.

The National Securities Market Commission shall check that the periodic information was drafted in accordance with the applicable regulations and demand compliance where this is not the case.

3. For the purposes of this Part, debt securities shall be understood to mean bonds and other transferable 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 the right to acquire shares or securities equivalent to shares.

**Article 123.** *Other reporting obligations.*

1. Issuers whose securities are admitted to trading on 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. Issuers must present that information to the National Securities Market Commission, for inclusion in the official register regulated under Article 238(f).

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, shall be established by regulation.

2. Issuers whose shares or bonds are admitted to trading on 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 admitted to trading on an official secondary market shall be deemed to comply with that obligation by application of the provisions of Article 539 of the Consolidated Text of the Corporate Enterprises Act, approved by Royal Legislative Decree 1/2010, of 2 July, and its implementing regulations. The requirements applicable to other issuers shall be established by regulation.

The provisions of this paragraph shall not apply to securities issued by the Member States of the European Union, regional governments, local corporations and similar entities in the Member States.

**Article 124.** *Issuers' responsibility.*

1. The responsibility for drafting and publishing the information referred to under Articles 118 and 119 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 shall be liable for any damages caused to the holders of the securities as a result of information that fails to provide a true and fair view of the issuer.

3. The statute of limitations period for derivative suits shall 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.

PART VIII

**Information obligations on major holdings and treasury stock**

**Article 125.** *Obligations of shareholders and holders of other securities and financial instruments.*

1. Any shareholder who, directly or indirectly, acquires or disposes of shares with voting rights of an issuer whose home Member State is Spain, in the terms to be established

by regulation, and whose shares are admitted to trading on an official secondary market or another regulated market domiciled in the European Union, with the result that the voting rights in their 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 shall also apply 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 shall also apply to any person who, regardless of the ownership of the shares, is entitled to acquire, dispose of or exercise voting rights attributed thereby, in the cases to be determined by regulation.

3. The provisions of the preceding paragraphs shall also apply to anyone directly or indirectly owning, acquiring or disposing of other securities and financial instruments that grant the unconditional right or the discretionary power to acquire shares that assign voting rights or financial instruments that are pegged to shares that assign voting rights and have a financial effect similar to the aforementioned securities and financial instruments, regardless of whether or not they give the right to settlement by physical delivery of the underlying securities, on such terms and with such breakdown as may be determined by regulation.

4. The obligations established in the preceding paragraphs shall also apply where shares of an issuer whose home Member State is Spain are admitted to trading for the first time on 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/she must notify the National Securities Market Commission of the shares held at the time of appointment and removal.

The issuer's executives are obliged to disclose the transactions referred to under Article 230(4).

6. The issuer must publish and disseminate the information referred to in the preceding paragraphs.

7. The form, deadline and other conditions for compliance with the obligations established in this article and any exceptions to compliance with these obligations shall be determined by regulation.

8. The provisions of this article and the following article shall not apply to the shareholders and unit-holders of investment funds and open-ended collective investment institutions referred to in Act 35/2003, of 4 November, on collective investment institutions.

**Article 126.** *Issuers' obligations with respect to own shares.*

1. Issuers whose home Member State is Spain and whose shares are admitted to trading on 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 shall be included in the official register regulated under Article 238.

2. The provisions of this article shall not apply to the open-ended collective investment institutions referred to in Act 35/2003, of 4 November, on collective investment institutions.

**Article 127.** *Preventive measures.*

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 under Article 125(2), has committed irregularities or breached its obligations under Articles 118 to 123, 125 and 126.

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 infringement 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.

PART IX

**Takeover bids**

**Article 128.** *Mandatory takeover bids.*

Any person that attains control of a listed company by any of the means listed below shall be obliged to announce 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 the right to subscribe or acquire shares:

- (a) By acquisition of shares or other securities that, directly or indirectly, give the right 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

**Article 129.** *Scope of application.*

1. The obligations referred to in this Part shall be deemed to apply to companies some or all of whose shares are admitted to trading on an official Spanish secondary market and whose registered office is in Spain.

2. The obligations referred to in this Part shall also apply, in the terms to be established by regulation, to companies not domiciled in Spain whose shares are not admitted to trading on a regulated market in the European Union Member State where they have their registered office, in the following cases:

(a) Where the company's securities are only admitted to trading on a Spanish official secondary market.

(b) Where the first admission to trading of the securities on a regulated market was on a Spanish official secondary market.

(c) Where the company's securities are simultaneously admitted to trading on regulated markets of more than one Member State and on a Spanish official secondary market, and the company so decides by means of notification to those markets and their competent authorities on the first day of trading in securities.

(d) Where, on 20 May 2006, the company's securities were already simultaneously admitted to trading on regulated markets of more than one Member State and on a Spanish official secondary market and the National Securities Market Commission so agrees with the competent authorities of other markets where the securities are admitted to trading or, absent such agreement, where the company itself so decides.

3. The provisions of this Part shall also apply, in the terms to be established by regulation, to companies domiciled in Spain whose securities are not admitted to trading on a Spanish official secondary market.

**Article 130.** *Equitable price.*

1. The price shall 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 therewith, for the same securities, during the period prior to the bid that is determined by regulation, and in the terms to be established.

2. 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 re-float 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 valuation criteria.

3. In the event of a modification to the price referred to in the preceding paragraph, the National Securities Market Commission shall publish, on its web site, the resolution that the takeover bid be made at a price other than the equitable price. That resolution must be grounded.

**Article 131.** *Control of the company.*

1. For the purposes of this Part, a natural or legal person shall 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 participation is lower, where they appoint, in the terms to be established by regulation, a number of Board members that, combined with any which they had already appointed, represent more than half of the members of the company's governing body.

2. The National Securities Market Commission may, in the terms to be established by regulation, waive the obligation to announce a takeover bid that is provided for under Article 128 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.

**Article 132.** *Consequences of a failure to announce a takeover bid.*

1. Parties in breach of the obligation to announce a takeover bid may not exercise the voting rights deriving from any of the securities of the listed company to which they are entitled for any reason, without prejudice to the sanctions provided for in Title VIII of this Act. This prohibition shall also apply to securities held indirectly by the party obliged to announce the takeover bid and those held by parties acting in concert with that party.

2. Breach of the obligation to announce a takeover bid consists of a failure to present, presentation after the established deadline, or presentation with key deficiencies.

3. Decisions adopted by the company's governing bodies shall be null and void where the quorum for the meeting or the majority for the vote were only attained by counting the securities whose voting rights are suspended in accordance with the provisions of this paragraph.

4. The National Securities Market Commission shall 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.

**Article 133.** *Other provisions.*

1. Where the consideration offered consists of securities to be issued by the company obliged to announce the takeover bid, the pre-existing shareholders and holders of convertible bonds shall not have the pre-emptive subscription right provided for under Article 93 of the Consolidated Text of the Corporate Enterprises Act, approved by Royal Legislative Decree 1/2010, of 2 July.

2. Without prejudice to the provisions of Article 130, mandatory takeover bids shall be subject to the provisions of Article 137(2) when any of the circumstances provided for in paragraph 3 of the said provision occur.

3. The provisions of this Part shall not apply in the event of use of the instruments, powers and resolution mechanisms established in Act 11/2015, of 18 June, on credit institutions and investment firms (recovery and resolution).

4. The following shall 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 announce the takeover bid in situations of shareholder agreements and supervening control where a takeover bid must be announced;
- (d) The terms in which the takeover bid shall 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 announced, 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 announced, counted as from the date of its public announcement;

(m) The rules on lapsing of takeover bids;

(n) The rules on publication of the outcome of takeover bids;

(o) The information to be supplied by the governing bodies or management of the target company 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 employment law; and

(p) Any other matters which it is considered advisable to regulate.

**Article 134.** *Obligations of the governing and management bodies.*

1. During the period and in the terms to be established by regulation, the governing and management bodies of the target company or the companies in its group must obtain prior authorisation from the general shareholders' meeting, as provided for under Article 194 of the Consolidated Text of the Corporate Enterprises Act, approved by Royal Legislative Decree 1/2010, of 2 July, 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 target company.

As regards decisions taken before the beginning of the period referred to in the preceding paragraph and not yet partially or fully implemented, the general shareholders' meeting must approve or confirm, in accordance with Article 194 of the Consolidated Text of the Corporate Enterprises Act, approved by Royal Legislative Decree 1/2010, of 2 July, 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 target company has a dual governance system, the provisions of the preceding paragraphs shall be deemed to also apply to the supervisory board.

2. The general shareholders' meeting referred to in this article may be convened with fifteen days' advance notice by means of an announcement published in the Official Gazette of the Companies 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.

The Official Gazette of the Companies Register shall publish the announcement immediately upon receipt.

3. Companies may elect not to apply the provisions of paragraphs 1 and 2 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

shareholders' meeting, or by an entity controlled directly or indirectly by such an entity, as provided for under Article 42 of the Code of Commerce.

Any decision adopted by virtue of the provisions of the preceding paragraph shall require the authorisation of the general shareholders' meeting in accordance with the provisions of Article 194 of the Consolidated Text of the Corporate Enterprises Act, approved by Royal Legislative Decree 1/2010, of 2 July, which must have been adopted at most 18 months prior to the publication of the takeover bid.

4. The target company'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 135.** *Breakthrough rules*

1. Companies may decide to apply the following breakthrough rules:

(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 shareholders' meeting called to decide upon breakthrough rules as referred to under Article 134(1), of the restrictions on voting rights provided for in the target company's articles of association and in shareholder agreements relating to the company.

(c) Suspension of the restrictions provided for in point a) above and, of those which, being among those established in point b) above, are contained in shareholder agreements, when the offeror has attained 70% or more of the capital with voting rights.

2. The provisions of the articles of association, which directly or indirectly, set in general terms the maximum number of votes cast by a single shareholder, the companies belonging to a given group or that act in concert with the former, shall be ineffective when the offeror has attained 70% or more of the capital with voting rights in a takeover bid, unless the said offeror or its group or those that act in concert with the former are not subject to equivalent breakthrough rules or have not adopted them.

3. The decision to apply paragraph 1 of this article must be adopted by the company's general shareholders' meeting, with the quorum and majority requirements provided for in the amendment of the articles of association in the Consolidated Text of the Corporate Enterprises Act, approved by Royal Legislative Decree 1/2010, of 2 July, and must be notified to the National Securities Market Commission and the supervisors of the Member States where the company's shares are admitted to trading or where an application for admission to trading has been presented. The National Securities Market Commission must publish this notice in the terms and within the deadline to be established by regulation.

The general shareholders' meeting of the company may, at any time, revoke the decision to apply paragraph 1 of this article, with the quorum and majority requirements provided for in the amendment of the articles of association in the Consolidated Text of the Corporate Enterprises Act, approved by Royal Legislative Decree 1/2010, of 2 July. 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 paragraph 1, it must provide appropriate compensation for the loss suffered by the holders of the rights referred to therein.

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

Any measure adopted by virtue of the preceding paragraph shall require the authorisation of the general shareholders' meeting, with the quorum and majority requirements provided for in the amendment of the articles of association in the Consolidated Text of the Corporate Enterprises Act, approved by Royal Legislative Decree 1/2010, of 2 July, at most 18 months prior to the announcement of the takeover bid.

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

**Article 136.** *Squeeze out and sell out.*

1. Where, as a result of a takeover bid for all of the securities, in the terms of Articles 128 to 133 and 137, the offeror owns securities representing at least 90% of the capital with voting rights and the bid has been accepted by owners of securities representing at least 90% of the voting rights not owned by the offeror:

(a) The offeror may demand that the remaining owners of securities sell them at a fair price.

(b) The owners of the target company's securities may demand that the offeror buy their securities at a fair price.

2. If, in the case regulated in this article, the securities subject to a squeeze out or sell out 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 for the price paid or the securities delivered by the offeror in payment.

The depository 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 paragraph 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 a squeeze out and sell out referred to in this article shall be established by regulation.

**Article 137.** *Voluntary takeover bids.*

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, shall be subject to the same rules of procedure as the takeover bids provided for in this Part and may be made, in the conditions to be established by regulation, for less than the total number of securities.

The mandatory takeover bid provided for under Article 128 shall 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 provided for in this Part have been complied with.

2. When any of the circumstances indicated in paragraph 3 below occur within two years before the announcement of the offer, the offeror must provide an independent expert report of the methods and valuation criteria applied to determine the bid price, including the average market value of a given period, the break-up value of the company, the value of the consideration 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 valuation criteria which, at any event, ensure the safeguarding of the shareholders' rights.

The report shall justify the relevance of each of the respective methods used in the valuation. The bid price shall not be less than the higher amount between the equitable price referred to under Article 130 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 provided for in this paragraph, the National Securities Market Commission may adapt the administrative procedure, extending the deadlines as necessary and requesting information and documents that it considers necessary.

3. The circumstances to which the foregoing paragraph 2 refers are the following:

(a) That the market prices of the securities, for which the bid is made, show reasonable indications of manipulation, which have caused a disciplinary procedure initiated by the National Securities Market Commission for a breach of the provisions of Article 231, regardless of the application of the corresponding sanctions, and as long as the interested party has been notified of the corresponding list of charges;

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

(c) That the target company has been subject to expropriation, forfeiture or other circumstances of the same nature which may involve a significant alteration in the actual 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.

## TITLE V

### **Investment firms**

## PART I

### **General provisions**

**Article 138.** *Definition of investment firm.*

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 provided for under Article 2.

2. Investment firms, in accordance with their specific legal regime, shall provide the investment services, perform the investment activities and provide the ancillary services provided for in this Part, and may be members of regulated markets if they so request in accordance with the provisions of Part III of Title IV, as well as members or users of multilateral trading facilities and organised trading facilities, in accordance with the provisions of Royal Decree-Law 21/2017, of 29 December.

3. References in this Act to investment firms and authorities of Member States of the European Union also include those belonging to other States of the European Economic Area. Likewise, the references in this Act to the Member States of the European Union also include the Member States of the European Economic Area.

**Article 139.** *Exemptions.*

1. This Act shall not apply to the following persons:

(a) Entities subject to Act 20/2015, of 14 July, on the organisation, supervision and solvency of insurance and reinsurance undertaking, and its implementing regulations, when performing the activities provided for in the said Act;

(b) Persons providing investment services and performing investment activities exclusively for their parent undertakings, for their subsidiary undertakings or for other subsidiary undertakings of their parent undertakings;

(c) Persons providing an investment service, where such a service is provided in an incidental manner within 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 do not exclude the provision of that service, as provided for in Commission Delegated Regulation (EU) 2017/565, of 25 April 2016;

(d) Persons dealing on own account in financial instruments other than commodity derivatives or emission allowances or derivatives thereof and not providing any other investment services or performing any other investment activities in financial instruments other than commodity derivatives or emission allowances or derivatives thereof unless such persons:

(1) Are market makers;

(2) are members of or participants in a regulated market or an MTF or have direct electronic access to a trading venue, except for non-financial institutions which execute in trading venue transactions in derivatives that are objectively measurable as reducing risks

directly relating to the commercial activity or treasury financing activity of the said non-financial institutions or their groups;

(3) apply a high-frequency algorithmic trading technique; or

(4) deal on own account when executing client orders;

Persons exempt under points (a), (i) or (j) are not required to meet the conditions provided for in this point (d) in order to be exempt.

(e) Operators with compliance obligations under Act 1/2005, of 9 March, which regulates the greenhouse gases emission rights trading scheme, who, when dealing in emission allowances, do not execute client orders and who do not provide any investment services or perform any investment activities other than dealing on own account, provided that those persons do not apply a high-frequency algorithmic trading technique;

(f) Persons providing investment services consisting exclusively of the administration of employee-participation schemes;

(g) Persons providing investment services which only involve the administration of employee-participation schemes and the provision of investment services exclusively for their parent undertakings, for their subsidiary undertakings or for other subsidiary undertakings of their parent undertakings;

(h) The members of the European System of Central Banks (ESCB) and other national bodies performing similar functions in the European Union, other public bodies charged with or intervening in the management of public debt in the European Union and international financial institutions established by two or more Member States which have the purpose of mobilising funding and providing financial assistance to the benefit of their members that are experiencing or threatened by severe financing problems;

(i) Collective investment institutions, closed-ended collective investment institutions and pension funds, whether coordinated at a European Union level or not and the depositories and management companies of such undertakings;

(j) Persons either dealing on own account, including market makers, in commodity derivatives or emission allowances or derivatives thereof, excluding persons who deal on own account when executing client orders, or providing investment services, other than dealing on own account, in commodity derivatives or emission allowances or derivatives thereof to the clients or suppliers of their main business, provided that:

(1) For each of those cases individually and on an aggregate basis this is an ancillary activity to their main business, when considered on a group basis, and that main business is not the provision of investment services within the meaning of this Act or an activity legally reserved for credit institutions under Act 10/2014, of 26 June, or acting as a market maker in relation to commodity derivatives;

(2) Those persons do not apply a high-frequency algorithmic trading technique; and

(3) Those persons annually notify the relevant competent authority that they make use of this exemption and upon request report to the competent authority the basis on which they consider that their activity is ancillary to their main business.

The determination of an activity as ancillary for the purposes of this paragraph shall be made in accordance with the provisions of Commission Delegated Regulation (EU) 2017/592, of 1 December 2016, supplementing Directive 2014/65/EU, of the European Parliament and of the Council, with regard to regulatory technical standards for the criteria to establish when an activity is considered to be ancillary to the main business.

(k) 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.

(l) Transmission system operators as defined under Article 2(4) of Directive 2009/72/EC, of the European Parliament and of the Council, of 13 July 2009, concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC, and Article 2(4) of Directive 2009/73/EC, of the European Parliament and of the Council, of 13 July 2009, concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC, when carrying out their tasks under those Directives, under Regulation (EC) No. 714/2009, of the European Parliament and of the Council, of 13 July 2009, on conditions for access to the network for cross-border exchanges in electricity and repealing Regulation (EC) No. 1228/2003, and Regulation (EC) No. 715/2009, of the European Parliament and of the Council, of 13 July 2009, on conditions for access to the natural gas transmission networks and repealing Regulation (EC) No. 1775/2005, or under network codes or guidelines adopted pursuant to those Regulations, any persons acting as service providers on their behalf to perform their task under those legislative acts or under network codes or guidelines adopted pursuant to those Regulations, and any operator or administrator of an energy balancing mechanism, pipeline network or system to keep in balance the supplies and uses of energy when performing such tasks.

This exemption shall only apply to persons engaged in the activities provided for in this point if they perform investment activities or provide investment services related to commodity derivatives in order to carry on those activities. This exemption shall not apply with regard to the operation of a secondary market, including a platform for secondary trading in financial transmission rights.

2. The rights conferred by this Act shall not extend to the provision of counterparty services in transactions carried out by public bodies dealing with public debt or by members of the ESCB performing their tasks as provided for by the Treaty on the Functioning of the European Union and by Protocol No 4 of the Statute of the European System of Central Banks and of the European Central Bank (ECB) or performing equivalent functions under national provisions.

3. The provisions of Articles 85 and 86 shall also apply to persons who are exempted under this article.

**Article 139 bis.** *Other exemptions relating to the provision of investment services and performance of investment activities.*

1. The following persons shall be exempt from the requirements and obligations provided for in this Act and its implementing regulations:

(a) Persons and entities not allowed to:

(1) Hold client funds or client securities and which, for that reason, are not allowed at any time to place themselves in debt with their clients, and

(2) provide any investment service except the reception and transmission of orders in transferable securities and the provision of investment advice in relation to such financial instruments.

(b) Persons who provide investment services and perform investment activities exclusively in commodities, emission allowances and/or derivatives thereof for the sole purpose of hedging the commercial risks of their clients, where those clients are exclusively local electricity undertakings as defined under Article 2(35) of Directive 2009/72/EC, of the European Parliament and of the Council, of 13 July 2009, and natural gas undertakings as defined under Article 2(1) of Directive 2009/73/EC, of the European Parliament and of the Council, of 13 October 2009, and provided that those clients jointly hold 100% of the capital or of the voting rights of those persons, exercise joint control and are exempt under Article 139(1)(j) if they provide those investment services and perform those investment activities themselves; or

(c) persons who provide investment services and perform investment activities exclusively in emission allowances and derivatives thereof for the sole purpose of hedging the commercial risks of their clients, where those clients are exclusively operators as defined under Article 3(f) of Directive 2003/87/EC, of the European Parliament and of the Council, of 13 October 2003, and provided that those clients jointly hold 100% of the capital or voting rights of those persons, exercise joint control and are exempt under Article 139(1)(j) if they provide those investment services and perform those investment activities themselves.

2. The persons referred to in point (a) of the preceding paragraph are only allowed to transmit orders to:

(a) Authorised investment firms;

(b) credit institutions authorised in accordance with Directive 2013/36/EU, of the European Parliament and of the Council, of 26 June 2013, on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC;

(c) branches of investment firms or of credit institutions authorised in a third country and which are subject to and comply with prudential rules considered by the competent authorities to be at least as stringent as those provided for in this Act, in Regulation (EU) No. 575/2013, of the European Parliament and of the Council, of 26 June 2013 or in Act 10/2014 of 26 June;

(d) collective investment institutions authorised under the law of a Member State to market units to the public or to the management companies of such institutions; and

(e) investment firms with fixed capital, as defined under Article 17(7) of Directive 2012/30/EU, of the European Parliament and of the Council, of 25 October 2012, on coordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 54 of the Treaty on the Functioning of the European Union, in respect of the formation of public limited liability companies and the maintenance and alteration of their capital, with a view to making such safeguards equivalent.

3. Persons referred to in paragraph 1 who are allowed to be exempt from the requirements and obligations provided for in this Act and its implementing regulations:

(a) Shall be subject to such requirements and supervisory rules as may be established by regulation; and

(b) may not provide investment services and perform investment activities, nor provide ancillary services, either through the establishment of a branch or through the freedom to provide services or to provide services without a branch under the terms provided for in Part III of Title V.

**Article 140.** *Investment services and activities.*

1. The following are considered investment services and activities:

(a) Reception and transmission of orders in relation to one or more financial instruments. This service shall be understood to include the placing in contact of two or more investors to execute transactions between themselves with one or more financial instruments;

(b) Execution of orders on behalf of clients;

(c) Dealing on own account;

(d) Portfolio management;

(e) Placement of financial instruments without a firm commitment basis;

(f) Underwriting of financial instruments or placement of financial instruments on a firm commitment basis;

(g) Investment advice.

Advice of a generic and non-personalised nature which may be made in the marketing of securities and financial instruments shall not be considered to constitute advice for the purposes of the foregoing. These recommendations shall have the value of commercial communications. Likewise, recommendations that are disclosed exclusively to the public shall not be considered personalised recommendations.

(h) Operation of multilateral trading facilities.

(i) Operation of organised trading facilities.

2. Acts carried out by an investment firm that are preparatory to the provision of an investment service should be considered an integral part of the service.

**Article 141.** *Ancillary services.*

The following are considered ancillary investment services:

(a) Safekeeping and administration of financial instruments for the account of clients, including custodianship and related services such as cash/collateral management and excluding the maintenance of securities accounts at the highest level;

(b) Granting of credit or loans to an investor to allow them to carry out a transaction in one or more of the instruments referred to under Article 2, where the firm granting the credit or loan is involved in the transaction;

(c) Advice to undertakings on capital structure, industrial strategy and related matters and advice and services relating to mergers and the purchase of undertakings;

(d) Services related to underwriting;

(e) The preparation of investment research and financial analysis or other forms of general recommendations relating to transactions in financial instruments, in accordance with Article 36 of Commission Delegated Regulation (EU) 2017/565, of 25 April 2016.

At any event, recommendations which do not meet the two conditions provided for under Article 36(1) of Commission Delegated Regulation (EU) No. 2017/565, of 25 April 2016, shall be treated as marketing communications and the investment firms which produce or disseminate them must ensure that they are clearly identified as such.

Additionally, firms shall ensure that any such recommendation contains a clear and prominent statement that (or, in the case of an oral recommendation, to the effect that) it has not been prepared in accordance with legal requirements designed to promote the independence of investment research, and that it is not subject to any prohibition on dealing ahead of the dissemination of investment research.

(f) Foreign exchange services where these are related to the provision of investment services and the performance of investment activities;

(g) Investment services and activities as well as ancillary services relating to the non-financial underlying of the financial instrument derivatives referred to in points (e), (f), (g) and (j) of the Schedule, where these are connected to the provision of investment or ancillary services and the performance of investment activities. The deposit or delivery of the goods that have the condition of deliverable shall be deemed included.

**Article 142.** *Other provisions on investment and ancillary services.*

1. Investment firms referred to under Article 143(1)(b) executing orders from investors relating to financial instruments may hold them for their own account provided that the following conditions are met:

(a) Such positions arise solely from the investment firm's inability to comply with precise orders received from clients;

(b) the total market value of such positions does not exceed 15% of the firm's initial capital;

(c) the firm complies with the requirements provided for under Articles 92 to 95 and Part Four of Regulation (EU) No. 575/2013, of the European Parliament and of the Council, of 26 June 2013, on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No. 648/2012; and

(d) such positions are incidental and provisional in nature and strictly limited to the time necessary to complete the transaction in question.

2. In the terms to be established by regulation, 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 provided for in the preceding paragraphs in connection with instruments not provided for under Article 2 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 management companies of collective investment institutions, pension funds or asset securitisation trusts.

3. The government may amend the contents of the list of investment services and ancillary activities contained in the preceding articles so as to adapt to amendments in EU law. The government may also regulate the form of providing the services and ancillary services contained in the preceding articles.

**Article 143.** *Classes of investment firm.*

1. The following are investment firms:

- (a) Broker-dealers.
- (b) Brokers.
- (c) Portfolio management companies.
- (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 provide the investment services and ancillary services provided for under Articles 140 and 141, respectively.

3. Brokers are investment firms which may only trade professionally for the account of third parties, with or without representation. They may provide the investment services and ancillary services provided for under Articles 140 and 141, respectively, with the exception of those provided for under Articles 140(1)(c) and (f), and 141(b).

4. Portfolio management firms are those investment firms that may exclusively provide the investment services and perform the investment activities provided for under Article 140(1)(d) and (g). They may also provide the ancillary services provided for under Article 141(c) and (e). These firms shall not be allowed to hold client funds or securities and

may therefore not, under any circumstances, place themselves in a debtor position *vis-à-vis* their clients.

5. Financial advisory firms are those natural or legal persons that may exclusively provide the investment services and perform the investment activities provided for under Article 140(1)(g) and the ancillary services provided for under Article 141(c) and (e).

In no case shall the activities performed by financial advisory firms be covered by the investment guarantee fund regulated in Title VI. These firms shall not be allowed to hold client funds or securities and therefore may not, under any circumstances, place themselves in a debtor position *vis-à-vis* their clients.

Brokers, portfolio management firms and financial advisory firms may not carry out transactions in securities or cash in their own name, except for the purpose of managing their own assets, subject to such limitations as may be provided for by regulation.

**Article 144.** *Reservation of business activity and denomination.*

1. No person or entity may, without having obtained the necessary authorisation and being registered with the appropriate administrative registers of the CNMV or the Bank of Spain, perform on a professional or habitual basis the activities provided for under Article 140 and under Article 141(a), (b), (d), (f) and (g), in relation to the financial instruments provided for under Article 2, including, for this purpose, foreign exchange transactions.

Likewise, the marketing of investment services and activities and the acquisition of new clients may only be carried out professionally, by themselves or through the agents regulated under Article 146, by entities allowed to provide such services.

2. The names “Sociedad de Valores”, “Agencia de Valores”, “Sociedad Gestora de Carteras” and “Empresa de Asesoramiento Financiero”, as well as their abbreviations “S.V.”, “A.V.”, “S.G.C.” and “E.A.F.”, respectively, are reserved for the entities registered in the appropriate registers of the CNMV, which are required to include them in their name. No other person or entity may use such names or abbreviations or the name “empresa de servicios y actividades de inversion” or any other misleading name or abbreviation.

3. 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 fines amounting to up to EUR 500,000, which may be repeated on the occasion of subsequent orders.

4. 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 this Act.

The provisions of this paragraph shall be understood without prejudice to the other sanctions that may be applicable by application of Title VIII of this Act and other liabilities, including criminal liabilities that may exist.

5. The Companies 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 145.** *Other entities allowed to provide investment services and activities and rules applicable to the marketing of structured deposits.*

1. Credit institutions, even if they are not investment firms according to this Act, may habitually provide all the services and perform all the activities under Articles 140 and 141 provided that their legal regime, articles of association and specific authorisation enable them to do so.

In the procedure authorising credit institutions to provide investment services and perform investment activities, or provide ancillary services, the report of the CNMV shall be mandatory.

The following provisions shall apply to credit institutions when they provide one or more services or perform one or more investment activities:

- (a) Articles 182(1) and (2), 183(1) and (2), 193, 194, 195, 195 *bis*, 196, 196 *bis* of this Act and Articles 27, 30, 31, 32, 33, 34, 38, 40 and 43 of Royal Decree-Law 21/2017, of 29 December,
- (b) Article 146 and Title VII of this Act,
- (c) Articles 69, 164, 168, 170, 171 and 173 of this Act and Articles 25 and 37 of Royal Decree-Law 21/2017, of 29 December,
- (d) Articles 197 and 276 *bis to 276 sexies* of this Act; and
- (e) Title VIII of this Act.

2. The following provisions shall apply to the management companies of collective investment institutions and closed-ended collective investment institutions when providing the investment services and performing the investment activities of portfolio management, advice, custody and administration, and reception and transmission of orders:

- (a) Articles 139(2), 193(2)(a), (b), (c), (d), (e), (f) and (h), 193(3)(b), (d) and (e), 194, 203, 204, 205, 206, 207, 208, 208 *bis*, 208 *ter*, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220 *bis*, 220 *ter*, 220 *quater*, 220 *quinquies*, and 220 *sexies* of this Act; and
- (b) Commission Delegated Regulation (EU) 2017/565, of 25 April 2016, supplementing Directive 2014/65/EU, 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 provided for in the said Commission Delegated Regulation.

3. The following provisions of this Act shall apply to credit institutions and investment firms when they market or advise their clients on structured deposits:

- (a) Articles 182(1) and (2), 183(1) and (2), 193(2)(a), (b), (c), (d) and (e) and Article 194,
- (b) Articles 208 to 220 *sexies*,
- (c) Articles 146, 147 and 221(1)(b); and
- (d) Articles 197, 276 *bis* to 276 *sexies* and Title VIII of this Act.

The deposit guarantee compartment of the deposit guarantee fund shall guarantee the principal of the structured deposits received by the credit institution.

4. Articles 195 to 196 *bis* shall also apply to members or participants in regulated markets and MTFs that are not required to obtain authorisation under this Act by virtue of the exemptions provided for under Article 139(1)(a), (e), (i) and (j).

**Article 146.** *Agents of investment firms.*

1. Investment firms, except financial advisory firms, may appoint tied agents for the promotion and marketing of the investment services and activities and ancillary services which they are authorised to provide or perform. They may also designate them to solicit business and habitually carry out for potential clients, on behalf of the investment firm, the investment services and activities provided for under Article 140(1)(a) and (e) as well as the provision of advisory investment services and performance of advisory investment activities under Article 140(1)(g) on financial instruments and the investment services and activities offered by the firm.

2. Agents shall at all times act on behalf of and under the full and unconditional responsibility of the investment firms which engaged them.

3. The provisions of this article and the following article shall be implemented by way of regulation, establishing, in particular, the other requirements to which the actions of the agents and the investment firms to which they render their services shall be subject, including, among others, their exclusive actions and suitability requirements.

Note that this latest update, provided by Article 14 of Royal Decree-Law 14/2018, of 28 September, [Ref. BOE-A-2018-13180](#), shall enter into force at the moment that the royal decree implementing it does so, as provided for in Final Provision 5(2) of the above-mentioned Royal Decree-Law.

**Article 147.** *Entry in the register of agents.*

The agents hired by the investment firms must be registered with the CNMV in order to commence their activity under the terms to be determined by regulation.

Note that this latest update, provided by Article 15 of Royal Decree-Law 14/2018, of 28 September, [Ref. BOE-A-2018-13180](#), shall enter into force at the moment that the royal decree implementing it does so, as provided for in Final Provision 5(2) of the above-mentioned Royal Decree-Law.

**Article 148.** *Electronic trading.*

**(Deleted)**

Note that the repeal of this article, provided by Article 16 of Royal Decree-Law 14/2018, of 28 September, [Ref. BOE-A-2018-13180](#), shall enter into force at the moment that the royal decree implementing it does so, as provided for in Final Provision 5(2) of the above-mentioned Royal Decree-Law.

Previous wording:

"In accordance with the regulations which, in general, govern electronic commerce, the Minister for Economy and Competitiveness 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 trade which, in its fundamental aspects and with any restrictions that may result from other legal provisions, must prevail in relationships between investment firms and their clients."

## PART II

### **Authorisation, registration, suspension and revocation**

**Article 149.** *Authorisation.*

1. The CNMV shall be responsible for authorising the creation of investment firms. At any event, the processing of the procedure shall be carried out by electronic means.

The authorisation shall state the type of investment firm and activities concerned, the list of investment services and activities, ancillary services and financial instruments and the ancillary activities referred to under Article 142(2) which are authorised.

2. The administrative resolution shall be reasoned and shall be notified within six months of receipt of the application or of the completion of the required documentation. If the application is not dealt with within the period specified above, it may be deemed to be rejected.

The authorisation granted by the CNMV shall be valid for the whole of the European Union and shall allow an investment firm to provide the services or perform the activities for which it has been authorised throughout the European Union, either under the right of establishment, including a branch, or under the freedom to provide services.

In order to obtain and retain the authorisation, investment firms must at all times comply with the general and specific requirements for authorisation, as well as with the provisions contained in this Part and in Parts IV and V and Sections 1, 2, 3 and 4 of Part VI, in Title VII, and in Title II of Royal Decree-Law 21/2017, of 29 December.

3. Investment firms may not provide investment services and perform investment activities or provide ancillary services on financial instruments which are not expressly mentioned in the authorisation referred to in paragraph 1. Furthermore, in no case shall an authorisation be granted for the provision of ancillary services only.

4. For the provision of the service of operation of a multilateral trading facility or an organised trading facility, the operators of regulated markets may also be authorised, as well as the entities formed for this purpose by one or more operators, which must have as their exclusive company purpose the operation of the facility and which must be wholly owned by one or more operators, provided that they comply, under the terms and with the adaptations provided for by regulation, with the requirements of investment firms in order to obtain the authorisation established in this Part.

5. The procedure for authorising investment services and activities shall be governed by regulation.

Note that this latest update of sub-paragraph 2 of paragraph 2 and 3, provided by Article 17 of Royal Decree-Law 14/2018, of 28 September, [Ref. BOE-A-2018-13180](#), shall enter into force at the moment that the royal decree implementing it does so, as provided for in Final Provision 5(2) of the above-mentioned Royal Decree-Law.

**Article 150.** *Registration.*

1. For an investment firm, once authorised, to commence operations, the promoters must incorporate a company and register it with the Companies 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 shall suffice.

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

**Article 151.** *Authorisation of investment firms controlled by other undertakings.*

1. The CNMV shall consult, in advance, with the competent authority of the relevant Member State of the European Union on the authorisation of an investment firm where the

new firm is to be controlled by another entity subject to financial supervision. The provisions of this article shall be implemented by regulation, including the cases in which such consultations must be carried out.

2. In the case of the creation of investment firms which are to be controlled directly or indirectly by one or more undertakings authorised or domiciled in a non-Member State of the European Union, the granting of the requested authorisation shall be suspended, its effects refused or limited, where a decision adopted by the European Union has been notified to Spain stating that investment firms in the European Union do not benefit in that State from treatment offering the same conditions of competition as their national entities and that the conditions of effective market access are not fulfilled.

Note that this latest update, provided by Article 18 of Royal Decree-Law 14/2018, of 28 September, [Ref. BOE-A-2018-13180](#), shall enter into force at the moment that the royal decree implementing it does so, as provided for in Final Provision 5(2) of the above-mentioned Royal Decree-Law.

**Article 152.** *General requirements for authorisation.*

1. Entities must comply with corporate, financial and governance requirements, membership of the investment guarantee fund, compliance with rules of conduct, procedures related to the prevention of money laundering and internal organisation as determined by regulation.

2. In the regulatory implementation of the requirements provided for in this article, account shall be taken of the investment services and activities and ancillary services which firms are authorised to provide, in particular in relation to the establishment of minimum share capital and minimum own funds.

Note that this latest update, provided by Article 19 of Royal Decree-Law 14/2018, of 28 September, [Ref. BOE-A-2018-13180](#), shall enter into force at the moment that the royal decree implementing it does so, as provided for in Final Provision 5(2) of the above-mentioned Royal Decree-Law.

**Article 153.** *Specific requirements for authorisation.*

1. Natural persons applying for authorisation to operate as financial advisory firms shall comply with the specific requirements for authorisation to be determined by regulation.

2. Where the request for authorisation concerns the provision of the operation of an MTF or an OTF, the investment firm, the operator or, where appropriate, the entity set up for that purpose by one or more operators, must also submit internal rules for the operation of the MTF or OTF under terms to be determined by regulation to the CNMV for approval.

Note that this latest update, provided by Article 20 of Royal Decree-Law 14/2018, of 28 September, [Ref. BOE-A-2018-13180](#), shall enter into force at the moment that the royal decree implementing it does so, as provided for in Final Provision 5(2) of the above-mentioned Royal Decree-Law.

**Article 154.** *Expiry of authorisation.*

The authorisation referred to in this Part shall be declared to have lapsed if, within a period of one year from the day following the date of notification 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 155.** *Refusal of authorisation.*

The National Securities Market Commission may only refuse authorisation to constitute an investment firm for the following reasons:

(a) When there is a breach of the legal and regulatory requirements provided for obtaining and maintaining the authorisation.

(b) When the CNMV has not been informed of the identity of the shareholders, whether direct or indirect, natural or legal persons, who hold major holdings and of the amounts of such shareholdings, and when, in view of the need to ensure sound and prudent management of the entity, the suitability of the shareholders who are to hold major holdings, as defined under Article 174 and in accordance with Article 9 of Commission Delegated Regulation (EU) 2017/1943, of 14 July 2016, is not considered appropriate.

The CNMV shall request a report from the Executive Service of the Commission for the Prevention of Money Laundering and Monetary Infringements in order to obtain an appropriate assessment of the provisions of Article 9(e) of Commission Delegated Regulation (EU) 2017/1943, of 14 July 2016, sending any information it has received regarding shareholders who are going to have a major holding that may be relevant for the assessment to the said Executive Service. The Executive Service must send the report to the CNMV within a maximum period of thirty working days from the day following that on which it receives the request with the indicated information.

The reference to shareholders in this article shall be understood as a reference to business owners in the case of financial advisory firms that are natural persons.

(c) When there is a 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 of a State that is not a Member State of the European Union that govern the legal or natural persons with which the investment firm has close links, or difficulties involved in their application, prevent the effective exercise of the supervisory functions.

(e) If the CNMV is not satisfied that the members of the management body of the market operator are of good repute and have sufficient knowledge, skills and experience and devote sufficient time to the performance of their duties; or where there are objective and demonstrable grounds for believing that the management body of the investment firm or the persons who are responsible for its effective management could pose a threat to the effective, adequate and prudent management of the same and to due regard for market integrity.

(f) When there are serious conflicts of interest between the positions, responsibilities or functions held by the members of the management body of the investment firm or by the business owner, in the case of financial advisory firms that are natural persons and other positions, responsibilities or functions that they hold simultaneously.

**Article 156.** *Amendments to the articles of association.*

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 and notified to the interested parties within two months from filing.

2. If no resolution is issued in that period, the application shall be deemed to have been accepted.

3. All of the amendments to articles of association must be registered with the Companies Register and the National Securities Market Commission within the deadlines and subject to the requirements that may be established by regulation.

4. Notwithstanding the provisions of paragraph 1, amendments to articles of association for the purposes listed below shall not require prior authorisation but must be notified to the National Securities Market Commission for entry into the corresponding register:

(a) Changes of domicile within the national territory, and the change of name of the investment firm.

(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 resolutions.

(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 resolution, considers do not require authorisation because they are not material.

5. Amendments to articles of association other than those provided for in the preceding paragraphs and which do not relate to the specific nature of the company as an investment firm or to the requirements to which these entities are subject shall not require the prior authorisation of the CNMV and need not subsequently be notified to the CNMV.

**Article 157.** *Modification of authorised investment services.*

1. 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 and must be registered in the CNMV's registers in the form to be determined by regulation.

2. Authorisation may be refused if the entity does not comply with the provisions of Articles 152, 153, 155, 183, 185, 190 and 193 and, in particular, if the entity's administrative and accounting organisation, human and technical resources or internal control procedures are deemed to be insufficient by the National Securities Market Commission.

3. 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.

**Article 158.** *Appointment of new directors and managers.*

1. The CNMV, in the manner and within the time limits established by regulation, must be previously notified of the appointment of:

(a) New directors and senior managers of investment firms.

(b) New members of the governing or senior management body of entities controlling investment firms other than those referred to under Article 4(1)(2)(c) of Regulation (EU) No. 575/2013, of the European Parliament and of the Council, of 26 June 2013, provided that such controlling entities are financial holding companies or mixed financial holding companies.

2. Likewise, in the manner and within the time limits established by regulation, when they are not part of the management body, the CNMV must be notified of the appointment of new heads of internal control functions, new financial officers and other key positions that, in accordance with a risk-based approach, have been considered as such for the daily conduct of the activity of the investment firms and of the parent undertakings mentioned in paragraph 1(b), that are:

(a) Significant Consolidated entities.

(b) Significant entities forming part of a group, where the investment firm is not a significant entity on a Consolidated basis.

(c) Significant entities that are not part of a group.

For the purposes of this paragraph 2, investment firms classified as significant shall be decided upon by regulation.

3. The CNMV may object to such appointments, stating its reasons within four months of receipt of the communication, if it considers that such persons do not meet the suitability requirements, in accordance with the provisions of Article 184 *bis*, or when there are

objective and demonstrable grounds for believing that the proposed changes may jeopardise the effective, adequate and prudent management of the entity or group to which it belongs and the due consideration of market integrity and the interests of clients.

When the CNMV determines that additional documentation or information is required to complete the assessment, the four-month period may be interrupted from the time when additional documentation or information is requested until receipt of such documentation and information, and must be resolved within a maximum period of six months from the beginning of that period.

4. In the case of new members of the governing or senior management body, as well as new heads of internal control functions, new financial officers and other key positions within the entity controlling the investment firms that are subject to authorisation from other supervisory bodies in the European Union, the mere communication to the CNMV of the new positions shall suffice.

**Article 159.** *Structural changes.*

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 provided for under Article 149, 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 160.** *Revocation of authorisation.*

1. The authorisation granted to an investment firm or to one of the entities referred to under Article 145(2) or to a branch of an entity with its head office in non-Member States of the European Union may be revoked in the following cases:

(a) If it does not commence authorised activities within 12 months of the date of notification of the authorisation, for reasons attributable to the person concerned.

(b) If it expressly waives the authorisation, regardless of whether it becomes another entity or agrees to its winding up.

(c) If it actually interrupts the authorised specific activities for a period exceeding six months.

(d) If, during a year, it carries out a volume of activity lower than the normal volume that is determined by regulation.

(e) If it subsequently fails to comply with any of the requirements for obtaining the authorisation.

(f) In the event of a serious and systematic breach of the obligations provided for under Articles 190(1)(a) and 193(2)(c), (e) and (f).

(g) In the case provided for under Article 180(1).

(h) If the investment firm or the person or entity is the subject of insolvency proceedings.

(i) If subject to a sanction, as provided for in Title VIII of this Act.

(j) If the investment firm ceases to belong to the investment guarantee fund provided for in Title VI.

(k) When any of the winding up events provided for under Articles 360 and 363 of the Consolidated Text of the Corporate Enterprises Act, approved by Royal Legislative Decree 1/2010, of 2 July, occurs.

(l) If it has obtained the authorisation on the basis of false statements or by any other irregular means.

(m) Where there is a serious and systematic breach of the provisions relating to the operating conditions of investment firms, in accordance with this Act, its implementing legislation or Regulation (EU) No. 600/2014, of the European Parliament and of the Council, of 15 May 2014.

2. Authorisation may only be revoked on the grounds of the unsuitability of a shareholder in exceptional circumstances, in accordance with the provisions of Article 180.

For lack of commercial or professional repute of the members of the governing or senior management body, revocation shall only apply if those affected do not cease to hold office within one month of the request to that effect being addressed to them by the CNMV. It shall not be considered that there is a lack of repute arising from the mere circumstance that while in office a Board member or manager is investigated or prosecuted for a criminal offence.

Note that this latest update, provided by Article 24 of Royal Decree-Law 14/2018, of 28 September, [Ref. BOE-A-2018-13180](#), shall enter into force at the moment that the royal decree implementing it does so, as provided for in Final Provision 5(2) of the above-mentioned Royal Decree-Law.

**Article 161.** *Procedure for revocation of authorisation.*

1. The revocation of the authorisation shall be in accordance with the procedure provided for in Act 39/2015, of 1 October, on the Common Administrative Procedure of the Public Administrations, with the processing and resolution lying with the CNMV.

2. The provisions of this article shall be implemented by regulation, including the possibility for the CNMV to decide that the revocation shall entail the compulsory winding up of the entity.

Note that this latest update, provided by Article 25 of Royal Decree-Law 14/2018, of 28 September, [Ref. BOE-A-2018-13180](#), shall enter into force at the moment that the royal decree implementing it does so, as provided for in Final Provision 5(2) of the

above-mentioned Royal Decree-Law.

**Article 162.** *Suspension of authorisation.*

1. 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.

2. The suspension may be decided upon in any of the following cases:

- (a) Commencement of proceedings due to a serious or very serious infringement.
- (b) In any of the cases provided for under Article 160(e), (f), (h), (j) or (l), until the revocation proceeding is completed.
- (c) In the case provided for under Article 178.
- (d) When the firm fails to make the contributions to the investment guarantee fund provided for in Title VI to which it belongs.
- (e) By way of a sanction, as provided for in Title VIII.

3. The suspension shall only be determined when, for one of the reasons provided for in the preceding paragraph, the measure is necessary to ensure the solvency of the entity or to protect investors. The duration of the suspension may not exceed one year and may be extended for a further year, unless this is by way of a sanction.

4. Suspension of activities shall be ordered and shall produce its effects as provided for under Article 161 except in any of the cases that are specifically regulated in this Act.

**Article 163.** *Power to request the opening of insolvency proceedings.*

The National Securities Market Commission shall have the power to apply for a declaration of insolvency of an investment firm if the accounts filed by the undertaking or the checks performed by the CNMV reveal that the firm is insolvent as established under Act 22/2003, of 9 July, on solvency.

PART III

**Branches and freedom to provide services**

*Section 1. European Union*

**Article 164.** *General provisions.*

1. The regime of cross-border action in the European Union regulated in this Section applies to Spanish investment firms and to those authorised and supervised by the competent authorities of other Member States of the European Union, as well as to investment firms authorised and supervised by the competent authorities of other States of the European

Economic Area, which decide to provide investment services or perform investment activities, as well as provide ancillary services, all of which are covered by their authorisation, in Spain or in another State of the territory of the European Economic Area.

2. The provision of the services or performance of the activities referred to in the previous paragraph may be effected either under the freedom to provide services, through the establishment of a branch or through the use of tied agents, in the absence of a branch.

Note that this latest update, provided by Article 27 of Royal Decree-Law 14/2018, of 28 September, [Ref. BOE-A-2018-13180](#), shall enter into force at the moment that the royal decree implementing it does so, as provided for in Final Provision 5(2) of the above-mentioned Royal Decree-Law.

**Article 165.** *Branches and tied agents of Spanish investment firms in Member States of the European Union.*

1. Any Spanish investment firm wishing to establish a branch in the territory of another Member State of the European Union, or to use tied agents established there in the event that the company does not have a branch established, must notify the CNMV in advance.

2. The CNMV may, in the exercise of its responsibilities and after informing the competent authority of the host Member State, perform in situ inspections of branches of Spanish investment firms providing services in the territory of another Member State of the European Union.

3. The provisions of this article and, in particular, the content of the notification provided for in paragraph 1 and, where appropriate, the remittance by the CNMV of the information provided by the Spanish investment firm to the competent authority of the host Member State may be implemented by regulation.

Note that this latest update, provided by Article 27 of Royal Decree-Law 14/2018, of 28 September, [Ref. BOE-A-2018-13180](#), shall enter into force at the moment that the royal decree implementing it does so, as provided for in Final Provision 5(2) of the above-mentioned Royal Decree-Law.

**Article 166.** *Freedom to provide services by Spanish investment firms in Member States of the European Union.*

1. Any Spanish investment firm that, under the freedom to provide services, wishes to provide investment services or perform investment activities for the first time, as well as provide ancillary services in the territory of another Member State of the European Union, or

wishes to modify the range of investment services or activities, as well as ancillary services provided under this regime, shall give prior notice to the CNMV.

2. The provisions of this article may be implemented by regulation and, in particular, the content of the notification provided for in paragraph 1 and, where appropriate, the remittance by the CNMV of the information provided by the Spanish investment firm to the competent authority of the host Member State.

Note that this latest update, provided by Article 27 of Royal Decree-Law 14/2018, of 28 September, [Ref. BOE-A-2018-13180](#), shall enter into force at the moment that the royal decree implementing it does so, as provided for in Final Provision 5(2) of the above-mentioned Royal Decree-Law.

**Article 167.** *Branches in Spain of investment firms of Member States of the European Union.*

1. The establishment by investment firms authorised in other Member States of the European Union of branches in Spain or the use of tied agents established in Spain, where such firms do not have an established branch, shall not require prior authorisation, provided that the appropriate services and activities are covered by the authorisation granted to such firms in the home Member State.

2. Notwithstanding the preceding paragraph, the opening of a branch in Spain or, in the absence thereof, the use of tied agents established in Spain, shall be conditional upon the CNMV receiving a communication from the competent authority of the home Member State of the investment firm. Such communication shall contain the information specified in the relevant regulatory provisions.

Where the investment firm authorised in another Member State of the European Union has recourse to a tied agent established in Spain, such tied agent shall be considered assimilated to the branch, if one has been established, and shall be subject to the regime provided for in this Act for branches.

3. The provisions of this article may be implemented by regulation and, in particular, the procedure for opening and closing the branch and the regime to which the tied agent's actions shall be subject.

Note that this latest update, provided by Article 27 of Royal Decree-Law 14/2018, of 28 September, [Ref. BOE-A-2018-13180](#), shall enter into force at the moment that the royal decree implementing it does so, as provided for in Final Provision 5(2) of the above-mentioned Royal Decree-Law.

**Article 168.** *Supervision of branches in Spain of investment firms of Member States of the European Union.*

1. The CNMV shall assume responsibility for ensuring that the investment services or activities and auxiliary services provided in Spain by the branch or, as the case may be, by the tied agent established in Spain, where there is no branch, comply with the obligations established in this Act and, in particular, under Articles 203 to 224; in Part I of Title V and in the provisions issued in implementation of the aforementioned articles, as well as the obligations provided for under Articles 14 to 26 of Regulation (EU) No. 600/2014, of the European Parliament and of the Council, of 15 May 2014.

2. Furthermore, the CNMV shall assume control of the obligation provided for under Article 194 regarding the registration of transactions carried out by the branch or by the tied agent, where there is no branch, without prejudice to the competent authority of the home Member State having direct access to that registration.

3. Without prejudice to paragraphs 1 and 2, the competent authority of the home Member State may, in the exercise of its responsibilities and after informing the CNMV, perform in situ inspections of that branch or tied agent.

4. The provisions of this article may be implemented by regulation, including the powers of the CNMV to ensure compliance with the provisions of this article.

Note that this latest update, provided by Article 27 of Royal Decree-Law 14/2018, of 28 September, [Ref. BOE-A-2018-13180](#), shall enter into force at the moment that the royal decree implementing it does so, as provided for in Final Provision 5(2) of the above-mentioned Royal Decree-Law.

**Article 169.** *Freedom to provide services in Spain by investment firms of Member States of the European Union.*

1. The provision or performance in Spain, for the first time, of investment services or activities, as well as ancillary services, under the freedom to provide services, by investment firms authorised in another Member State of the European Union, may commence once the CNMV has received a communication from the competent authority of the entity's home Member State, with the information and under the terms established by regulation.

2. Where the investment firm or credit institution intends to use tied agents established in its home Member State, the CNMV and the Bank of Spain shall make public their identity, previously communicated by the competent authority of the home Member State.

Note that this latest update, provided by Article 27 of Royal Decree-Law 14/2018, of 28 September, [Ref. BOE-A-2018-13180](#), shall enter into force at the moment that the royal decree implementing it does so, as provided for in Final Provision 5(2) of the above-mentioned Royal Decree-Law.

**Article 170.** *Preventive measures.*

1. Where the CNMV has clear and demonstrable grounds for believing that an investment firm authorised in another Member State of the European Union which operates in Spain through a branch, or, as the case may be, through a tied agent established in Spain, where there is no branch, or under the freedom to provide services, is in breach of obligations arising from national provisions adopted pursuant to Directive 2014/65/EU, of 15 May 2014, it shall inform the competent authority of the home Member State of the facts thereof.

If, despite the measures taken by the competent authority of the home Member State, the investment firm persists in acting in a manner which is clearly detrimental to the interests of investors in Spain or to the proper functioning of the markets, the CNMV, after informing the competent authority of the home Member State, shall take all appropriate measures, including the possibility of preventing the infringing investment firms from performing new transactions on Spanish territory. The CNMV shall inform the European Commission and ESMA of these measures without delay. The CNMV may require ESMA to act in accordance with the powers conferred to it by Article 19 of Regulation (EU) No. 1095/2010, of 24 November 2010.

2. Notwithstanding the provisions of the preceding paragraph, where the CNMV establishes that the branch in Spain of an EU investment firm or the tied agent of such a firm established in Spain, where there is no branch, does not comply with the obligations provided for in this Act - in particular in Part I of Title V and under Articles 203 to 224; as well as in the provisions issued in implementation of these rules; and the obligations provided for under Articles 14 to 26 of Regulation (EU) No. 600/2014, of the European Parliament and of the Council, of 15 May 2014 - it shall require an investment firm to resolve its irregular situation.

If the investment firm fails to take appropriate measures, the CNMV shall take all necessary measures to resolve this situation and shall inform the competent authorities of the home Member State of the nature of the measures taken.

If, despite the measures taken by the CNMV, the firm continues to infringe the provisions contained in this Act and its implementing regulations, the CNMV, after informing the competent authorities of the home Member State, may sanction it and, where appropriate, prohibit it from performing new transactions on Spanish territory. The CNMV shall inform the European Commission and ESMA of these measures without delay. The CNMV may require ESMA to act in accordance with the powers conferred to it by Article 19 of Regulation (EU) No. 1095/2010, of the European Parliament and of the Council, of 24 November 2010.

3. Any measure taken pursuant to this article involving sanctions or restrictions on the activities of an investment firm shall be properly explained and communicated to the investment firm concerned.

4. The provisions of this article shall also apply in the case of credit institutions from other Member States of the European Union authorised to provide investment services or perform investment activities, as well as provide ancillary services in Spanish territory, either under the freedom to provide services or under the freedom of establishment.

Note that this latest update, provided by Article 27 of Royal Decree-Law 14/2018, of 28 September, [Ref. BOE-A-2018-13180](#), shall enter into force at the moment that the royal decree implementing it does so, as provided for in Final Provision 5(2) of the above-mentioned Royal Decree-Law.

## *Section 2. Third countries*

### **Article 171. General provisions.**

#### 1. This Section regulates:

(a) The provision of investment and ancillary services or performance of investment activities by Spanish investment firms in non-EU Member States, whether under the freedom to provide services or through the establishment of a branch, including through the creation or acquisition by the Spanish investment firm or by an entity belonging to its Consolidated group supervised by the CNMV, of investment firms located there; and

(b) the provision of investment and ancillary services or performance of investment activities in Spain by third country firms, either through the establishment of a branch or under the freedom to provide services, and provided that, in the latter case, such firms are not entered in ESMA's register of third country firms referred to under Article 48 of Regulation (EU) No. 600/2014, of the European Parliament and of the Council, of 15 May 2014.

2. Where a third-country firm intends to provide investment services or perform investment activities in Spain, with or without ancillary services, to retail clients or professional clients referred to under Article 206 of this Act, it must establish a branch in Spain and apply to the CNMV, in the case of an investment firm, or to the Bank of Spain, in the case of a credit institution, for the appropriate authorisation, under the terms and conditions provided for investment firms under Article 173 of this Act and its implementing regulations and, for credit institutions, under Article 13 of Act 10/2014, of 26 June and its implementing regulations.

Likewise, in view of the volume of the activity, complexity of the products or services, or reasons of general interest, the CNMV may require a third country firm that provides or intends to provide investment services or to perform investment activities in Spain, with or without ancillary services to professional clients or the eligible counterparties as referred to, respectively, under Articles 205 and 207, to establish a branch in Spain, and must apply to the CNMV, in the case of an investment firm, or to the Bank of Spain, in the case of a credit institution, for the appropriate authorisation, under the terms and conditions described in the preceding paragraph.

3. The provisions of this article may be implemented by regulation, including particularities deriving from the provision of investment services or performance of

investment activities to a person established in Spain on the exclusive initiative of that person or from the client acquisition.

Note that this latest update, provided by Article 27 of Royal Decree-Law 14/2018, of 28 September, [Ref. BOE-A-2018-13180](#), shall enter into force at the moment that the royal decree implementing it does so, as provided for in Final Provision 5(2) of the above-mentioned Royal Decree-Law.

**Article 172.** *Cross-border action by Spanish investment firms in non-European Union Member States.*

1. Spanish investment firms that intend to open a branch, or provide services without a branch in a non-European Union Member State, must obtain prior authorisation from the CNMV.

2. The creation by a Spanish investment firm or by an entity belonging to its Consolidated group, provided that it is a Consolidated group of financial institutions supervised by the CNMV, of a foreign investment firm, or the acquisition of a holding in an existing company, shall also be subject to the prior authorisation of the CNMV, when such foreign investment firm is to be incorporated or is domiciled in a non-EU Member State.

3. The authorisation procedures provided for in this article shall be implemented by way of regulation, including the grounds for rejection of applications.

Note that this latest update, provided by Article 27 of Royal Decree-Law 14/2018, of 28 September, [Ref. BOE-A-2018-13180](#), shall enter into force at the moment that the royal decree implementing it does so, as provided for in Final Provision 5(2) of the above-mentioned Royal Decree-Law.

**Article 173.** *Cross-border action in Spain by companies from third countries.*

1. Companies from third countries that provide investment services or perform investment activities in Spain, with or without ancillary services, shall be subject to this Act and its implementing regulations.

2. Investment firms whose head office or registered office is located in a non-EU Member State which intend to provide investment services or perform investment activities in Spain, with or without ancillary services, either through the establishment of a branch or under the freedom to provide services, provided that, in the latter case, they are not entered in ESMA's register of third country firms referred to under Article 48 of Regulation (EU) No. 600/2014, of the European Parliament and of the Council, of 15 May 2014, shall require the authorisation of the CNMV in the form and under the conditions provided for at law. Without

prejudice to the resolution that the CNMV must issue, the expiry of the maximum time limit without having notified an express resolution shall mean that the application is rejected.

Likewise, in the event of a change in the terms of the authorisation granted by the CNMV pursuant to the preceding paragraph, the investment firm shall inform the CNMV of such changes in writing. Regulations shall implement those alterations that, which shall require the authorisation of the CNMV and the form and conditions for their processing.

3. Credit institutions, whose head office or registered office is located in a non-EU Member State and which intend to provide investment services or perform investment activities in Spain, with or without ancillary services, either through the establishment of a branch or under the freedom to provide services, provided that, in the latter case, they are not entered in ESMA's register of third country firms referred to under Article 48 of Regulation (EU) No. 600/2014, of the European Parliament and of the Council, of 15 May 2014, for not meeting the requirements provided for this purpose under Article 46 of the aforementioned Regulation, shall require the authorisation of the Bank of Spain, under the terms provided for under Article 13 of Act 10/2014, of 26 June, and its implementing regulations.

4. Third country firms whose legal and supervisory framework has been recognised by the European Commission as effectively equivalent in accordance with Article 47(1) of Regulation (EU) No. 600/2014, of the European Parliament and of the Council, of 15 May 2014, such equivalence decision being in force, and which have a branch in Spain authorised by the CNMV or the Bank of Spain to provide investment services or perform investment activities, with or without ancillary services, may provide such services or perform such activities in other Member States of the European Union to professional clients and eligible counterparties, as defined under Articles 205 and 207 of this Act, subject to compliance with the information requirements provided for under Article 166 of this Act.

Note that this latest update, provided by Article 27 of Royal Decree-Law 14/2018, of 28 September, [Ref. BOE-A-2018-13180](#), shall enter into force at the moment that the royal decree implementing it does so, as provided for in Final Provision 5(2) of the above-mentioned Royal Decree-Law.

## PART IV

### Major holdings

#### **Article 174.** *Major holdings.*

1. For the purposes of this Act, a significant holding in a Spanish investment firm shall be understood to be one that directly or indirectly affects at least 10% of the capital or voting rights attached to the shares in the firm or that allows significant influence to be exercised over the management of the investment firm in which the holding is held, taking into account the conditions relating to the calculation of voting rights and their aggregation provided for

under Articles 26 and 27 of Royal Decree 1362/2007, of 19 October, implementing Market Act 24/1988 of 28 July, on the securities market as regards transparency requirements relating to information on issuers whose securities are admitted to trading on a regulated market or on another regulated market in the European Union.

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 holdings contained in this Act and the specific rules established by Additional Provision Six and under Articles 48 and 99 and their implementing regulations.

**Article 175.** *Duty to notify.*

1. Any natural or legal person, acting alone or in concert with others, that has acquired, directly or indirectly, a holding 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 holding that has been attained.

2. Any natural or legal person who, acting alone or in concert with others, hereinafter referred to as the potential acquirer, has decided to acquire, directly or indirectly, a major holding in a Spanish investment firm or to increase, directly or indirectly, the holding in the same in such a way that either the percentage of voting rights or capital held is equal to or greater than 20%, 30% or 50%, or that by virtue of the acquisition the investment firm could be controlled - hereinafter, the proposed acquisition - shall notify the CNMV beforehand.

The notification shall indicate the size of the intended holding and shall include all information determined in accordance with Commission Delegated Regulation (EU) No. 2017/1946, of 11 July 2017, supplementing Directives 2004/39/EC and 2014/65/EU, of the European Parliament and of the Council, as regards technical regulatory standards in order to establish an exhaustive list of information that proposed acquirers are required to include in the notification of the proposed acquisition of a qualifying holding in an investment firm. Such information shall be relevant to the assessment, and proportionate and appropriate to the nature of the potential acquirer and the proposed acquisition.

3. Investment firms shall also notify the National Securities Market Commission of acquisitions or disposals of holdings in their capital which cross any of the thresholds indicated in the preceding paragraphs of this article as soon as they become aware of them.

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

**Article 176.** *Assessment of the proposed acquisition.*

1. The CNMV, in order to ensure the sound and prudent management of the investment firm in which the acquisition is proposed, and taking into account the possible influence of the potential acquirer on the acquisition, shall assess the suitability of the acquisition and the financial soundness of the proposed acquisition, in accordance with the

criteria provided for under Article 9 of Commission Delegated Regulation (EU) No. 2017/1946, of 14 July 2016.

2. The procedure provided for in this article, including the assessment criteria, the period for carrying out the assessment and the reasons, if any, why the CNMV may oppose it, shall be implemented by way of regulation.

Note that this latest update, provided by Article 30 of Royal Decree-Law 14/2018, of 28 September, [Ref. BOE-A-2018-13180](#), shall enter into force at the moment that the royal decree implementing it does so, as provided for in Final Provision 5(2) of the above-mentioned Royal Decree-Law.

**Article 177.** *Collaboration between supervisory authorities.*

The CNMV, when carrying out the assessment referred to under Article 176(1), shall consult the authorities responsible for the supervision of financial institutions in Spain and in other Member States of the European Union under the terms to be determined by regulation.

Note that this latest update, provided by Article 31 of Royal Decree-Law 14/2018, of 28 September, [Ref. BOE-A-2018-13180](#), shall enter into force at the moment that the royal decree implementing it does so, as provided for in Final Provision 5(2) of the above-mentioned Royal Decree-Law.

**Article 178.** *Effects of non-compliance with obligations.*

When an acquisition regulated under Article 175 takes place without having been notified beforehand to the National Securities Market Commission, or where it has been notified but the period regulated under Article 176(3) has not expired, or where the National Securities Market Commission expresses opposition, the following shall occur:

(a) At any event, the voting rights corresponding to the holdings 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 resolutions may be challenged in the courts, as provided for in Part IX of the Consolidated Text of the Corporate Enterprises Act, approved by Royal Legislative Decree 1/2010, of 2 July, 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 162.

(c) If necessary, it may be decided to take charge of the company or replace its directors, as provided for in Title VIII.

(d) The sanctions provided for in Title VIII of this Act shall be imposed.

**Article 179.** *Reduction of major holdings.*

1. Any natural or legal person who has decided to dispose, directly or indirectly, of a significant holding 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 CNMV of any decision to reduce their significant holding 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.

2. Failure to comply with this duty shall be sanctioned as provided for in Title VIII.

**Article 180.** *Preventive measures.*

1. Where there are sound and accredited reasons to suggest that the influence exerted by persons owning significant holdings in an investment firm may be detrimental to sound prudent management of the same so as to seriously impair its financial position, the National Securities Market Commission shall adopt one or more of the following measures:

(a) Those provided for in paragraph 178(a) and (b), although voting rights may not be suspended for more than three years.

(b) Exceptionally, revocation of the authorisation.

2. Additionally, the appropriate sanctions as provided for in Title VIII shall be imposed.

3. The National Securities Market Commission shall give a reasoned account to the Ministry of Economy and Competitiveness of the decisions taken pursuant to this article.

**Article 181.** *Disclosure of shareholder structure.*

1. Investment firms must inform the National Securities Market Commission, in the form and with the frequency to be established by regulation, regarding the composition of their shareholder structure and any changes occurring thereto. 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 regulation.

2. Additionally, at least once per year, investment firms must notify the National Securities Market Commission of the identity of the shareholders owning significant holdings, indicating the size of such holdings.

PART V

**Suitability, corporate governance and reporting requirements**

**Article 182.** *Governance agreements.*

1. Investment firms shall have sound governance agreements, including a clear and adequate organic structure proportionate to the nature, scale and complexity of their activities and with well-defined, transparent and consistent lines of accountability.

To this end, the management body of the investment firm must define governance agreements that ensure the efficient and prudent management of the entity, including the appropriate allocation of functions in the organisation and the prevention of conflicts of interest, promoting market integrity and the interests of clients. Such agreements shall at least comply with the following principles:

(a) The overall responsibility of the entity, the approval and monitoring of the implementation of its strategic objectives, its risk strategy and its internal governance, shall lie with the management body.

(b) The management body shall ensure the integrity of the accounting and financial reporting systems, including financial and operational control and compliance with applicable law.

(c) The management body shall oversee the information disclosure process and communications relating to the investment firm.

(d) The management body shall be responsible for ensuring effective supervision of senior management.

(e) The chairman of the management body may not simultaneously hold the position of chief executive officer, unless justified by the entity and authorised by the CNMV.

2. The governance agreements provided for in the previous paragraph should also ensure that the management body of investment firms defines, approves and supervises:

(a) The organisation of the firm for the provision of investment services and performance of investment activities, as well as provision of ancillary services, including the knowledge, skills and experience required of the personnel, resources and procedures and the rules applicable to the provision of services or the performance of activities of the firm, having regard to the nature, scale and complexity of its activities and all requirements to be met.

(b) The strategy relating to the services, activities, products and operations it offers, depending on the level of risk tolerance of the firm and the characteristics and needs of the firm's clients to whom it offers or provides them, including the performance of stress tests, where appropriate.

(c) A remuneration policy for persons involved in the provision of services to clients aimed at encouraging responsible business conduct, fair treatment of clients and the avoidance of conflicts of interest in relations with them.

3. Other entities providing investment services and performing investment activities in accordance with this Title shall have a clear and appropriate organic structure proportionate to

the nature, scale and complexity of the investment services they provide and investment activities they perform.

**Article 183.** *Periodic control and assessment of governance agreements.*

1. The management body shall regularly monitor and assess the appropriateness and implementation of the firm's strategic objectives in the provision of investment and ancillary services and performance of investment activities, the effectiveness of governance agreements of the investment firm and the appropriateness of strategies relating to the provision of services to clients, and shall take appropriate measures to remedy any shortcomings.

At any event, governance agreements shall be governed by the principles of accountability and supervision of the management body, and of the integrity of the accounting and financial reporting systems.

2. The members of the management body shall have adequate access to the information and documents necessary to supervise and control the management's decision-making process.

3. Investment firms shall have a website where they will disseminate the public information provided for in this Part and communicate how they comply with governance agreements.

**Article 184.** *Collective requirements of the management body.*

1. The management body of investment firms shall collectively possess sufficient knowledge, skills and experience to be able to understand the activities of investment firms, the main risks and to ensure the effective ability of the management body to make independent and autonomous decisions for the benefit of the entity.

2. Investment firms shall devote adequate human and financial resources to the integration and training of the members of the management body.

3. The items provided for in the previous paragraphs shall be implemented by regulation.

**Article 184 bis.** *Suitability policy for the selection and assessment of positions.*

1. Members of the management body and senior management of investment firms shall at all times comply with the following suitability requirements:

- (a) Be of recognised repute, honesty and integrity,
- (b) have sufficient knowledge, skills and experience,
- (c) act with independence of judgment; and
- (d) be in a position to exercise good governance of the entity.

These requirements shall also apply to natural persons representing legal persons on management bodies, in accordance with the provisions of Article 236(5) of the Consolidated Text of the Corporate Enterprises Act, approved by Royal Legislative Decree 1/2010, of 2 July.

2. When assessing the requirements provided for in paragraphs 1(b) and (d) of this article, the CNMV shall take into account the size, internal organisation, nature, scale and complexity of the activities of the investment firm, as well as the functions performed by these persons with respect to the investment firm.

3. The application of the requirements provided for in the preceding paragraphs to financial advisory firms shall be determined by regulation.

**Article 185.** *Selection and assessment of positions.*

1. Investment firms must at all times ensure compliance with the suitability requirements of this Act. To this end, they must have, in conditions proportionate to the size, internal organisation, nature, scale and complexity of their activities, adequate internal units and procedures to carry out the selection, monitoring and succession plan, as well as the re-election to positions, of the persons who are to occupy positions subject to compliance with the suitability requirements provided for in the previous article in accordance with what is provided for in this article.

2. The suitability assessment of the positions referred to in the previous paragraph shall be carried out both by the investment firm itself, and by the CNMV, under the terms provided for by regulation.

3. In the event of non-compliance with the requirements of good repute, honesty and integrity, knowledge, skills, experience, independence of judgment and good governance, the CNMV may:

(a) Revoke the authorisation, in an exceptional manner, in accordance with the provisions of Article 160 of this Act.

(b) Require the temporary suspension or definitive removal of the person or the correction of identified deficiencies in cases of lack of good repute, honesty and integrity, appropriate knowledge, skills or experience, independence of judgment or ability to exercise good governance.

If the investment firm does not execute such requirements within the time limit indicated by the CNMV, the CNMV may agree to the temporary suspension or definitive removal of the relevant officer, in accordance with the procedure provided for under Article 311 of this Act.

4. At any event, the management body must ensure that the procedures for selecting its members favour diversity of experience and knowledge, facilitate the selection of women, ensuring their balanced presence as members of the management body and, in general, do not have implicit biases that could involve discrimination.

The concept of diversity shall be implemented by regulation for the purposes of compliance with the provisions of this paragraph.

**Article 185 bis.** *Criteria for interpretation of suitability requirements.*

1. Those who have been engaged in personal, business and professional conduct which leaves no doubt as to their ability to perform sound and prudent management of the investment firm shall be regarded as complying with the good repute, honesty and integrity requirements of this Title.

To assess the concurrence of good repute, honesty and integrity, all available information, according to the parameters to be determined by regulation, should be considered. At any event, such information should include information on the conviction for the commission of serious or minor offences and the sanctions for the commission of administrative infringements.

2. A person shall be deemed to possess the knowledge, skills and experience required under this Title to perform their duties in investment firms if he or she has an appropriate level of training and professional profile, in particular in the areas of securities and financial services, and practical experience derived from his or her previous occupations for a sufficient period of time.

3. For the purposes of assessing the possibility of the members of the management body exercising the good governance required by this Title, the presence of potential conflicts of interest generating undue influence from third parties and the ability to devote sufficient time to carrying out the relevant functions shall be taken into account.

The concept of sufficient time for the purposes of compliance with the provisions of this paragraph shall be implemented by regulation.

**Article 186.** *Performance criteria for members of the management body.*

Each member of the management body of investment firms shall act with honesty, integrity and independence of judgment, effectively assessing and questioning, where appropriate, senior management decisions and effectively monitoring and controlling the senior management decision-making process.

**Article 187.** *Investment firms subject to Regulation (EU) No. 575/2013, of the European Parliament and of the Council, of 26 June 2013.*

1. The provisions of this Part shall apply to investment firms and, where applicable, their controlling entities, other than those referred to under Article 4(1)(2)(c) of Regulation (EU) No. 575/2013, of the European Parliament and of the Council, of 26 June 2013, with the following particularities:

(a) The provisions of Article 182(1) shall also apply to Consolidated groups in which they are integrated, so that the systems, procedures and mechanisms provided for in that article with which parent and subsidiary undertakings must comply are consistent and well integrated and that any data and information relevant for supervisory purposes can be provided.

(b) The provisions of Articles 184, 184 *bis*, 185 and 185 *bis* shall also apply to the members of the management and senior management body of controlling entities of the investment firms referred to in paragraph 1, where that controlling entity is a financial holding company or a mixed financial holding company.

2. The provisions of points (a) and (b) of Article 184 *bis* (1) shall apply to those responsible for internal control functions, financial officers and other key positions which, under a risk-based approach, have been considered as such for the day-to-day conduct of the business of the investment firms referred to in paragraph 1 of this article and, where applicable, of the controlling entities referred to in point (b) of paragraph 1 of this article.

**Article 188.** *Significant investment firms.*

1. Significant investment firms referred to under Article 187(1) above and their controlling entities shall set up an appointments committee and a remuneration committee, comprised of members of the management body who do not perform executive functions at the entity. The appointments committee shall establish an objective of balanced representation of the under-represented sex on the management body and develop guidance on how to achieve this objective.

2. The CNMV shall determine the maximum number of positions that directors or senior managers of significant investment firms may hold simultaneously, taking into account the particular circumstances and the nature, size and complexity of the entity's activities.

The members of the management body with executive functions and the members of the senior management of significant investment firms may not occupy more positions than those provided for credit institutions under Article 26 of Act 10/2014, of 26 June at the same time.

3. The CNMV may authorise the positions mentioned in the previous paragraph to occupy an additional non-executive position if it considers that this does not prevent the correct performance of its activities at the investment firm. Such authorisation must be communicated to ESMA.

4. The CNMV may determine that a significant investment firm required to have an appointments committee and a remuneration committee may, by reason of its size, internal organisation, the nature, scope or lack of complexity of its activities, jointly set up the appointments committee and the remuneration committee, or be exempted from the obligation to set up one, the other or both committees.

5. The significant nature of investment firms shall be established by regulation, in accordance with the following criteria:

- (a) Minimum amount of total asset items,
- (b) the minimum total amount of its annual turnover; and
- (c) the minimum average number of workers employed during the financial year.

**Article 189.** *Remuneration policies of investment firms.*

1. Investment firms must have a remuneration policy that addresses the institution's risk management and the management of potential conflicts of interest, in particular in relation to clients.

2. The remuneration policy shall be determined in accordance with the general principles provided for credit institutions under Article 33 of Act 10/2014, of 26 June.

3. With regard to variable elements of remuneration, the principles provided for credit institutions under Article 34 of Act 10/2014, of 26 June, shall apply.

4. In the case of investment firms that receive public financial support, in addition to the rules provided for under Article 33 of Act 10/2014, of 26 June, those provided for under Article 35 of the said Act and its implementing regulations for credit institutions shall be applied, with any adaptations that may be necessary due to the nature of the institution.

5. Investment firms shall submit to the CNMV as much information as it requires in order to comply with remuneration obligations.

6. The provisions of the preceding paragraphs shall not apply to the investment firms referred to under Article 4(1)(2)(c) of Regulation (EU) No. 575/2013, of the European Parliament and of the Council, of 26 June 2013.

7. Nor shall the provisions of the preceding paragraphs apply to investment firms authorised exclusively to provide any of the services referred to in points (h) or (i) of Article 140.

**Article 189 bis.** *Remuneration policy and risk management.*

1. Investment firms shall have, under conditions proportionate to the nature, scale and complexity of their activities, remuneration policies consistent with the promotion of sound and effective risk management.

2. The remuneration policy shall be applied to the categories of employees whose professional activities have a significant impact on their risk profile, in relation to the group, parent and subsidiary undertakings. In particular, it shall apply to senior managers, employees who assume risks for the investment firm, those who exercise control functions, as well as to any employee who receives a lump sum remuneration that includes them in the same remuneration scale as the previous ones, where their professional activities have a significant impact on the risk profile of the entity.

3. Investment firms shall have at the disposal of the CNMV at all times an updated list indicating the categories of employees whose professional activities have a significant impact on their risk profile.

**Article 189 ter.** *Remuneration policy and management of conflicts of interest.*

1. Investment firms shall define and implement remuneration policies and practices in accordance with Commission Delegated Regulation (EU) 2017/565, of 25 April 2016, with the aim of avoiding conflicts of interest in the provision of services to their clients.

2. The CNMV may specify the criteria to be taken into account in the definition of policies and practices for the remuneration of relevant persons that directly or indirectly affect the provision of investment or ancillary services and performance of investment activities by the investment firm in order to avoid conflicts of interest in the provision of services to its clients.

PART VI

**Management systems, procedures and mechanisms**

***Section 1. Financial requirements***

**Article 190.** *Financial requirements.*

1. Investment firms shall have the following obligations:

(a) Those deriving from Regulation (EU) No. 575/2013, of the European Parliament and of the Council, of 26 June 2013, on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No. 648/2012, of 4 July.

However, the obligations of the previous point shall not apply, under the terms and with the exceptions provided for in Regulation (EU) No. 575/2013, of 26 June 2013, to investment firms not authorised to provide the ancillary services referred to under Article 141(a) which provide only one or more of the investment services or activities listed under Article 140(a), (b), (d) and (g) of this Act, and which are not permitted to hold in trust money or securities of their clients and which, for this reason, may never be in a debit position *vis-à-vis* such clients.

The calculations for ascertaining whether investment firms fulfil the obligations established in this point (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 CNMV determines.

(b) Investment firms must maintain the minimum volume of investments in certain categories of low-risk liquid assets, to be established by regulation, 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 regulation.

2. Consolidated groups of investment firms and investment firms that are not part of Consolidated groups, except those to which the second sub-paragraph of point (a) of the previous paragraph refer, 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.

**Article 190 bis.** *Combined capital buffer requirement.*

1. Investment firms must at all times comply with the combined capital buffer requirement, understood as the total common equity Tier 1 as defined under Article 26 of Regulation (EU) No. 575/2013, of the European Parliament and of the Council, of 26 June 2013, necessary to comply with the obligation to have capital conservation buffers, plus other buffers, under terms to be established by regulation.

This obligation shall be complied with without prejudice to the own resources requirements provided for under Article 92 of Regulation (EU) No. 575/2013, of the European Parliament and of the Council, of 26 June 2013, and any others that the CNMV may require by virtue of the provisions of Article 261.

2. The provisions of this article shall be implemented by regulation and, in particular, the cases of non-application or the particularities applicable to certain investment firms according to their size or the services provided and the particularities derived from their application to groups of companies.

**Article 191.** *Information on solvency.*

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 "Information on solvency", the information referred to in Part Eight of Regulation (EU) No. 575/2013, of 26 June 2013, and on the terms provided for therein.

2. The National Securities Market Commission may require parent undertakings to publish on an annual basis, either in full or by reference to equivalent information, a description of their legal and governance structure and of the organic structure of the group.

3. The disclosure, in compliance with the requirements of corporate legislation or the securities market, of the data referred to in paragraph 1 shall not exempt them from inclusion in the document "Information on solvency" in the manner provided for in the said paragraph.

4. The National Securities Market Commission may require from the entities obliged to disclose the information referred to in paragraph 1:

(a) Verification by account auditor or independent expert, or by other means deemed satisfactory, of the information not covered by the accounts audit, in accordance with the provisions of Act 22/2015, of 20 July, on the auditing of accounts, with respect to the rules on independence to which accounts auditors are subject.

(b) Disclosure of one or more of such pieces of information, either independently at any time, or more frequently than annually, and to establish maximum disclosure periods.

(c) Use for the disclosure of means and places other than the accounts.

5. The provisions of this article shall not apply to the investment firms referred to under Article 190(1)(a), second sub-paragraph.

**Article 192.** *Annual report of investment firms.*

1. Investment firms shall submit to the National Securities Market Commission and shall publish annually, specifying the countries in which they are established, the following information on a Consolidated basis for each financial year:

- (a) Name, nature and geographical location of the activity.
- (b) Turnover.
- (c) Number of full-time employees.
- (d) Gross earnings before tax.
- (e) Income taxes.
- (f) Subsidies or public aid received.

2. The information referred to in the previous paragraph shall be published as an annex to the accounts of the audited entity in accordance with the legislation governing auditing of accounts.

3. Entities shall disclose in their annual report of investment firms, among the key indicators, the performance of their assets, which shall be calculated by dividing the net profit by the balance sheet total.

4. The National Securities Market Commission shall make these reports available on its website.

5. The provisions of this article shall not apply to the investment firms referred to under Article 190(1)(a), second sub-paragraph.

**Article 192 bis.** *Risk management and risk committee.*

1. The management body is responsible for the risks assumed by an investment firm. In exercising its responsibility for risk management, the management body shall:

- (a) Devote sufficient time to the consideration of risk matters; and
- (b) approve and periodically review the strategies and policies for assuming, managing, monitoring and reducing risks.

2. Investment firms should form a risk committee. Exceptions to the obligation to set up a risk committee shall be provided for by regulation.

3. The provisions of this article shall be implemented by regulation and other requirements may be provided to ensure the adequate management of risks by the investment firm.

**Section 2.** *General requirements for internal organisation and operation*

**Article 193.** *Internal organisation requirements.*

1. Investment firms shall operate in accordance with the rules of corporate governance and internal organisation requirements provided for in this Act and its implementing legislation, as well as under Articles 21 to 43 of Commission Delegated Regulation (EU) 2017/565, of 25 April 2016, and other applicable legislation.

2. The requirements for the internal organisation of investment firms shall be implemented by regulation, and shall include at least the following aspects:

(a) Adequate and sufficient policies and procedures to ensure that the firm, including its managers, employees and tied agents, comply with their obligations under this Act, as well as with the relevant rules applicable to the personal transactions of such persons,

(b) effective administrative and organisational measures with a view to taking all reasonable steps to prevent conflicts of interest as defined under Article 208 *bis* from adversely affecting the interests of its clients,

(c) a process for the approval of each of the financial instruments and significant adaptations of existing instruments prior to their marketing or distribution to clients, in the case of investment firms which manufacture financial instruments for sale to clients,

(d) adequate mechanisms to obtain sufficient information on financial instruments and on the product approval process, including the identified target market of the financial instrument, and to understand the characteristics and identified target market of each instrument, in the case of investment firms offering or marketing financial instruments not designed by them,

(e) keeping a register of all the services, activities and transactions they perform under the terms defined under Article 194 of this Act,

(f) where they have at their disposal financial instruments belonging to clients, appropriate measures to safeguard the ownership rights of their clients,

(g) for those investment firms to which it applies, a recovery plan under the terms of Act 11/2015, of 18 June, on credit institutions and investment firms (recovery and resolution); and

(h) robust security mechanisms to ensure the security and authentication of information systems, to minimise the risk of data corruption and unauthorised access and to prevent information leaks, while maintaining data confidentiality.

3. Investment firms must also adopt and have:

(a) Reasonable measures to ensure the continuity and regularity of the provision of investment services and performance of investment activities,

(b) adequate administrative and accounting procedures, internal control mechanisms, effective risk assessment techniques and effective control and safeguard mechanisms for their computer systems,

(c) the investment firms to which it applies must draw up and keep up-to-date a recovery plan as provided for in Act 11/2015, of 18 June 2015.

(d) when holding funds belonging to clients, investment firms shall take appropriate measures to safeguard the rights of their clients. Institutions may not use their clients' funds for their own account, except in exceptional cases that may be provided for by regulation and always with the client's express consent. The entity's internal records must make it possible to ascertain, at all times and without delay, and especially in the event of the entity's insolvency, the position of each client's funds; and

(e) where they entrust to a third party the exercise of operational functions crucial for the provision of continuous and satisfactory service to their clients and the performance of investment activities on a continuous and satisfactory basis, they shall take reasonable steps to avoid undue additional operational risk.

4. Credit institutions that provide investment services and perform investment activities must respect the internal organisation requirements provided for in the previous paragraph, with the specifications determined by regulation, and the Bank of Spain has the powers to supervise, inspect and sanction these requirements. The prohibition on the use of their clients' funds for their own account provided for in point (d) above shall not apply to such entities.

5. The conclusion of financial guarantee agreements with change of ownership and the creation of pledges or the conclusion of agreements to set-off claims over financial instruments or over clients' funds shall be governed by regulation.

6. Once insolvency proceedings have been initiated against a securities depository institution, the CNMV, without prejudice to the powers of the Bank of Spain and the FROB, may immediately and at no cost to the investor, transfer the securities deposited on behalf of its clients to another institution authorised to carry on this activity, even if such assets are deposited with third parties in the name of the institution providing the deposit service. For these purposes, both the competent judge and the bodies involved in the insolvency proceedings shall facilitate access by the entity to which the securities are to be transferred to the documentation and accounting and computer records necessary to make the transfer effective. The existence of insolvency proceedings shall not prevent the securities purchased or cash from the exercise of financial rights or the sale of the securities from being made available to the client in accordance with the rules of the clearing, settlement and registration system.

7. The provisions of this article shall be implemented by regulation and, in particular, the content and requirements of the procedures, records and measures provided for in this article shall be established, just as the internal organisation requirements applicable to financial advisory firms that are natural persons.

Note that this latest update, provided by Article 36 of Royal Decree-Law 14/2018, of 28 September, [Ref. BOE-A-2018-13180](#), shall enter into force at the moment that the royal decree implementing it does so, as provided for in Final Provision 5(2) of the above-mentioned Royal Decree-Law.

**Article 194. Records.**

1. Investment firms shall keep a record of all the services, activities and operations they provide or perform. That record must be sufficient to enable the CNMV to carry out its supervisory functions and apply the appropriate executive measures and, in particular, to enable it to determine whether the investment firm has fulfilled all its obligations, including those relating to its clients or potential clients and to market integrity.

2. The register referred to in paragraph 1 shall include recordings of telephone conversations or electronic communications related to the activity of the investment firm. The obligation provided for in this article shall be implemented by regulation and shall include, at least, the following aspects:

(a) The types of telephone conversations or electronic communications with clients to be recorded,

(b) the obligation to notify their clients that communications or telephone conversations shall be recorded,

(c) the prohibition to provide investment services or perform investment activities over the telephone to clients who have not been notified in advance of the recording in relation to certain services,

(d) the possibility for clients to communicate their orders through other channels provided that such communications can be made on a durable medium; and

(e) to take reasonable steps to avoid communications that cannot be recorded or copied.

3. The records kept pursuant to this article shall be made available to clients on request and shall be kept for a period of five years and, when requested by the CNMV, for a period of up to seven years.

Note that this latest update, provided by Article 36 of Royal Decree-Law 14/2018, of 28 September, [Ref. BOE-A-2018-13180](#), shall enter into force at the moment that the royal decree implementing it does so, as provided for in Final Provision 5(2) of the above-mentioned Royal Decree-Law.

***Section 3. Requirements for the internal organisation and operation of firms engaged in algorithmic trading***

**Article 195. Algorithmic trading.**

1. Investment firms engaged in algorithmic trading shall be required to implement:

(a) Risk controls and systems appropriate to their activities and effective in ensuring that their trading systems are resilient, have sufficient capacity, comply with appropriate thresholds and limits, and limit or prevent the sending of erroneous orders or the possibility of systems operating in a manner that could create or facilitate anomalies in trading conditions,

(b) effective risk systems and controls to ensure that trading systems cannot be used for any purpose contrary to Regulation (EU) No. 596/2014, of the European Parliament and of the Council, of 16 April 2014, or the rules on the trading venue to which it is linked; and

(c) effective mechanisms to ensure continuity of activities in the event of malfunctioning of their trading systems.

They shall also ensure that their systems have been fully tested and monitored to ensure that they meet the requirements provided for in this paragraph.

2. The obligations provided for in this article shall be implemented by regulation and shall include, among others, the following elements:

(a) The obligation to notify this activity to the CNMV or other supervisory authorities,

(b) the powers of the CNMV to require investment firms authorised in Spain to provide it with information on their activity,

(c) the obligation to keep records relating to the matters referred to in this paragraph; and

(d) the obligation for investment firms employing high-frequency algorithmic trading techniques to keep records of their orders.

Note that this latest update, provided by Article 36 of Royal Decree-Law 14/2018, of 28 September, [Ref. BOE-A-2018-13180](#), shall enter into force at the moment that the royal decree implementing it does so, as provided for in Final Provision 5(2) of the above-mentioned Royal Decree-Law.

**Article 195 bis.** *Algorithmic trading as a market creation strategy.*

1. For the purposes of this article and Article 8 of Royal Decree-Law 21/2017, of 29 December, an investment firm using algorithmic trading shall be deemed to be applying a market creation strategy if, when trading for its own account, its strategy, as a member or as a participant in one or more trading venues, includes the simultaneous announcement of firm buy and sell quotes of comparable magnitude and at competitive prices in relation to one or more financial instruments on a single trading venue or on different trading venues, thereby providing liquidity to the market on a regular and frequent basis.

2. Investment firms engaged in algorithmic trading to implement a market creation strategy, taking into account the liquidity, scale and nature of the specific market and the characteristics of the instrument traded, shall:

(a) Carry out these market creation activities on an ongoing basis for a specified proportion of the trading hours of the trading venue, except in exceptional circumstances, so as to provide liquidity on a regular and predictable basis to the trading venue,

(b) enter into a binding written agreement with the trading venue specifying at least the obligations of the investment firm consistent with point (a); and

(c) have effective systems and controls in place to ensure that they comply at all times with their obligations under the agreement referred to in point (b).

3. The circumstances in which the investment firm shall be required to access the market by entering into the agreement referred to in the previous paragraph and the content of that agreement shall be governed by Commission Delegated Regulation (EU) 2017/578, of 13 June 2016, supplementing Directive 2014/65/EU, of the European Parliament and of the Council, on markets in financial instruments with regard to regulatory technical standards specifying the requirements on market making agreements and schemes.

4. For the purposes of paragraph 2(a), exceptional circumstances are those provided for in Commission Delegated Regulation (EU) No. 2017/578, of 13 June 2016.

***Section 4. Internal organisational and operational requirements for firms providing direct electronic access or acting as general clearing members***

**Article 196. Direct electronic access.**

1. Any investment firm providing direct electronic access to a trading venue shall have in place effective systems and controls to ensure that:

(a) An appropriate assessment and review of the suitability of the clients using the service is carried out,

(b) they may not exceed pre-established trading and credit thresholds,

(c) the negotiation of persons using the service is adequately supervised; and

(d) appropriate risk controls are in place to prevent negotiations which could create risks for the trading firm itself, create or lead to anomalies in trading conditions or contravene Regulation (EU) No. 596/2014, of the European Parliament and of the Council, of 16 April 2014 or trading venue rules.

2. Direct electronic access to a trading venue shall be prohibited if the controls provided for in the previous paragraph are not complied with.

3. The investment firm providing direct electronic access shall be responsible for ensuring that clients using that service comply with the requirements of this Act and the rules of the trading venue. It shall monitor transactions for breaches of those rules or anomalies in trading conditions or conduct which may involve market abuse and which must be notified to the competent authority.

4. The investment firm shall ensure that a binding written agreement is concluded between the firm and the client regarding the fundamental rights and obligations arising from the provision of the service and that, in the context of the agreement, the investment firm retains liability under this Act.

5. The provisions of this article may be implemented by regulation, which shall include, among other aspects:

- (a) Obligations to notify the CNMV and other competent authorities;
- (b) the power of the CNMV to require information in relation to this activity; and
- (c) the keeping of records relating to this activity.

Note that this latest update, provided by Article 36 of Royal Decree-Law 14/2018, of 28 September, [Ref. BOE-A-2018-13180](#), shall enter into force at the moment that the royal decree implementing it does so, as provided for in Final Provision 5(2) of the above-mentioned Royal Decree-Law.

**Article 196 bis.** *Investment firms acting as general clearing members.*

1. Investment firms which act as general clearing members for other persons should put in place effective systems and controls to ensure that clearing services are only applied to eligible persons and that they meet clear criteria, and that appropriate requirements are imposed on such persons in order to reduce the risks to them and to the market. Investment firms shall ensure that a binding written agreement is concluded between them and persons on the fundamental rights and obligations arising out of the provision of the service.

2. Investment firms shall comply with the obligations provided for in this article in accordance with Commission Delegated Regulation (EU) 2017/589, of 19 July 2016.

### ***Section 5. Infringement notification procedures***

**Article 197.** *Notification of infringements.*

1. Investment firms, market operators, data reporting services providers, credit institutions in relation to investment services or activities or to ancillary activities and services and branches of third country firms should have adequate procedures in place to enable their employees to notify potential or actual infringements internally through an independent, specific and autonomous channel.

2. These procedures must ensure the confidentiality of both the person reporting the infringements and the natural persons allegedly responsible for the infringement.

3. It must also be ensured that employees who report infringements committed within the entity are protected against retaliation, discrimination and any other kind of unfair treatment.

TITLE V *BIS*

**Data reporting services**

PART I

**Authorisation procedures for data reporting services providers**

**Article 197 bis.** *Types of data reporting providers and reservation of activity.*

1. Data reporting services shall be provided by data reporting services providers.  
2. The types of data reporting services providers and the services that each of them can provide are as follows:

(a) Approved Publication Arrangements (APAs) are persons authorised to provide the service of publishing trade reports on behalf of investment firms pursuant to Articles 20 and 21 of Regulation (EU) No. 600/2014, of 15 May 2014.

(b) Consolidated Tape Providers (CTPs) are persons authorised under Directive 2014/65/EU, of 15 May, to provide the service of collecting trade reports for financial instruments listed under Articles 6, 7, 10, 12, 13, 20 and 21 of Regulation (EU) No. 600/2014 from regulated markets, MTFs, OTFs and APAs and consolidating them into a continuous electronic live data stream providing price and volume data per financial instrument.

(c) Approved Reporting Mechanisms (ARMs) are persons authorised under this Act to provide the service of reporting details of transactions to competent authorities or to ESMA on behalf of investment firms, as provided for under Article 26 of Regulation (EU) No. 600/2014, of 15 May 2014.

3. The provision of data reporting services within the scope of Regulation (EU) No. 600/2014, of 15 May 2014, as a regular profession or activity shall require prior authorisation as a data reporting services provider (APA, CTP or ARM) in accordance with the provisions of this Part, as well as registration with the CNMV register established for this purpose.

4. However, CTPs may provide other services not subject to authorisation in accordance with Article 13 of Commission Delegated Regulation (EU) 2017/571, of 2 June 2016, supplementing Directive 2014/65/EU, of the European Parliament and of the Council, with regard to regulatory technical standards on the authorisation, organisational requirements and publication of transactions for data reporting services providers.

5. Investment firms and market operators that operate a trading venue may also operate the data reporting services of an APA, a CTP and an ARM, provided that the CNMV has previously verified that they comply with the provisions of this Title, and obtain the appropriate authorisation.

6. Data reporting services providers shall provide the services under the supervision of the CNMV, which shall:

(a) Periodically check that data reporting services providers comply with the provisions of this Title; and

(b) verify that data reporting services providers comply at all times with the conditions of the initial authorisation provided for in this Title.

**Article 197 *ter*.** *Authorisation.*

1. The CNMV shall be responsible for authorising the provision of the service by data reporting services providers.

2. The authorisation to provide data reporting services shall specify the service that the data reporting services provider is authorised to provide.

A data reporting services provider that decides to extend its activities to other data reporting services shall submit a request for an extension of its authorisation.

3. The CNMV shall notify ESMA of any authorisation granted and any authorisation revoked.

4. The authorisation granted by the CNMV shall be valid for the whole of the European Union and shall enable the data reporting services provider to provide the services for which it has been authorised in other Member States.

5. Data reporting services providers authorised in another Member State of the European Union may provide such services in Spain without prior authorisation from the CNMV.

6. Entities not authorised in Member States of the European Union shall be subject to the authorisation procedure provided for in this Part and the implementing regulations thereof.

**Article 197 *quater*.** *Authorisation procedure.*

1. In order for the CNMV to evaluate the request for authorisation and ensure that the applicant for authorisation to provide data reporting services complies with all the requirements provided for in this Title as well as in applicable EU law, the applicant shall provide the CNMV with information with the following content:

(a) A programme of activities setting out, *inter alia*, details of the types of services to be provided and the organic structure.

(b) The information and documentation required by Commission Delegated Regulation (EU) 2017/571, of 2 June 2016, supplementing Directive 2014/65/EU, of the European Parliament and of the Council, with regard to regulatory technical standards on the authorisation, organisational requirements and the publication of transactions for data reporting services providers.

(c) The identity of all members of the management body as well as of all persons who shall effectively manage the activities of the data reporting services provider.

(d) Any other documents that allow verification of their compliance with all the requirements provided for in the above-mentioned Commission Delegated Regulation (EU) No. 2017/571, of 2 June 2016.

2. The submission of the application and the accompanying information and documentation shall be subject to the relevant provisions of Commission Delegated Regulation (EU) 2017/1110, of 22 June 2017, providing implementing technical standards with regard to the standard forms, templates and procedures for the authorisation of data reporting services providers and related notifications pursuant to Directive 2014/65/EU, of 15 May 2014.

3. The CNMV may request from the applicant any other additional information it deems appropriate to continue with the evaluation of the application, so that it may verify that the applicant has adopted, at the time of the initial authorisation, all the necessary measures to comply with its obligations under the provisions of this Title, as well as applicable EU law.

4. The CNMV shall not grant authorisation until it is satisfied that the applicant meets all the requirements of this Act, its implementing regulations and the relevant provisions of EU law.

5. The decision by virtue of which the authorisation is granted or refused shall state the reasons thereof, and the time limit for resolving the authorisation procedure shall be six months, as from the moment the application has been registered in the CNMV register or from the moment the documentation is completed, if this is not sufficient at the time the application is registered. In the absence of an express decision within that time limit, the application shall be deemed to have been rejected.

**Article 197 *quinquies*.** *Registration of data reporting services providers.*

The CNMV shall create a register of all data reporting services providers. This register shall be public and contain information on the services for which the data reporting services provider is authorised and shall be updated periodically.

**Article 197 *sexies*.** *Requirements to obtain the authorisation and carry on its activity.*

The following shall be requirements for an entity to obtain and maintain its authorisation to provide data reporting services:

- (a) To have the form of a public limited company and to have an indefinite duration.
- (b) To have its registered office, as well as its place of effective management, in national territory.
- (c) To have a management body whose members comply with the provisions of Article 197 *undecies*.

(d) To comply with the conditions for obtaining the authorisation referred to under Article 197 *bis* (3).

(e) To comply with the requirements relating to the dissemination, communication and processing of information in Part II of this Title.

(f) To comply with the operational and internal organisational requirements of Part III of this Title.

**Article 197 septies.** *Revocation of authorisations.*

1. The CNMV may revoke the authorisation granted to a data reporting services provider in the following cases:

(a) If it does not commence authorised activities within 12 months of the date of notification of the authorisation, for reasons attributable to the person concerned.

(b) If it expressly waives the authorisation, regardless of whether it becomes another entity or resolves to wind up.

(c) If it actually interrupts the authorised specific activities for a period exceeding six months.

(d) If it subsequently fails to comply with any of the requirements for obtaining the authorisation, unless otherwise provided for in relation to those requirements.

(e) In the event of serious and systematic breach of the obligations provided for in Parts II and III of this Title.

(f) If it has obtained the authorisation by virtue of false statements or by any other irregular means.

(g) If it commits a very serious infringement as provided for in Title VIII.

2. The revocation of the authorisation shall be in accordance with the procedure provided for in Act 39/2015, of 1 October, on the common administrative procedure of the public administrations, with the processing and resolution lying with the CNMV.

PART II

**Requirements relating to the dissemination, communication and processing of information by data reporting services providers**

**Article 197 octies.** *Dissemination and information processing requirements applicable to APAs.*

1. APAs should establish appropriate policies and mechanisms to make public the information required under Articles 20 and 21 of Regulation (EU) No. 600/2014, of 15 May 2014, as close to real time as technically possible and under reasonable commercial conditions.

2. The information made public by APAs in accordance with paragraph 1 shall include the details to be determined by regulation.

3. The information shall be provided free of charge fifteen minutes after the APA has published it.

4. APAs should disseminate such information efficiently and consistently, so as to ensure rapid access to the information, under non-discriminatory conditions and in a format that facilitates consolidation of the information with similar data from other sources, subject to the specific rules contained in Part Three of Delegated Regulation (EU) No. 2017/571, and under the terms provided for under Article 84 of Commission Delegated Regulation (EU) No. 2017/565, of 25 April 2016, supplementing Directive 2014/65/EU, of the European Parliament and of the Council, of 15 May 2014 as regards organisational requirements and operating conditions for investment firms.

**Article 197 nonies.** *Dissemination and information processing requirements applicable to CTPs.*

1. CTPs shall establish appropriate policies and mechanisms to collect information published in accordance with Articles 6, 10, 20 and 21 of Regulation (EU) No. 600/2014, of 15 May 2014, consolidate it into a continuous electronic data flow and make it available to the public in as close to real time as technically possible and under reasonable commercial conditions.

2. Such information shall include details as may be determined by regulation.

3. The information shall be provided free of charge fifteen minutes after the CTP has published it.

4. CTPs shall disseminate such information in an efficient and consistent manner so as to ensure rapid access to information, under non-discriminatory conditions and in formats that are easily accessible and usable by market participants subject to the specific implementing regulations of the European Union applicable thereto.

**Article 197 decies.** *Communication and information processing requirements applicable to ARMs.*

ARMs shall establish appropriate policies and mechanisms to communicate the information required under Article 26 of Regulation (EU) No. 600/2014, of 15 May 2014 as soon as possible, and at the latest by the end of the working day following the day on which the transaction took place.

Such information shall be communicated in accordance with the requirements provided for under Article 26 of Regulation (EU) No. 600/2014, of 15 May 2014.

### PART III

## **Operational requirements and internal organisation of data reporting services providers**

**Article 197 undecies.** *Requirements relating to the management body of data reporting services providers.*

1. All members of the management body of data reporting services providers shall at all times be of good repute and have sufficient knowledge, skills and experience and shall devote sufficient time to the performance of their duties.

2. The management body shall collectively possess the appropriate knowledge, skills and experience to enable it to understand the activities of the data reporting services provider.

3. Each member of the management body shall act with honesty, integrity and independence, effectively challenging senior management decisions, where necessary, and effectively monitoring and controlling the management decision-making process, where necessary.

4. Where a market operator applies for authorisation to operate an APA, CTP or ARM and the members of the management body of the APA, CTP or ARM are the same as the members of the management body of the regulated market, those persons shall be deemed to fulfil the requirement provided for in paragraph 1.

5. Data reporting services providers shall notify the CNMV of the identity of all the members of their management body and of any change in its composition, together with all the information necessary to assess whether the entity complies with the provisions of the previous paragraphs.

6. The management bodies of data reporting services providers shall define and monitor the implementation of a governance system that ensures the effective and prudent management of the organisation and that includes the allocation of functions in the organisation and the prevention of conflicts of interest, promoting market integrity and the clients' interest.

7. The CNMV shall refuse authorisation if it does not consider that the person or persons who shall effectively direct the activities of the data reporting services provider are of sufficiently good repute, or when there are objective and demonstrable grounds for believing that the proposed structure and configuration of the management of the firm pose a threat to its proper and prudent management and to the due consideration of the interests of its clients and market integrity.

8. The CNMV may oppose changes or successive appointments of members of the management body when there are objective and demonstrable reasons to believe that such changes in the data reporting services provider pose a threat to its proper and prudent management and to the due consideration of the interests of its clients and market integrity.

**Article 197 duodecies.** *Organisational requirements for the management of conflicts of interest.*

1. Data reporting services providers shall implement and maintain effective administrative measures designed to avoid conflicts of interest with clients using their

services to meet their regulatory obligations and other entities acquiring data from data reporting services providers. These measures should include policies and procedures to detect, manage and disclose actual and potential conflicts of interest, as provided for under Article 5 of Delegated Regulation (EU) No. 2017/571.

2. The data reporting services provider shall treat all information collected in a non-discriminatory manner and shall manage and maintain appropriate facilities to separate different business functions, in those cases in which:

- (a) An APA is also a market operator or an investment firm.
- (b) An ARM is also a market operator or an investment firm.
- (c) A CTP is operated by an APA or a market operator.

**Article 197 *terdecies*.** *Organisational requirements to ensure system capacity, business continuity and information quality.*

1. Data reporting services providers shall use security systems and devices that are adequate and robust enough to ensure the continuity and regularity of service provision, ensure the security of the means of transmission of information, minimise the risk of data corruption and unauthorised access and prevent information leakage before publication.

Data reporting services providers shall maintain adequate resources and establish back-up facilities in order to offer and maintain their services at all times, as implemented under Articles 7, 8 and 9 of Delegated Regulation (EU) 2017/571, of 2 June 2016.

2. Data reporting services providers shall establish systems to effectively monitor the completeness of reports, detect omissions and manifest errors and request the resubmission of erroneous reports and other actions, as provided for under Articles 10, 11 and 12 of Delegated Regulation (EU) 2017/571, of 2 June 2016.

**Article 197 *quaterdecies*.** *Organisational requirements for the management of outsourcing functions.*

1. Where a data reporting services provider arranges for third parties to carry out certain activities on its behalf, including undertakings with which it has close links, it shall ensure that the third party service provider has the competence and capacity to perform the activities reliably and professionally.

2. Data reporting services providers must inform the CNMV about the outsourcing of functions. Prior to outsourcing, data reporting services providers must provide the CNMV with information specifying which activities are to be outsourced, indicating the human and technical resources required to carry out each of the activities.

3. Data reporting services providers outsourcing activities shall comply with Article 6 of Delegated Regulation (EU) 2017/571, of 2 June 2016.

## TITLE VI

### **Investment guarantee fund**

#### **Article 198.** *Investment guarantee fund.*

1. The investment guarantee fund shall be responsible for ensuring the coverage referred to under Article 201(1) on the occasion of the performance of the services provided for under Article 140, as well as the ancillary services referred to under Article 141(a).

2. The investment guarantee fund shall be constituted as a separate entity, without legal personality, the representation and management of which shall be entrusted to a management company in the form of a public limited company, the capital of which shall be distributed among the member entities in the same proportion as their contributions to the fund.

3. The budgets of the management company, its articles of association and amendments thereto shall require the prior approval of the National Securities Market Commission. The estimated budget of the funds to be prepared by the management company shall likewise be submitted for approval.

In order to allow new shareholders in the management company as a result of the adhesion of investment firms to a fund or the exit of those who hold this status of shareholder, the holdings in the capital of each of the shareholders in the management company shall be adapted in the terms to be determined by regulation. The results of these adjustments shall be disclosed to the National Securities Market Commission.

4. The appointment of directors and general manager(s) of the management companies shall require prior approval from 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 the fund. Likewise, each regional government with jurisdiction in the matter, and with an official secondary market located in its regional territory, shall designate a Board member, who shall have the same functions.

The National Securities Market Commission may suspend all resolutions by the board of directors which it deems contrary to the said regulations and to the fund's purposes.

#### **Article 199.** *Adhesion.*

1. All Spanish investment firms must join the investment guarantee fund, with the exception provided for under Article 152(1)(i) for financial advisory firms.

2. Branches of non-Spanish companies may join if they are from the European Union.

3. The manner in which branches of companies from third countries join shall be in accordance with the terms to be provided for by regulation.

4. The fund shall cover transactions performed by member firms inside or outside the European Union, depending on the type of firm, in the terms to be provided for by regulation.

5. The following points shall also be established by regulation:

(a) The specific membership system for newly-created investment firms.

(b) The exceptions to membership of the fund by those investment firms that do not incur the risks provided for under Article 198(1).

#### **Article 200.** *Exclusion.*

1. 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 the said fund.

2. The exclusion shall lead to the revocation of the firm's authorisation.

3. The guarantee provided by the fund shall cover those clients who have made investments to such time.

4. The National Securities Market Commission shall be empowered to order the said exclusion, after receiving a report from the management company of the fund.

The exclusion agreement shall be given appropriate publicity in such a way as to ensure that the clients of the investment firm concerned are immediately aware of the measure taken.

5. 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 provided for under Article 162. The management company of the fund shall collaborate with the National Securities Market Commission in order to maximise the effectiveness of the measures that are adopted.

**Article 201.** *Enforcement of the guarantees.*

1. 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 management company of the fund to execute the guarantee that the fund provides, in any of the following circumstances:

(a) The firm has entered insolvency proceedings.

(b) A court identifies the insolvency proceedings filed as suitable for consideration.

(c) The National Securities Market Commission declares that the investment firm cannot, apparently and for reasons directly related to its financial situation, meet its obligations with investors, provided that the investors had applied to the investment firm for restitution of the funds or securities which they had entrusted thereto, and that they had not been satisfied by the said firm within a maximum period of twenty-one working days.

2. 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 an indemnity.

3. In the event that the securities or other financial instruments entrusted to the investment firm are returned by the 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 provisions established by regulation.

4. The government has the powers to regulate the functioning of the investment guarantee fund and the scope of the guarantee it provides, 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 management companies, which shall regulate matters including the possibility of indebtedness and the manner in which management 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 their commitments quickly.

(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 frequency with which the contributions must be made and the rules governing non-payment.

## TITLE VII

### Rules of conduct

#### PART I

#### Rules of conduct applicable to investment firms

##### *Section 1. Obligors and classification of clients*

##### **Article 202.** *Obligors.*

1. Investment firms must respect:

(a) The rules of conduct provided for in this Part.

(b) The codes of conduct which, in implementation of the rules provided for in paragraph a) above, are approved by the government or, with the latter's express authorisation, by the Minister for Economy and Competitiveness at the proposal of the National Securities Market Commission.

(c) Their own internal rules of conduct.

2. The Minister for Economy and Competitiveness and, with their express authorisation, the National Securities Market Commission shall establish the minimum content required of the internal rules of conduct.

##### **Article 203.** *Classes of client.*

For the purposes of this Title, investment firms shall classify their clients as retail clients, professional clients or eligible counterparties. The same obligation shall apply to other undertakings which provide investment services and perform investment activities in respect of the clients to whom they provide or offer such services.

The category of eligible counterparty only applies in relation to the service of the reception and transmission of orders, executing orders on behalf of third parties or dealing on

own account and the ancillary services directly related thereto. This categorisation is not possible when services other than the above are provided, such as portfolio management and advice.

**Article 204.** *Retail clients.*

All clients not classified as professionals shall be classified as retail clients.

**Article 205.** *Professional clients.*

1. Professional clients are those who are presumed to possess the experience, knowledge and expertise necessary to make their own investment decisions and to properly assess their risks.

2. The types of client that shall, at any event, be considered professional clients may be determined by regulation.

Note that this latest update, provided by Article 40 of Royal Decree-Law 14/2018, of 28 September, [Ref. BOE-A-2018-13180](#), shall enter into force at the moment that the royal decree implementing it does so, as provided for in Final Provision 5(2) of the above-mentioned Royal Decree-Law.

**Article 206.** *Request for treatment as a professional client.*

1. Other clients not included under Article 205, including public sector bodies, local authorities and other retail investors, who request it beforehand and expressly waive their treatment as retail clients, shall also be considered professional clients. However, in no case shall clients who request to be treated as professionals be deemed to have market knowledge and experience comparable with the categories of professional clients provided by regulation under Article 205.

2. The requirements for the admission of the application and waiver provided for in the previous paragraph may be implemented by regulation.

**Article 207.** *Transactions with eligible counterparties.*

1. For the purposes of this article, the following entities shall be considered eligible counterparties:

- (a) Investment firms,
- (b) credit institutions,
- (c) insurance and reinsurance companies,

(d) collective investment institutions and management companies of collective investment institutions,

(e) venture capital entities, other closed-ended collective investment institutions and management companies of closed-ended collective investment institutions,

(f) pension funds and their management companies,

(g) other financial institutions authorised or regulated by EU law or by the national law of a Member State; and

(h) national governments and their related services, including those negotiating national public debt, central banks and supranational bodies. Equivalent third country entities and regional governments shall also be considered as such.

2. Also, if requested, eligible counterparties shall include those undertakings that meet the requirements provided for under Article 71 of Commission Delegated Regulation (EU) No. 2017/565, of 25 April 2016, in which case they shall only be recognised as eligible counterparties for the services or transactions for which they can be treated as a professional client. This includes undertakings from third countries that are subject to equivalent requirements and conditions.

3. Firms that provide investment services and perform investment activities authorised to execute orders on behalf of third parties, negotiate on their own account or receive and transmit orders, may carry out these transactions and the auxiliary services directly related to them, with the entities indicated in the previous paragraph without the need to comply with the obligations provided for under Articles 208, 208 *ter*, 209(2), 213, 214, 215, 216, 217, 218, 219, 220 *bis* to 220 *sexies*, 221 and 222 to 224, provided that those entities are previously informed of this and do not expressly request that they be applied to them.

4. In their relationship with eligible counterparties, investment firms shall act honestly, impartially and professionally and communicate fair, clear and not misleading information, taking into account the nature of the eligible counterparty and its activity.

5. In the case of the entities referred to in paragraph 1, their classification as eligible counterparties shall be without prejudice to the right of these entities to request, either in a general form or on a trade-by-trade basis, treatment as a client, in which case their relationship with the investment firm shall be subject to paragraph 3. The request shall comply with Article 71 of Commission Delegated Regulation (EU) No. 2017/565, of 25 April 2016.

6. In the case of undertakings referred to in paragraph 2, classification as an eligible counterparty shall require the investment firm to obtain express confirmation that the undertaking agrees to be treated as an eligible counterparty, either in a general form or on a trade-by-trade basis. The procedures for obtaining such confirmation shall be in accordance with Article 71 of Commission Delegated Regulation (EU) No. 2017/565, of 25 April 2016.

7. Where the transaction is carried out in relation to an undertaking domiciled in another Member State of the European Union, the classification of the undertaking determined by the legislation of that State shall be respected.

Note that this latest update, provided by Article 42 of Royal Decree-Law 14/2018, of 28 September, [Ref. BOE-A-2018-13180](#), shall enter into force at the moment that the royal decree implementing it does so, as provided for in Final Provision 5(2) of the above-mentioned Royal Decree-Law.

### *Section 2. General duties of performance.*

#### **Article 208.** *Duty of diligence and transparency.*

Investment firms shall act honestly, impartially and professionally, in the best interests of their clients, and shall observe, in particular, the principles provided for in this Section and in Sections 3, 4, 5, 6 and 7 when providing investment services and performing investment activities or, where appropriate, providing ancillary services to clients.

#### **Article 208 bis.** *Conflicts of interest.*

1. In accordance with Article 193, investment firms must organise themselves and take steps to identify and prevent and/or manage conflicts of interest between their clients and the firm itself or its group.

2. The provisions of this article may be implemented by regulation, specifying, as a minimum, the parties between whom conflicts of interest may arise, the reporting obligations with respect to the measures adopted by the investment firm pursuant to the preceding paragraph, as well as the means by which the said information must be provided.

### *Section 3. Oversight and control of financial services*

#### **Article 208 ter.** *Manufacture and marketing of financial products.*

1. Investment firms which manufacture financial instruments for sale to clients shall ensure that those financial instruments are designed to meet the needs of an identified target market of end clients within the relevant client category of clients.

They shall also ensure that the strategy for distribution of the financial instruments is compatible with the identified target market, and the investment firm shall take reasonable steps to ensure that the financial instrument is distributed to the identified target market

2. Investment firms shall understand the characteristics of the financial instruments they offer or recommend, assess their compatibility with the needs of the clients to whom they provide investment services and perform investment activities, also taking into account the identified target market of the end clients referred to in the previous paragraph, and ensure that instruments are only offered or marketed where it is in the client's interest to do so.

3. The obligations regarding oversight and control of financial products provided for in this article shall be implemented by regulation for investment firms that manufacture and distribute financial instruments. The CNMV may specify the procedures and factors to be considered in determining the target market for financial instruments as well as the processes and systems that the entities must implement to reasonably guarantee that the products are distributed to the target market identified.

#### ***Section 4. Information duties***

##### **Article 209. *General duty to inform.***

1. Firms providing investment services and performing investment activities shall at all times keep their clients adequately informed, in accordance with the provisions of this Act, its implementing regulations and Commission Delegated Regulation (EU) 2017/565, of 25 April 2016.

2. All information, including marketing communications, addressed by the investment firm to clients or potential clients shall be fair, clear and not misleading. Marketing communications shall be clearly identifiable as such.

3. Appropriate information shall be provided in good time to clients or potential clients with regard to the investment firm and its services, the financial instruments and proposed investment strategies, execution venues and all costs and related charges.

4. The provisions of this article and, in particular, the content of the information to be provided to clients, shall be implemented by regulation.

##### **Article 210. *Guidance and warnings on risks associated with financial instruments and investment strategies.***

1. The information concerning financial instruments and investment strategies provided for under Article 209(3)(b) shall include appropriate guidance and warnings on the risks associated with such instruments or strategies.

2. In the case of debt securities issued by a credit institution, the information to be provided to investors shall include additional information to highlight to the investor the differences between these products and ordinary bank deposits in terms of profitability, risk and liquidity.

The Minister for Economy and Competitiveness and, with their express authorisation, the National Securities Market Commission, may specify the terms of the said additional information.

3. The National Securities Market Commission may require that the information given to investors prior to the acquisition of a product includes as many warnings as it deems necessary regarding the financial instrument and, in particular, those that highlight that it is a product that is not suitable for non-professional investors due to its complexity. It may also require these warnings to be included in marketing communications.

##### **Article 211. *Duty to inform on the service provided.***

The investment firm shall provide the client with adequate reports on the service provided on a durable medium. These reports shall include periodic communications to clients, taking into account the type and the complexity of financial instruments involved and the nature of the service provided to the client and shall include, where applicable, the costs associated with the transactions and services undertaken on behalf of the client.

***Section 5. Suitability and appropriateness assessment***

**Article 212.** *General duty of entities to know their clients.*

Firms providing investment services and performing investment activities must at all times ensure that they have all the necessary information about their clients, in accordance with Articles 213 to 217 and Articles 54 to 57 of Commission Delegated Regulation (EU) No. 2017/565, of 25 April 2016.

**Article 213.** *Suitability assessment.*

1. When providing investment advice or portfolio management services, the investment firm shall obtain the necessary information about the knowledge and experience of the client or potential client in the investment field relevant to the particular type of product or service, their financial situation, including their ability to withstand losses, and their investment objectives, including their risk tolerance, in order to enable the firm to recommend to the client the investment services and financial instruments which are suitable for the client and which, in particular, best match their level of risk tolerance and their ability to withstand losses.

2. Where an investment firm provides investment advice recommending a package of services or products combined in accordance with Article 219(2), it must ensure that the package, considered as a whole, is suitable for the client.

3. In the case of professional clients, the entity shall not have to obtain information about the client's knowledge and experience in relation to the products, transactions and services for which it has obtained the classification of professional client.

4. Where the entity does not obtain the information referred to in the previous paragraph, it shall not recommend investment services and activities or financial instruments to the client or potential client.

5. When providing investment advice, the investment firm shall, prior to the transaction, provide the client with a declaration of suitability on a durable medium specifying the advice provided and how such advice is tailored to the preferences, objectives and other characteristics of the retail client.

6. Where an investment firm provides portfolio management services or has informed the client that it shall make a periodic suitability assessment, the periodic report shall contain an updated statement of how the investment fits the preferences, objectives and other characteristics of the retail client.

**Article 214.** *Appropriateness assessment.*

1. Where services other than investment advice or portfolio management services are provided, the investment firm shall ask the client, including potential clients where appropriate, to provide information about their knowledge and experience in the investment field relevant to the particular type of product or service offered or demanded, in order to enable the entity to assess whether the investment service or product is appropriate for the client.

2. Where a package of services and products combined in accordance with Article 219(2) is expected to be provided, it shall ensure that the package taken as a whole is appropriate for the client.

3. The entity shall provide a copy to the client of the document that contains the assessment made under this article.

4. Where, on the basis of the information provided for in paragraph 1, the entity considers that the investment product or service is not appropriate for the client, it shall warn the client.

5. Where the client does not provide the information referred to in paragraph 1 or this information is insufficient, the entity shall warn the client that this decision prevents the entity from determining whether the investment service or product expected to be provided is appropriate for the client.

6. In the event that the investment service is provided in relation to a complex instrument as provided for under Article 217, the contractual document shall be required to include, together with the client's signature, a handwritten expression, in the terms determined by the CNMV, whereby the investor states that they have been warned that the product is not appropriate for them or that it has not been possible to make an assessment under the terms of this article.

**Article 215.** *Register relating to obligations regarding the appropriateness assessment.*

Firms providing investment services and performing investment activities shall at all times keep a record of the appropriateness assessments made, as provided for under Article 56 of Commission Delegated Regulation (EU) 2017/565, of 25 April 2016.

**Article 216.** *Exemption from the appropriateness assessment.*

Where the entity exclusively provides the service of execution or reception and transmission of client orders, with or without the provision of ancillary services, except for

the granting of credit facilities or loans under Article 141(b) which do not relate to existing credit limits on loans, current accounts or client overdraft authorisations, it need not follow the procedure described under Article 214 provided that all of the following conditions are met:

- (a) The order refers to non-complex financial instruments,
- (b) the service is provided at the initiative of the client or potential client,
- (c) the entity has clearly informed the client or potential client that it is not obliged to assess the appropriateness of the financial instrument offered or the service provided and that, therefore, the client does not enjoy the protection of the rules of conduct provided for in this Act. This warning may be in a standard format; and
- (d) the entity complies with Article 208 *bis*.

**Article 217.** *Non-complex financial instruments.*

1. For the purposes of this Part, the following shall be treated as non-complex financial instruments:

(a) Shares admitted to trading on a regulated market or on an equivalent market in a third country or on an MTF in the case of shares in companies, excluding shares in collective investment institutions other than undertakings for collective investment in transferable securities (UCITS) and shares incorporating derivatives.

(b) Money-market instruments. Those that include derivatives or incorporate a structure that makes it difficult for the client to understand the risks incurred are excluded.

(c) Debt securities or other forms of securitised debt admitted to trading on a regulated market, on an equivalent market in a third country as referred to in point (a), or on an MTF, excluding those which incorporate derivatives or incorporate a structure which makes it difficult for the client to understand the risks involved.

(d) Units and shares in UCITS, excluding structured UCITS as referred to in the second paragraph of Article 36(1) of Regulation (EU) No. 583/2010.

(e) Structured deposits, excluding those that incorporate a structure that makes it difficult for the client to understand the risks it incurs in terms of the yield or cost of exit of the product before maturity.

2. In addition to the instruments provided for in the previous paragraph, non-complex financial instruments shall also be considered those in which the conditions provided for under Article 57 of Commission Delegated Regulation (EU) 2017/565, of 25 April 2016, are met.

3. For the purposes of this Part, the following shall not be considered non-complex financial instruments:

(a) Securities giving the right to acquire or sell other transferable securities or giving rise to their settlement in cash, determined by reference to transferable securities, currencies, interest rates or yields, commodities or other indices or measures.

(b) The financial instruments referred to in paragraphs (d) to (k) of the Schedule.

(c) The debt financial instruments listed in Schedule (a)(2) which, in turn, are eligible liabilities for internal recapitalisation in accordance with the provisions of Section 4 of Part VI of Act 11/2015, of 18 June.

***Section 6. Other obligations regarding conduct in the provision of services***

**Article 218. Register of agreements.**

Investment firms must create a register which includes agreements establishing, in writing and on paper or on any other durable medium, the essential rights and obligations of the firm and of the client, as well as the conditions under which the investment firm shall provide services to the client.

The content of these agreements shall comply with Article 58 of Commission Delegated Regulation (EU) No. 2017/565, of 25 April 2016.

**Article 219. Investment services as part of a financial product or precondition of a credit and related sales.**

1. Where an investment service is offered as part of a financial product to which other provisions on credit institutions and consumer credit relating to information requirements already apply, such service shall not be subject to the obligations provided for under Article 209 of this Act.

2. Where an investment service is offered together with another service or product as part of a package or as a condition of the same agreement or package, the investment firm shall inform the client whether the individual components can be purchased separately and shall provide separate evidence of the costs and charges for each component.

If the risks associated with such an agreement or package offered to a retail client are likely to be different from the risks associated with the components considered separately, the investment firm shall provide an adequate description of the different components of the agreement or package and how the interaction between them modifies the risks.

3. If a credit agreement relating to residential immovable property, which is subject to the provisions on the consumer rating assessment provided for in the implementing regulations of Directive 2014/17/EU, of the European Parliament and of the Council, of 4 February 2014, on credit agreements for consumers relating to residential immovable property and amending Directives 2008/48/EC and 2013/36/EU and Regulation (EU) No. 1093/2010, has as a prior condition of payment, refinancing or repayment of the credit, the provision to the same client of an investment service in relation to mortgage obligations expressly issued as security for the financing of the credit agreement and with the same conditions as this, such

service shall not be subject to the obligations provided for under Articles 209, 213, 214(5), 216, 217, 218, 219(3) and 220 *sexies*.

**Article 220.** *Fulfilment of the information obligations when providing services through another investment firm.*

1. 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.

2. The investment firm which receives instructions may also 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 that issues the instructions shall remain liable for the appropriateness for the client of the recommendations or advice provided.

3. At 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 Part.

#### ***Section 7. Payments and remuneration for the provision of services***

**Article 220 bis.** *Remuneration and conflicts of interest.*

Investment firms that provide investment services to and perform investment activities for their clients shall ensure that they do not remunerate or assess the performance of their staff in a manner that conflicts with their obligation to act in the best interests of their clients. In particular, they shall not establish any system of remuneration, sales targets or any other system which may constitute an incentive for staff to recommend a particular financial instrument to a retail client if the investment firm is able to offer a different financial instrument better suited to the needs of the client.

**Article 220 ter.** *Independent advice.*

1. Investment firms may only inform clients that they provide the investment advisory service independently if they comply with the following requirements:

(a) Assess a range of financial instruments available on the market that is sufficiently diversified in terms of their types and their issuers or providers, in order to ensure that the client's investment objectives can be adequately met and are not limited to financial instruments issued or provided by:

(1) The investment firm itself or by entities having close links with the investment firm, or

(2) other entities with which the investment firm has legal or financial links, such as contractual relationships, which may impair the independence of the advice provided,

(b) not to accept and retain fees, commissions or other monetary or non-monetary benefits paid or provided by a third party or by a person acting on behalf of a third party in connection with the provision of the service to clients; and

(c) clearly communicate to the client any minor non-monetary benefits which may serve to enhance the quality of service provided to the client and which are of such a scale and nature that they cannot be regarded as affecting compliance by the investment firm with the obligation to act in the best interests of its clients, who shall furthermore be excluded from the provisions of the previous point.

2. The prohibition on accepting and retaining fees, commissions or other monetary or non-monetary benefits provided for in the preceding paragraph and the benefits that shall be considered minor non-monetary benefits shall be implemented by regulation.

**Article 220 *quater*.** *Independence in the discretionary management of portfolios.*

1. When providing the portfolio management service, the investment firm shall not accept or retain fees, commissions or other monetary or non-monetary benefits paid or provided by a third party or by a person acting on behalf of a third party in connection with the provision of the service to clients.

2. Minor non-monetary benefits which may serve to increase the quality of the service provided to the client and the scale and nature of which are such that they cannot be regarded as affecting the investment firm's compliance with the obligation to act in the best interests of its clients shall be clearly communicated and excluded from the preceding paragraph.

3. The prohibition on accepting and retaining fees, commissions or other monetary or non-monetary benefits provided for in paragraph 1 above shall be implemented by regulation.

**Article 220 *quinquies*.** *Receipt of incentives.*

1. In no case shall investment firms be deemed to comply with the obligations provided for under Articles 208 and 208 *bis* if they pay or charge fees or commissions, or provide or receive any non-monetary benefit in connection with the provision of an investment service or ancillary services, to a third party or from a third party other than the client or the person acting on behalf of the client, unless the payment or benefit:

(a) Is designed to improve the quality of the relevant service provided to the client; and

(b) does not prejudice the fulfilment of the investment firm's obligation to act honestly, impartially and professionally in the best interests of its clients.

2. The existence, nature and amount of the payments or benefits referred to in the preceding paragraph, or where such amount cannot be determined, its method of calculation, must be clearly disclosed to the client, in a complete, accurate and comprehensible manner, prior to the provision of the relevant investment or ancillary services. Where appropriate, the investment firm shall also inform the client of the arrangements for transferring to the client the fees, commissions or monetary and non-monetary benefits received for the provision of the investment service or ancillary services.

3. Any payment or benefit which permits or is necessary for the provision of investment services and performance of investment activities, such as custody charges, settlement and exchange charges, regulatory fees or legal advice charges, and which by their nature cannot conflict with the duty of the investment firm to act honestly, impartially and professionally in the best interests of its clients, shall not be subject to the requirements provided for in the paragraph 1.

4. The government or, with its express authorisation, the CNMV, shall implement the provisions of this article. In particular, it may draw up a closed list of cases in which the requirements referred to in paragraph 1 shall be deemed to be met.

**Article 220 *sexies*.** *Proof of necessary knowledge and skills.*

1. Investment firms shall ensure and demonstrate to the CNMV, upon request, that individuals who provide advice or information on financial instruments, services and activities or ancillary services to clients on their behalf have the knowledge and skills necessary to comply with their obligations under Articles 208 *ter*, 209 and 211 to 220 *quinquies*.

2. The CNMV shall publish on its website the guidelines approved by ESMA specifying the criteria for the assessment of knowledge and skills provided for in the previous paragraph and, where applicable, the Technical Guides approved by virtue of Article 270(1) specifying the criteria it considers appropriate for entities to demonstrate that the personnel reporting or advising on investment services and activities possess the necessary knowledge and skills.

**Section 8. Management and execution of client orders**

**Article 221.** *Obligations relating to the management and execution of orders.*

1. Persons or firms providing investment services and performing investment activities, when executing client orders, whether providing this service independently or in conjunction with another, shall:

(a) Take all sufficient measures to obtain the best possible result for their clients' transactions taking into account the price, costs, speed and probability of execution and

settlement, size, nature of the transaction and any other element relevant to the execution of the order.

(b) Have procedures and systems for managing orders, in accordance with the provisions of Articles 67 to 70 of Commission Delegated Regulation (EU) 2017/565, of 25 April 2016, which allow their timely, fair and rapid execution and subsequent allocation, in such a way that no client is harmed when transactions are carried out for several of them or when acting on their own behalf. Such procedures or systems shall allow for the execution of client orders, which are equivalent, according to the time they were received by the investment firm.

(c) Take measures to facilitate the quickest possible execution of client limit orders in respect of shares admitted to trading on a regulated market or traded on a trading venue which are not immediately executed under prevailing market conditions.

2. The provisions of this Section shall apply in accordance with Commission Delegated Regulation (EU) 2017/565, of 25 April 2016, supplementing Directive 2014/65/EU, 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.

3. The provisions of this article may be implemented by regulation.

**Article 221 bis.** *Execution on trading venues.*

1. Investment firms shall not receive any form of remuneration, discount or non-monetary benefit for directing client orders to a particular trading or execution venue in contravention of the conflict of interest or incentive requirements provided for under Articles 208 to 208 *ter*, 209, 220 *bis* to 220 *sexies* and 221.

2. For financial instruments subject to the trading obligation provided for under Articles 23 and 28 of Regulation (EU) No. 600/2014, of the European Parliament and of the Council, of 15 May 2014, each trading venue and each systematic internaliser, and for other financial instruments, each execution venue, shall make available to the public, free of charge and at least once a year, data relating to the quality of the execution of transactions at that venue, in accordance with Commission Delegated Regulation (EU) No. 2017/575, of 8 June 2016, supplementing Directive 2014/65/EU, of the European Parliament and of the Council, on markets in financial instruments as regards the technical regulatory standards for data to be published by execution venues on the quality of the execution of transactions. The periodic report shall include detailed information on the price, costs, speed and probability of execution of the different financial instruments.

3. Investment firms shall communicate to the client, after the execution of the transaction, the venue where the order has been executed.

**Article 222.** *Duty to report on the policy on the execution of orders.*

1. The entity must inform its clients about its policy on the execution of orders, and it is necessary to obtain their consent before applying it. Such information shall explain clearly, in sufficient detail and in a manner that can be easily understood by clients, how the firm shall execute orders for the client. The information shall be in accordance with Commission Delegated Regulation (EU) No. 2017/565, of 25 April 2016.

2. Where such a policy allows the institution to execute orders outside a trading venue, clients should be aware of this and should give their prior and express consent before proceeding with the execution of orders outside a trading venue. Consent may be obtained in a general form or on a trade-by-trade basis.

3. The entity must be able to demonstrate to its clients, at their request, that it has executed their orders in accordance with the firm's execution policy and to demonstrate to the CNMV, at its request, compliance with the provisions of Articles 221 to 224.

**Article 222 bis.** *Duty to report annually on the main execution venues.*

Investment firms that execute client orders shall summarise and publish on an annual basis, for each class of financial instrument, the five main venues for the execution of orders, in terms of trading volumes, at which they executed client orders in the previous year, as well as information on the quality of execution.

The content and format of such information shall be in accordance with Commission Delegated Regulation (EU) 2017/576, of 8 June 2016.

**Article 223.** *Specific cases of execution of orders.*

1. When the client gives specific instructions on the execution of their order, the firm shall execute the order following the specific instruction.

2. In the case of orders from retail clients who have not given specific instructions, the best possible result shall be determined in terms of total consideration, consisting of 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.

**Article 224.** *Supervision of the policy on the execution of orders by entities.*

1. Investment firms that execute client orders shall monitor the effectiveness of their systems and policy on the execution of orders in order to detect and, where appropriate, correct any deficiencies. In particular, they shall periodically check whether the execution venues included in the policy on the execution of orders provide the best possible results for the client or whether there is a need to change their execution systems, taking into account, *inter alia*, information published in application of Articles 221 bis (2) and 222 bis.

2. Entities shall notify those of their clients with whom they have a stable professional relationship of any significant change in their systems or policy on the execution of orders.

## PART II

### Market abuse

#### **Article 225.** *Competent authority.*

1. The CNMV shall be the competent authority for the application of Regulation (EU) No. 596/2014, of the European Parliament and of the Council, of 16 April 2014.

2. The Minister for Economy and Business and, with their express authorisation, the CNMV, may adopt the implementing rules that are necessary for compliance with Regulation (EU) No. 596/2014, of the European Parliament and of the Council, of 16 April 2014, and the rest of the provisions in force on market abuse.

3. Notwithstanding the above, the CNMV is expressly empowered to implement all matters for which Regulation (EU) No. 596/2014, of the European Parliament and of the Council, on market abuse expressly empowers competent authorities. Specifically, the CNMV may establish accepted market practices in accordance with Article 13 of Regulation (EU) No. 596/2014, of the European Parliament and of the Council, on market abuse by approving it in the appropriate Circular.

#### **Article 226.** *Public disclosure of inside information.*

Issuers of securities or financial instruments that are traded on a Spanish regulated market, or in respect of which admission to trading has been requested, must communicate as soon as possible to the CNMV, which shall make this public on its website, the inside information that concerns them directly referred to under Article 17 of Regulation (EU) No. 596/2014, of the European Parliament and of the Council, of 16 April 2014.

#### **Article 227.** *Public disclosure by issuers of other relevant information.*

Issuers of securities or financial instruments that are traded on a regulated market shall also notify the CNMV, which shall also make this public on its website, of any other information of a financial or corporate nature relating to the issuer itself or to its securities or financial instruments that any legal or regulatory provision obliges them to make public in Spain or that they consider necessary, for their special interest, to disclose to investors.

#### **Article 228.** *Methods and terms of publication of inside information and other relevant information.*

1. The CNMV may determine the method and terms in which the information referred to in the foregoing articles shall be published on its website. At any event, when inside information is made public, such status shall be expressly stated and the CNMV website shall present such information separately from any other information communicated by issuers.

2. MTFs and OTFs must have technical means to ensure the public disclosure of inside information communicated to them by issuers of securities or financial instruments traded on them or for which admission to trading has been requested. These technical means may also be used in relation to any other financial or corporate information that the issuers are required to disclose to investors.

**Article 229.** *Delay in the disclosure of inside information.*

The issuer or the emission allowance market participant that, within the framework of the provisions of Article 17(4) of Regulation (EU) No. 596/2014, of the European Parliament and of the Council, of 16 April 2014, decides to delay the disclosure of inside information, shall not be obliged to submit proof of satisfaction of the conditions that allow such delay when it makes the necessary communication thereof to the CNMV, unless the latter expressly requests it.

**Article 230.** *Transactions carried out by persons discharging managerial responsibilities and persons closely associated with them.*

1. The obligation to notify the transactions referred to under Article 19(1) of Regulation (EU) No. 596/2014, of the European Parliament and of the Council, of 16 April 2014, shall arise when, within a calendar year, the amount without netting of all transactions reaches the figure of EUR 20,000. From that first communication, the persons subject to the requirement shall communicate each and every subsequent transaction referred to in that article.

2. In relation to the last subparagraph of Article 19(3) of Regulation (EU) No. 596/2014, of the European Parliament and of the Council, the transactions referred to under Article 19(1) of the said Regulation which have been notified by persons discharging managerial responsibilities in issuers that have applied for admission of their financial instruments on a regulated market or admitted to trading on a regulated market, as well as the transactions notified by persons closely associated with them, shall be made public by the CNMV.

The obligation of public disclosure of transactions notified by persons discharging managerial responsibilities in the issuers referred to in the preceding paragraph or by persons closely associated with them, provided for under Article 19 of Regulation (EU) No. 596/2014, of the European Parliament and of the Council, of 16 April 2014, shall be deemed to have been complied with by the said issuers in the event that they disclose the relevant information through the technical means provided for by the CNMV.

The CNMV is empowered to implement the procedures and methods for performing the public disclosure referred to in the previous section.

**Article 231.** *Obligations for MTFs and OTFs in relation to transactions carried out by persons discharging managerial responsibilities and persons closely associated with them.*

MTFs and OTFs must have the technical means to ensure the public disclosure of the transactions referred to under Article 19(1) of Regulation (EU) No. 596/2014, of the European Parliament and of the Council, of 16 April 2014, which have been notified by persons discharging managerial responsibilities in issuers of financial instruments traded exclusively on an MTF or OTF, those admitted to trading on an MTF or for which admission to trading on an MTF has been requested, as well as those notified by persons closely associated with them. These technical means must comply with the terms provided for under Article 19(3) of Regulation (EU) No. 596/2014, of the European Parliament and of the Council, on market abuse and in Commission Implementing Regulation (EU) No. 2016/1055, of 29 June 2016.

The public disclosure obligation of transactions notified by persons discharging managerial responsibilities in the issuers referred to in the preceding paragraph or by persons closely associated with them, provided for under Article 19 of Regulation (EU) No. 596/2014, of the European Parliament and of the Council, of 16 April 2014, shall be deemed to have been satisfied for such issuer companies if they disclose the relevant information through the technical means provided for by the MTFs or by the OTFs, as the case may be.

**Article 232.** *Notification of suspicious transactions*

**(Deleted)**

## TITLE VIII

### **Rules for supervision, inspection and sanction**

#### PART I

#### **General provisions**

**Article 233.** *Scope of supervision, inspection and sanction.*

1. The following are subject to the rules of supervision, inspection and sanction contained in this Act, for which the National Securities Market Commission is responsible:

(a) The persons and entities listed below, with regard to compliance with this Act and its implementing regulations, as well as with EU law that contains provisions specifically referring to them:

(1) The market operators of official secondary markets, the market operators of multilateral trading facilities and organised trading facilities, central counterparties and central securities depositories. The Bank of Spain is not included.

(2) The *Sociedad de Bolsas* and those companies which own all the shares or a controlling holding, either directly or indirectly, in the entities listed in the preceding paragraph.

(3) Spanish investment firms, including any office or centre within Spain or abroad.

(4) Investment firms authorised in non-EU Member States which operate in Spain.

(5) Agents of investment firms.

(6) Management companies of investment guarantee funds.

(7) Persons and entities not included in the preceding points which are members of any official secondary market or of the clearing and settlement systems that handle their transactions.

(8) Data reporting services providers.

(b) The credit rating agencies, established in Spain and registered by virtue of Part One of Title Three 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 is the competent authority in Spain for the purposes of Regulation (EC) No. 1060/2009, of 16 September 2009, and shall exercise its powers in accordance with the provisions of European Union regulations on credit rating agencies.

(c) The following persons and entities, with regard to their transactions related to the securities market:

(1) Securities issuers.

(2) Credit institutions and their agents, including any branch opened outside Spain, and credit institutions authorised in non-EU Member States operating in Spain.

(3) Investment firms authorised in another Member State of the European Union that operate in Spain, in the terms provided for in this Act and in its implementing regulations, 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.

(4) UCITS management companies insofar as they provide investment services.

(5) Other natural and legal persons, to the extent that they are affected by the provisions of this Act and its implementing regulations.

(6) The credit rating agencies registered by another competent authority of the European Union by virtue of Part One of Title Three of Regulation (EC) No. 1060/2009, of the 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 the said Regulation on credit rating agencies. The National Securities Market Commission shall exercise its powers in accordance with the provisions of European Union rules on credit rating agencies.

(d) 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 those with significant holdings for the purposes of complying with the provisions of Part IV of Title V

(e) Entities which form part of the Consolidated groups of the investment firms provided for under Article 258, solely for the purpose of complying with Consolidated own funds requirements and restrictions regarding investments, transactions and positions that imply high risks.

(f) Entities that form part of Consolidated groups controlled by entities described in paragraphs (a)(1) and (2) above, solely for the purpose of complying with the obligation to consolidate their accounts and the restrictions that may be imposed regarding their business and equity balance.

(g) Financial holding companies, mixed financial holding companies and mixed holding companies, in accordance with Article 4(1)(20) and (21), respectively, of Regulation (EU) No. 575/2013, of 26 June 2013, whose subsidiary undertakings include investment firms.

(h) Natural persons and non-financial undertakings referred to under Article 258(3), solely for the purposes provided for in that article.

(i) Any person or entity, for the purposes of verifying whether they contravene the naming and operating restrictions provided for under Articles 143 to 147. In the case of legal persons, the powers of the National Securities Market Commission provided for in the previous paragraphs may be exercised over the individuals that hold the position of director, manager or similar within those persons.

(j) Natural and legal persons carrying out transactions subject to Regulation (EU) No. 236/2012, of 14 March 2012.

(k) Natural and legal persons carrying out transactions subject to Regulation (EU) No. 648/2012, of 4 July 2012.

(l) Credit institutions in the performance of their sales or advisory activities related to structured deposits.

(m) Natural and legal persons carrying on activities subject to Regulation (EU) No. 1286/2014, of the European Parliament and of the Council, of 26 November 2014, on key information documents for packaged retail and insurance-based investment products, as far as packaged retail investment products falling within the scope of this Act are concerned.

(n) Benchmark administrators and supervised entities in accordance with Article 40 of Regulation (EU) No. 2016/1011, of the European Parliament and of the Council, of 8 June 2016, on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds, as well as other natural or legal persons, insofar as they may be affected by the rules of that Regulation and its implementing regulations.

(ñ) Natural and legal persons subject to Regulation (EU) No. 2015/2365, of the European Parliament and of the Council, of 25 November 2015, on transparency of securities financing transactions and of reuse, and amending Regulation (EU) No. 648/2012.

(o) Natural and legal persons subject to Regulation (EU) No. 596/2014, of 16 April 2014.

2. The insolvency practitioners of a securities issuing entity or of a registered entity subject to insolvency proceedings shall be responsible for complying with the obligations to

submit information to the National Securities Market Commission provided for in this Act for its directors and managers, when the latter have been replaced by the former.

3. The provisions of this article shall be understood without prejudice to the powers of supervision, inspection and sanction vested in the regional governments that have jurisdiction in this matter over the market operators of secondary markets located in their territory and, in connection with the transactions in securities only admitted to trading on such markets, over the other persons or entities listed in the first two paragraphs above. For the exercise of these powers, the relevant provisions of this Title shall be of a basic nature, except for the references contained therein to State agencies or institutions. The National Securities Market Commission may enter into agreements with the regional governments with jurisdiction in matters of securities markets in order to coordinate their respective actions.

4. With respect to the provisions of Regulation (EU) No. 596/2014, of the European Parliament and of the Council, of 16 April, the CNMV shall be competent for its application in relation to the instruments, contracts, conduct, transactions, offers, orders and, in general, actions and omissions referred to under Article 2 of the said Regulation and, specifically, the actions carried out:

(a) in Spanish territory in relation to transferable securities and other financial instruments,

(b) outside Spanish territory in relation to transferable securities and other financial instruments admitted to trading or for which a request for admission to trading on a regulated market, on an MTF, on an OTC, or auctioned on an auction platform operating in Spanish territory has been made; and

(c) outside Spanish territory in relation to financial instruments not covered by points (a) or (b) whose price or value depends on the financial instruments referred to in those points or has an effect on their price or value.

5. Without prejudice to the provisions of this Act, the Bank of Spain shall have powers of oversight and supervision over all members of the Public-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 under Article 145.

In all cases where the powers of supervision and inspection of the National Securities Market Commission and the Bank of Spain overlap, the two 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 matters referred to under Article 193(2), whereas the duty to oversee matters of solvency and other matters of internal organisation lie with the body that maintains the corresponding register.

The National Securities Market Commission and the Bank of Spain shall sign agreements in order to coordinate their respective powers of supervision and inspection.

6. In accordance with Article 40(1) of Regulation (EU) No. 2016/1011, of the European Parliament and of the Council, of 8 June 2016, on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment

funds and amending Directives 2008/1481/EC and 2014/1171/EU and Regulation (EU) No. 596/2014, the National Securities Market Commission is designated as the competent authority.

Without prejudice to the foregoing, the Bank of Spain shall exercise the functions of supervision, inspection and sanction in relation to the obligations provided for under Article 16 of the said Regulation as regards compliance with such obligations by the supervised institutions contributing data for indices prepared by the Bank of Spain, as well as under Articles 28(2) and 29(1) of the said Regulation as regards compliance with such obligations in relation to the use of benchmarks in the financial contracts referred to in paragraph (18) of Article 3(1) of the said Regulation by institutions subject to the supervision of the Bank of Spain in matters of transparency and client protection.

Likewise, in accordance with Article 40(2) of the said Regulation, the National Securities Market Commission shall be the authority responsible for the coordination and exchange of information.

**Article 234.** *Powers of supervision and inspection.*

1. The CNMV shall have all the powers of supervision and inspection necessary for the exercise of its functions. It may exercise these powers:

- (a) Directly, without prejudice to the power to seek the collaboration of third parties under the terms provided for under Article 235.
- (b) In collaboration with other authorities, national or foreign, under the terms of this Act and its implementing regulations.
- (c) By application to the competent judicial authorities.

2. In the manner and with the limitations provided for in the legal system, the supervision and inspection powers of the CNMV shall include at least the following powers:

- (a) To have access to any document in any form or to other data that it considers may be relevant for the exercise of its functions and to receive or obtain copies thereof.
- (b) To request any person, including those who successively intervene in the transmission of orders or in the execution of the transactions under consideration, to provide information within the period reasonably established by the CNMV and, if necessary, to summon and take a statement from a person in order to obtain information.
- (c) To perform in situ inspections at any office or premises.
- (d) To request the provision of the telephone records and data traffic records available to those people and entities referred to under Article 233(1) of the Consolidated Text of the Securities Market Act. Pursuant to the Fifteenth Additional Provision of the Data Protection Act, when the CNMV has not been able to obtain, by other means, the information necessary to carry out its supervisory or inspection tasks, in the terms provided for in the said provision, it may collect from operators providing publicly available electronic communications services

and from information society service providers the data in their possession relating to electronic communication or information society services provided by the said providers that are different from their content and are essential for the exercise of the said tasks.

To this end, the competent body of the CNMV must request the appropriate court authorisation, when this implies a restriction of fundamental rights, from the Central Judicial Review Court, which shall resolve the matter within a maximum period of forty-eight hours.

Note that the provisions of point (d) shall not apply until the amendment to the Data Protection Act has been approved and its Eighteenth Additional Provision has entered into force, as provided for in subparagraph 2 of Final Provision 5(2) of Royal Decree-Law 14/2018, of 28 September. [Ref. BOE-A-2018-13180](#).

- (e) To request the attachment and/or freezing of assets.
- (f) To request a temporary prohibition from exercising professional activity.
- (g) To request the auditor of investment firms and entities under Article 233(1)(a)(1), (2) and (8) to provide any information obtained in the performance of their duties.
- (h) To request any person to provide information, including all relevant documentation, about the size and purpose of a position or exposure contracted through a commodity derivative as well as the assets and liabilities of the underlying market.
- (i) To request the provisional or definitive cessation of any practice or conduct which it considers contrary to the provisions of Regulation (EU) No. 596/2014, of the European Parliament and of the Council, of 16 April 2014, Regulation (EU) No. 600/2014, of the European Parliament and of the Council, of 15 May 2014, or this Act and its implementing regulations and prevent the repetition of such practice or conduct.
- (j) To 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.
- (k) To agree to the suspension or limitation on the type or volume of transactions or activities that natural or legal persons may carry out in the securities market.
- (l) To agree to suspend or exclude a financial instrument from trading, whether on a regulated market or another trading system.
- (m) To request any person to take measures to reduce the size of a position or exposure.
- (n) To refer matters for criminal prosecution.
- (ñ) To limit the ability of any person to enter into a commodity derivative agreement, including the introduction of limits on the size of positions that a person may hold at any time in accordance with Article 85.
- (o) To publish notices.

(p) To suspend the marketing or sale of financial instruments or structured deposits when the conditions provided for under Articles 40, 41 or 42 of Regulation (EU) No. 600/2014/EU, of the European Parliament and of the Council, of 15 May 2014, are met.

(q) To suspend the marketing or sale of financial instruments or structured deposits when an investment firm has not developed or implemented an effective product approval process or has otherwise failed to comply with this Act or its implementing regulations.

(r) To request a natural person to be separated from the management body of the investment firm or from the market operator.

(s) To authorise auditors or experts to carry out verifications or investigations.

(t) In the exercise of the function of checking the periodic information referred to under Article 122(2), the CNMV may:

(1) Obtain from the accounts auditor of issuers whose securities are admitted to trading on any regulated market domiciled in the European Union, by means of a written request, such information or documents as may be necessary, in accordance with the provisions of Act 22/2015, of 20 July.

The disclosure by auditors of the information required by the CNMV pursuant to this article shall not constitute a breach of the duty of secrecy.

(2) Request issuers whose securities are admitted to trading on any regulated market domiciled in the European Union to publish additional information, reconciliations, corrections or, where appropriate, restatements of the periodic information.

(u) To collect, through its employees, information on the degree of compliance with the rules affecting the securities markets by supervised entities, without disclosing their status as CNMV personnel and, in particular, with respect to the way in which their financial products are being marketed, as well as on the good or bad practices that these entities may be carrying out.

(v) To request, in writing or orally, the persons and entities referred to under Article 230, to immediately make any information public that the former deems relevant to their activities related to, or that may influence, the securities market. If the obligors do not do so directly, the CNMV shall do so itself.

(w) To suspend, as a precautionary measure, the exercise of the voting rights associated with the shares acquired until compliance with the reporting obligations provided for under Article 125 is established, at the time of opening or in the course of disciplinary proceedings.

(x) In relation to commodity derivatives, to request information from participants in the related spot markets through standard forms, to receive reports on transactions and to have direct access to traders' systems.

(y) To take all necessary measures to ensure that the public is adequately informed, *inter alia*, by correcting false or misleading information published, and by requesting the issuer or another person who has published or disseminated false or misleading information to publish a correction.

(z) In relation to the marketing of packaged retail investment products, the CNMV may adopt the following measures:

- (1) Ban the marketing of a packaged retail investment product.
- (2) Suspend the marketing of a packaged retail investment product
- (3) Ban the facilitation of a key information document that breaches the requirements of Articles 6, 7, 8 or 10 of Regulation (EU) No. 1286/2014, of the European Parliament and of the Council, of 26 November 2014, and demand the publication of a new version of the document.
- (4) Any other measure attributed to the competent authority designated by the corresponding Member State in Regulation (EU) No. 1286/2014, of the European Parliament and of the Council, of 26 November 2014.

3. If the persons on whom the powers of supervision and inspection are exercised oppose them or there is a risk of such opposition, the competent body of the CNMV must request the appropriate court authorisation, when this involves a restriction of fundamental rights, from the Central Judicial Review Courts, which shall resolve the matter within a maximum period of five days.

4. The verification and investigation actions, including the taking of a statement, may be carried out at the choice of the CNMV's services:

- (a) At any office of the inspected entity or person or its representative.
- (b) On the premises of the CNMV or of other public bodies.

When the verification and investigation actions are carried out in the places indicated in point (a), the working day of the same shall be observed, without prejudice to the fact that other hours and days may be determined by mutual agreement.

5. The measures referred to in paragraph 2. (e), (f), (i), (j), (k), (l), (m), (ñ), (o), (q), (r), (s), (u), (w), (y) and (z) may be adopted on a provisional basis in the course of disciplinary proceedings, in accordance with the provisions of Article 56 of Act 39/2015, of 1 October, in order to ensure the enforceability of the resolution that may be issued, the successful outcome of the proceedings, avoid maintaining the effects of the infringement and the requirements of general interest, or as a measure of prudential supervision or conduct, to ensure the proper exercise of its supervisory function, the effective protection of investors or the proper functioning of the securities markets, maintaining the same while the cause giving rise thereto remains.

6. When the measures provided for in paragraph 2. (e), (f), (i), (k) and (t) are exercised over institutions subject to the supervision of the Bank of Spain, either as a precautionary measure in disciplinary proceedings or outside the exercise of the disciplinary power, they must be notified beforehand to the said body.

Likewise, in the case of the measures referred to in paragraph 2(e), the prior report of that body shall be required.

7. When the measures referred to in paragraph 2. (e), (f), (i), (k) and (t) are exercised over entities subject to the supervision of the Directorate-General for Insurance and Pension Funds, either as a precautionary measure in disciplinary proceedings, or outside the exercise of the disciplinary power, they shall be notified beforehand to the said body.

Likewise, in the case of the measures referred to in paragraph 2(e), the prior report of that body shall be required.

8. The CNMV, in exercising the powers of supervision and inspection provided for in this Act, may communicate to and require the shareholders obliged to communicate major holdings in issuing companies, investment firms and other entities authorised to provide investment services and perform investment activities, including their agents, the managers referred to under Article 19 of Regulation No 596/2014, of the European Parliament and of the Council, of 16 April 2014, the persons and entities referred to under Article 233(1)(a)(1) to (5) and (8), (c)(1) to (3), and (h), and the data reporting services providers, by electronic means, the information and measures contained in this Act and in its implementing regulations, as well as the forwarding by electronic means of the information and documents that such persons have to submit to the CNMV.

The aforementioned entities shall be obliged to provide, within the time limit provided for this purpose, the technical means required by the CNMV for the effectiveness of their electronic notification systems, in accordance with the provisions of Article 14(3) of Act 39/2015, of 1 October.

The electronic notification system, which shall respect the principles and guarantees of Act 39/2015, of 1 October, shall allow the date and time when the act subject to notification is made available to the interested party, as well as access to its content, from which time the notification shall be understood to be served for all legal purposes.

When ten calendar days elapse without access to the content of the act that is the subject of the notification being made available, it shall be understood that the notification has been rejected with the effects provided for under Article 41(5) of Act 39/2015, of 1 October.

The Electronic Registry of the CNMV may accept the standard electronic documents appropriate to the services, procedures and formalities that are specified in accordance with the provisions of the legislation creating its registry, completed in accordance with pre-established formats.

9. The facts ascertained in the exercise of its functions of supervision and inspection by authorised personnel of the CNMV shall have probative value without prejudice to the evidence that in defence of their respective rights or interests may be adduced or submitted by the interested persons or entities.

10. The CNMV may make public any measure adopted as a consequence of non-compliance with the applicable legislation, unless its disclosure could seriously jeopardise the securities markets or cause disproportionate harm to the persons affected.

11. The CNMV, which shall be the competent authority for the purposes of the provisions of Regulation (EU) No. 236/2012, of the European Parliament and of the Council, of 14 March 2012, on short selling and certain aspects of credit default swaps, and Regulation (EU) No. 648/2012, of the European Parliament and of the Council, of 4 July 2012, shall have

the powers contained in this article that are necessary to carry out the functions and tasks assigned to it by delegation or in cooperation with other competent authorities.

The Bank of Spain and the Directorate-General for Insurance and Pension Funds shall immediately notify the CNMV of any effective breach, or the existence of *prima facie* evidence of a foreseeable breach, of the obligations provided for under Articles 11(3) and 11(4) of Regulation (EU) No. 648/2012, of the European Parliament and of the Council, of 4 July 2012.

12. Access, processing and transfer of personal data collected by the CNMV in the exercise of its functions of inspection and supervision is covered by the regulations on the protection of personal data, when carried out to meet the public interest and in the exercise of public powers conferred thereto. The data shall only be used for the exercise of the powers mentioned in the terms provided for in this Act.

The rights of interested parties regulated in the personal data protection regulations shall be limited, in accordance with the provisions of the said regulations, for as long as the CNMV deems it necessary to safeguard the purpose of its inspection and supervisory actions.

Note that the provisions of paragraph 12 shall not apply until the amendment to the Data Protection Act has been approved and its Eighteenth Additional Provision has entered into force, as provided for in subparagraph 2 of Final Provision 5(2) of Royal Decree-Law 14/2018, of 28 September. [Ref. BOE-A-2018-13180](#).

13. The CNMV shall be the competent authority for the application of Regulation (EU) No. 596/2014, of the European Parliament and of the Council, of 16 April 2014. To this end, and without prejudice to the provisions of the preceding paragraphs, it may exercise each and every one of the powers that the aforementioned Regulation recognises to the competent authorities, including those specifically referred to under Article 23(2) by any of the means referred to under Article 23(1) of the said Regulation, as well as those provided for under Articles 13 and 19(9) of the same Regulation.

14. Without prejudice to the provisions of the previous paragraphs, the CNMV, as the competent authority, may exercise each and every power recognised under Regulation (EU) No. 2016/1011, of the European Parliament and of the Council, of 8 June 2016, to the competent authorities, *inter alia*, those specifically referred to under Article 41(1) by any of the means provided for under Article 41(2) of the said Regulation.

**Article 234 bis.** *Other powers to strengthen macro-prudential supervision.*

The CNMV may introduce limits and conditions on the activity of its supervised entities with the aim of avoiding excessive private sector debt that may affect financial stability.

**Article 235.** *Collaboration of external agents in supervisory and inspection functions.*

1. For the best exercise of the supervisory functions assigned to it by law, the National Securities Market Commission may, in the event of a duly reasoned need, use the precedents arising from the collaboration required to this end by auditors, consultants and other independent experts, who must, in all cases, comply with the rules and instructions determined by the said body.

2. In particular, the National Securities Market Commission, in order to assess the degree of compliance with the rules affecting the securities markets by the supervised institutions and, in particular, affecting the practices of trading in financial instruments, may request the collaboration of experts in issuing reports.

For the preparation of these reports, the designated experts and their employees may act anonymously, without disclosing that their actions are on behalf of the National Securities Market Commission.

3. Acting in collaboration with the National Securities Market Commission in accordance with the provisions of this paragraph shall under no circumstances imply the exercise of administrative powers.

**Article 236.** *Obligations to collaborate with the National Securities Market Commission.*

1. By virtue of the provisions of Article 234, the natural and legal persons referred to under Article 233(1) are obliged to supply any books, records and documents, regardless of their format, which the Commission deems pertinent, including computer programmes, 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.

2. Natural persons shall be obliged to respond to summonses from the CNMV in order to give testimony.

3. The bodies and organs of any public authority; chambers and corporations, professional associations, boards of professional associations; other public entities, including the management and services entities of the Social Security system 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 CNMV to exercise the functions provided for under Article 17, 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.

4. The auditors of investment firms shall be bound by the obligation to notify the National Securities Market Commission as regulated in the Seventh Additional Provision of Act 22/2015 of 20 July.

5. To the extent necessary for the effective exercise by the National Securities Market Commission of its supervisory and inspection functions, the persons or entities providing any type of professional service to the persons covered by Article 233(1) are obliged to provide such data and information as may be required of them by the CNMV in accordance with the provisions, as the case may be, of the specific legislation governing their profession or activity.

**Article 237.** *Publication of relevant information.*

With the exceptions provided for under Article 248, 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 CNMV may disclose such information itself.

**Article 238.** *Public registers in relation to securities markets.*

The National Securities Market Commission must keep the following official registers, to which the public shall have free access:

(a) A register of the institutions entrusted with keeping the accounting records for each of the security issuances represented by book-entries.

(b) A register containing the prospectuses approved by the CNMV pursuant to this Act.

(c) A register of the documents referred to under Article 7 and, in general, those referred to under Article 36(1(a) and (b).

(d) A register of investment firms operating in Spain and, where applicable, of their directors, executives and similar officers.

(e) A register of agents or authorised representatives who habitually act on behalf of investment firms.

(f) A register of regulated information, which must include the information referred to under Articles 118 to 122, 123(1), 125, 126 and 228. Official demands issued by the CNMV for the presentation, additional information or review of the contents of the information referred to under Articles 118 to 122 shall also be included.

(g) A register of the listed companies provided for under Article 77(1).

(h) A register, in accordance with the provisions of Article 275(2), of the sanctions imposed in the last five years on natural and legal persons subject to the supervision, inspection and sanctions provided for in this Title 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.

(j *bis*) A register of Spanish organised trading facilities (OTFs).

(k) A register of credit institutions and investment firms that engage in the activity regulated in Part III of Title X.

(l) A registry of credit rating agencies established in Spain that 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 registration and the central counterparties referred to under Articles 97 and 103, respectively.

(n) A register of bank asset funds referred to in the Tenth Additional Provision of Act 9/2012, of 14 November, on credit institutions (restructuring and resolution), in which the events and acts subject to registration with the National Securities Market Commission according to applicable legislation shall be registered.

(ñ) A register of crowdfunding platforms.

(o) A register of securitisation funds, in which the events and acts subject to registration with the National Securities Market Commission according to applicable legislation shall be registered.

(p) A register of inside information concerning issuers of financial instruments that have been admitted to trading on regulated markets or for which admission to a regulated market has been requested.

(q) A register of data reporting services providers.

(r) A register of corporate governance information and other information that issuing companies must submit to the CNMV in compliance with legislative provisions and which are not defined in the previous registers.

(s) A register of the prospectuses for takeover bids approved by the CNMV pursuant to the provisions of this Act, as well as exemptions from the announcement of takeover bids.

The inclusion in the CNMV Registers of periodical information and prospectuses shall only imply the recognition that they contain all the information required by the legislation that establishes their content and in no case shall it determine the CNMV's liability for the lack of veracity of the information contained therein.

The official register provided for in paragraph f) shall be considered a central mechanism for storing the information referred to in this article, under terms to be provided by regulation.

**Article 239.** *Complaints services.*

1. The Ministry of Economy and Competitiveness shall regulate, without prejudice to the jurisdiction of the regional governments in this matter, the constitution by the National Securities Market Commission and, if deemed necessary, by the operators of the official secondary securities markets, by central counterparty entities and by central securities depositories, of services designed to deal with complaints that, in matters within its jurisdiction, the public may make, as well as to advise the public on its rights and the existing legal channels for exercising them.

2. 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 to the provision of investment and ancillary services by investment firms.

**Article 240.** *Advertising.*

The Minister for Economy and Competitiveness and, with their express authorisation, the National Securities Market Commission, shall determine those cases in which public disclosure of the activities provided for 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 that is contrary to the provisions referred to in the preceding paragraph or generally that is deemed unlawful according to general advertising regulations, without prejudice to the sanctions that may be applicable in accordance with the following Part.

**Article 241.** *Accounting information obligations.*

1. The separate and Consolidated accounts and directors' reports for each fiscal year of the entities referred to under Article 233(1)(a) 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 of Book I of the Code of Commerce, the Minister for Economy and Competitiveness and, with their express authorisation, the National Securities Market Commission, the Bank of Spain and the Institute of Accounting and Auditing are empowered, to establish and amend the accounting rules applicable to the entities referred to in the preceding paragraph and the templates to which their accounts must conform, as well as those standards relating to the achievement of established coefficients, providing the intervals and details with which the respective particulars must be furnished to the CNMV 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.

The ministerial order establishing the authorisation shall determine which reports, if any, shall be required for the establishment and modification of the aforementioned standards and templates as well as for the resolution of consultations on such legislation.

In addition, the Minister for Economy and Competitiveness and, with their express authorisation, the National Securities Market Commission, may regulate the registers, internal databases or statistics and documents which the entities referred to under Article 233(1)(a) are obliged to keep, as well as those concerning securities market transactions as provided for under Article 145.

3. The Minister for Economy and Competitiveness and, with their express authorisation, the National Securities Market Commission, following a report from the Institute of Accounting and Auditing, shall have the same powers provided for in the preceding paragraph in relation to Consolidated groups of investment firms included and to Consolidated groups whose parent undertaking is one of those referred to under Article 233(1)(a)(1) and (2). The exercise of these powers shall require the mandatory reports, if any, to be determined in the enabling ministerial order.

## PART II

### **Cooperation with other authorities**

**Article 242.** *Cooperation with other national supervisory authorities.*

1. The Bank of Spain, the National Securities Market Commission and the Ministry of Economy and Competitiveness, within their respective legal powers over the control and inspection of financial institutions, shall cooperate closely for the purpose of harmonising, as appropriate, and improving, on the basis of their mutual experience, the criteria and programmes protecting the supervisory techniques and practices used in the exercise of those powers.

2. To this end, they shall regularly exchange relevant information, in particular that relating to ensuring the highest quality of the techniques used, and may conclude one or more agreements with a view to standardising such exchanges, standardising specific procedures or

practices and, where appropriate, establishing the instruments for monitoring the above-mentioned objectives.

**Article 243.** *Request for prior report and information.*

1. The National Securities Market Commission shall request a prior report from the Bank of Spain or the Directorate-General for Insurance and Pension Funds, as appropriate, for the adoption of any of the following resolutions in relation to the counterparties subject to their respective prudential supervision:

(a) Resolutions relating to the existence of risk management procedures and to the capital adequacy of financial counterparties for the purposes of Article 11(3) and (4) of Regulation (EU) No. 648/2012, of 4 July 2012.

(b) The application of the exemptions to intra-group transactions referred to under Article 4(2) and Article 11(5) *et seq.* of the said Regulation.

2. The resolutions that may be adopted by the National Securities Market Commission referred to in point (a) above must, at any event, be based on the report issued by the authority responsible for the prudential supervision of the appropriate entity.

3. The National Securities Market Commission may request from the Bank of Spain and the Directorate-General for Insurance and Pension Funds all information necessary for the exercise of the powers of supervision, inspection and sanction relating to the application of Regulation (EU) No. 648/2012, of 4 July 2012.

**Article 244.** *Cooperation with other supervisory authorities in the European Union.*

1. The CNMV shall cooperate with other competent authorities of the European Union whenever necessary to carry out the functions provided for in this Act and in Regulation (EU) No. 600/2014, of the European Parliament and of the Council, of 15 May 2014, making use to this end of all the powers conferred on it by this Act and those provided for in Regulation (EC) No. 1060/2009, of 16 September 2009.

2. The CNMV shall also provide assistance to other competent authorities in the European Union. In particular, it shall exchange information, cooperate in investigative or supervisory activities and cooperate in facilitating the collection of financial sanctions. The CNMV may exercise its powers for cooperation purposes, even in cases where the conduct under investigation does not constitute a breach of the legislation in force in Spain.

3. The CNMV shall cooperate with the European Securities and Markets Authority. In particular, it shall, without delay, provide it with all the information it requires for the performance of the tasks assigned to it pursuant to Article 35 of Regulation (EU) No. 1095/2010, of 24 November 2010.

4. In exercising its disciplinary and investigative powers, the CNMV shall cooperate with other competent authorities of the European Union to ensure that the sanctions or measures produce the desired results and shall coordinate its actions with other authorities in cross-border cases.

5. In relation to emission allowances, the CNMV shall cooperate with the Spanish Office for Climate Change, the public bodies responsible for the supervision of spot markets and auctions, the Spanish Emission Allowances Register and other public bodies responsible for supervising compliance with Act 1/2005, of 9 March, which regulate the greenhouse gases emission rights trading scheme, in order to ensure an overall view of the emission allowance markets.

6. In relation to agricultural commodity derivatives, the CNMV shall inform and cooperate with the Ministry of Agriculture, Fisheries and Food and the regional public bodies competent in matters of supervision, operation and regulation of physical agricultural markets in accordance with Regulation (EU) No. 1308/2013, of the European Parliament and of the Council, of 17 December 2013, establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No. 922/72, (EEC) No. 234/79, (EC) No. 1037/2001 and (EC) No. 1234/2007.

7. In the performance of its supervisory function, the National Securities Market Commission shall request, from the competent authorities of other Member States, information relating to the application of methods and methodologies provided for in this Act and its implementing regulations resulting from the transposition of Directive 2013/36/EU, of 26 June, and Regulation (EU) No. 575/2013, of 26 June, which may previously be available to the supervisor in another Member State.

8. In the event that in the performance of its supervisory function over any person referred to under Article 233, the National Securities Market Commission becomes aware of information which, although not within its sphere of supervision, may be of interest for the performance of the supervisory function of a supervisory authority of a Member State of the European Union, it shall immediately communicate the said information to the authority of the appropriate Member State, without this in any case being understood as performance of the supervisory function by the National Securities Market Commission.

**Article 245.** *Exchange of information.*

1. The CNMV shall immediately provide ESMA, the European Banking Authority, the European Insurance and Occupational Pensions Authority and the competent authorities of other Member States of the European Union with the information necessary for the performance of their duties as required by those authorities.

2. The National Securities Market Commission shall not transmit information received from competent authorities of other countries to other bodies or natural and legal persons without the express consent of the competent authorities that have disclosed it.

At any event, the information received by or transmitted by the National Securities Market Commission may only be used for the purposes for which such authorities have given their consent in the exercise of their functions, 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 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 resolutions by the competent authorities.
- (e) In judicial proceedings.
- (f) In extra-judicial mechanisms for handling investor complaints.

3. Likewise, the National Securities Market Commission may transmit the information received from other competent authorities to the Bank of Spain and the Directorate-General for Insurance and Pension Funds.

4. Notwithstanding the provisions of paragraph 2, in duly justified circumstances the National Securities Market Commission may transmit the information to other bodies or natural and legal persons without the express consent of the competent authorities that have disclosed it but solely for the purposes for which the said authorities have given their consent. In this case, the National Securities Market Commission shall immediately inform the competent authority of the State that sent the information.

5. The provisions of the previous paragraphs shall apply, as regards the rules applicable to the request for supply or exchange of information, as provided for under Article 15 of Regulation (EC) No. 1287/2006, of 10 August 2006.

6. The provisions of this article shall not prevent the National Securities Market Commission from transmitting the confidential information necessary for the exercise of its functions to the following bodies:

(a) To the European Securities and Markets Authority and the European Systemic Risk Board, noting the limitations on company-specific information and effects on non-EU Member States provided for in Regulation (EU) No. 1095/2010, of 24 November 2010 and Regulation (EU) No. 1092/2010, of the European Parliament and of the Council, of 24 November 2010, on macro-prudential oversight of the financial system in the European Union and establishing the European Systemic Risk Board, respectively.

(b) The European System of Central Banks and the European Central Bank, in their capacity as monetary authorities.

(c) The Bank of Spain and the Directorate-General for Insurance and Pension Funds. Similarly, these bodies shall not be prevented from communicating to the National Securities Market Commission the information the latter may require in order to carry out the functions that lie with it under this Act.

**Article 245 bis.** *Notification of data to ESMA and competent authorities.*

1. The CNMV shall notify ESMA and other competent authorities of the details of:

(a) Any requirement to reduce the size of a position or exposure under Article 234(2)(m); and

(b) any limit imposed on the ability of persons to contract an instrument in accordance with Article 85.

2. The notification shall include, where appropriate, details of the request or application under Article 234(2)(h), including the identity of the person or persons to whom the request was addressed and the reasons for such request, as well as the extent of the limits imposed under Article 234(2)(ñ), including the person concerned, the financial instruments concerned, thresholds on the size of positions which the person may subscribe at any time, and the exemptions applicable under Article 85, as well as the reasons therefor.

3. The CNMV shall notify the actions or measures adopted at least 24 hours prior to their expected date of entry into force. If, due to exceptional circumstances, the CNMV is unable to give notice within that period, it may do so with less notice.

4. When the CNMV receives a notification as provided for in this article from another competent authority, it may take measures pursuant to Article 234(2) (m) and (ñ), when it is satisfied that the measure is necessary to achieve the objective of the other competent authority. The CNMV shall also proceed to notify in accordance with this paragraph if it proposes to adopt measures.

5. When an action taken under paragraph 1 concerns wholesale energy products, the CNMV shall also forward the notification to the Agency for the Cooperation of Energy Regulators established under Regulation (EC) No. 713/2009, of the European Parliament and of the Council, of 13 July 2009, establishing the Agency for the Cooperation of Energy Regulators.

**Article 246.** *Prior consultation with other competent authorities of the European Union.*

The National Securities Market Commission, prior to the adoption of resolutions that may affect the exercise of supervisory functions by the interested competent authorities of another Member State of the European Union, shall consult them, providing the essential or relevant information, in view of the importance of the matter in question.

In particular, appropriate consultation should take place before the following resolutions are adopted:

(a) Those provided for in Part IV of Title V in relation to the acquisition of major holdings, regardless of the scope of the change in the shareholder structure affected by the relevant resolution.

(b) Reports to be issued on mergers, divisions or any other material change in the organisation or management of an investment firm.

(c) Sanctions for the commission of very serious and serious infringements which, in the opinion of the National Securities Market Commission, are considered to be of special significance.

(d) Intervention and substitution measures, as referred to under Article 311.

(e) The request for additional own resources, as provided for under Article 260(2), as well as the imposition of limitations on the use of internal methods for measuring operational risk.

In the cases referred to in points (c), (d) and (e), the European Union authority responsible for the Consolidated supervision of the group possibly affected by the resolution must at any event be consulted.

By way of exception, the National Securities Market Commission may omit prior consultation of the competent authority concerned of another Member State of the European Union, when circumstances of urgency arise or when such consultation could jeopardise the effectiveness of the resolutions to be adopted, but must inform the said authorities without delay as soon as the resolution has been adopted.

**Article 247.** *Cooperation with the competent authorities of non-EU Member States.*

1. The National Securities Market Commission may conclude cooperation agreements providing for the exchange of information with the competent authorities of non-EU Member States 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 paragraph.

2. The National Securities Market Commission may transfer personal data to non-EU Member States in accordance with Title V of Act 15/1999, of 13 December, on data protection.

3. The National Securities Market Commission may 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, insurance and reinsurance undertakings, other financial organisations and financial markets;

(b) The insolvency proceedings in which the liquidation stage for investment firms and other similar procedures has opened;

(c) Carrying out statutory audits on the accounts of investment firms, credit institutions, insurance and reinsurance undertakings and other financial institutions, 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 insolvency proceedings in which the liquidation stage for investment firms and other similar procedures has opened;

(e) The supervision of persons operating in the emission allowance markets in order to ensure an overall view of the financial and spot markets.

(f) The supervision of persons operating in agricultural commodity derivatives markets in order to ensure an overall view of the financial and spot markets.

(g) The supervision of persons charged with carrying out statutory audits on the accounts of investment firms, credit institutions, insurance or reinsurance undertakings and other financial institutions.

Such exchange of information must be intended for the performance of the tasks of those authorities or bodies or natural or legal persons.

The cooperation agreements referred to in this paragraph shall require compliance with the requirements provided for in the preceding paragraphs.

4. When the information to be shared by the National Securities Market Commission comes from another EU 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 the competent authorities of non-EU Member States.

**Article 248.** *Professional secrecy.*

1. Confidential information or data that the CNMV or other competent authorities have received in the exercise of their supervisory and inspection duties under this or other acts or EU law may not be disclosed to any person or authority. Confidentiality shall be understood to have been lifted as soon as the interested parties make public the facts to which it refers.

Without prejudice to the provisions of this article and to the cases provided for by criminal or tax law, no confidential information that it may receive in the exercise of its functions may be disclosed to any person or authority whatsoever, except in a generic or collective manner that prevents the specific identification of investment firms, market operators, regulated markets or any other person to whom this information refers.

2. 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 parliamentary regulations. For this purpose, the President of the National Securities Market Commission may make a reasoned request to the competent bodies of Parliament for a closed session or the application of the established procedure for accessing classified information.

Members of a parliamentary investigation committee who receive classified information are obliged to adopt adequate measures to ensure that the information remains classified.

3. All persons which carry out or have carried out business for the National Securities Market Commission and who have had knowledge of classified information are obliged to keep this information confidential. Any 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 classified information or documents, even after they have left the 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 are 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 are demanded by the legal authorities in the context of insolvency proceedings in connection with an investment firm, provided that the data do not concern third parties involved in the relaunch of the firm.

(e) The data are 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 are to be supplied by the National Securities Market Commission to the following bodies in order for them to fulfil their respective functions: regional governments with jurisdiction over securities markets; the Bank of Spain; the Directorate-General for Insurance and Pension Funds; the Institute of Accounting and Auditing, the market operators of official secondary markets in order to ensure their correct operation; investment 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 are to be supplied by the National Securities Market Commission to the authorities responsible for preventing money laundering, in accordance with Act 10/2010, of 28 April, on money laundering and finance of terrorism (prevention), including communications which may exceptionally be made according to the provisions of Articles 93 and 94 of Act 58/2003, of 17 December, on general taxation, with the prior authorisation of the Minister for 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 are requested by a parliamentary investigation committee under the terms established in its specific legislation.

(i) The data are 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 oversight of credit institutions, insurance and reinsurance undertakings, 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 are to be supplied by the National Securities Market Commission to the Ministry of Economy and Competitiveness or the authorities of the regional governments with jurisdiction over 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 Article 176(8).

(m) Information that the National Securities Market Commission provides to the Spanish supervisory authorities on energy matters and the supervisors of the Iberian Market in Electricity that is necessary to fulfil their functions as supervisor of 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 CNMV's prior consent.

(n) 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 shall be subject to professional secrecy.

(ñ) 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 24 November 2010.

(o) The information provided by the CNMV to the Spanish Office for Climate Change, the public bodies responsible for the supervision of spot markets and auctions, the Spanish Emission Allowances Register and other public bodies responsible for supervision in accordance with Act 1/2005, of 9 March, which regulates the greenhouse gases emission rights trading scheme.

(p) The information provided by the CNMV to the Ministry of Agriculture, Fisheries and Food and the regional public bodies responsible for the supervision, operation and regulation of physical agricultural markets in accordance with Regulation (EU) No. 1308/2013, of the European Parliament and of the Council, of 17 December 2013, in relation to agricultural commodity derivatives.

(q) The information that the CNMV must provide in order to carry out its functions, and by virtue of this Act, to other competent authorities of the European Union.

(r) The information that, by virtue of cooperation and exchange of information agreements referred to under Article 247, the CNMV provides to the competent authorities of non-EU Member States, or to other authorities, bodies, or natural and legal persons thereof.

5. Judicial authorities that receive classified information from the National Securities Market Commission are obliged to adopt adequate measures to ensure that the information remains classified for the duration of the relevant proceedings. Other authorities, persons or firms which receive classified information are subject to the professional secrecy governed by this article and cannot use the information except to fulfil their legally established functions.

6. The transmission of classified information to bodies and authorities of countries outside the European Economic Area referred to in paragraph (4)(j) shall, where the information originates in another Member State, be subject to the express agreement of the authority which transmitted it and may only be communicated to the addressees referred to for the purposes for which that authority has given its agreement. The same limitation shall apply to the information to the chambers and bodies referred to in paragraph (4)(i) and to the information requested by the Court of Auditors and parliamentary investigation committees.

7. The National Securities Market Commission shall communicate to the European Banking Authority the identity of the authorities or bodies to which it may transmit data, documents or information in accordance with paragraph (4)(d) and (f) in relation to the Institute of Accounting and Auditing.

**Article 249.** *Refusal to cooperate or exchange information.*

The CNMV may refuse to act on a request for cooperation in an investigation, on-site verification or supervision pursuant to Article 253(4) to (6) or to exchange information pursuant to Article 245(1) to (5) and 253(1) only if:

(a) Legal proceedings have been initiated for the same acts and against the same persons;

(b) A final court ruling has already been handed down in respect of the same persons and the same facts.

In the event of a refusal, the CNMV shall duly notify the requesting competent authority and the European Securities and Markets Authority, providing as much information as possible on the matter.

**Article 250.** *Cooperation with judicial authorities.*

The National Securities Market Commission shall provide such cooperation as requested by the courts or the Public Prosecutor's Office in order to clarify events relating to the securities markets which may be of a criminal nature.

**Article 251.** *Cooperation in the field of prudential supervision of investment firms.*

The National Securities Market Commission, as the authority responsible for the solvency-related supervision of Consolidated groups of investment firms, shall cooperate with the supervisory authorities of the European Union. To that end, it shall:

(a) Coordinate the collection of information and disseminate to the other authorities responsible for the supervision of investment firms in the group the information it considers important in both normal and urgent situations.

(b) Plan and coordinate supervisory activities in normal situations, *inter alia*, in relation to the activities referred to under Articles 190, 196, 260 and 261 related to Consolidated supervision, and in provisions concerning technical criteria concerning the organisation and treatment of risks, in cooperation with the competent authorities involved.

(c) Plan and coordinate supervisory activities, in cooperation with the competent authorities involved and, where appropriate, with central banks, in emergency situations or in anticipation of such situations, and in particular in cases where there are adverse developments in investment firms or financial markets, using, where possible, existing specific communication channels to facilitate crisis management. The content of this planning and coordination may be determined by regulation.

(d) Cooperate closely with other competent authorities with supervisory responsibility for foreign investment firms, parent and subsidiary undertakings or investees of the same group under the terms of Article 247.

(e) Enter into coordination and cooperation agreements with other competent authorities for the purpose of facilitating and establishing effective supervision of the groups entrusted to its supervision and taking on the additional tasks resulting from such agreements and with the content established by regulation.

In particular, the National Securities Market Commission may enter into a bilateral agreement pursuant to Article 28 of Regulation (EU) No. 1093/2010, of 24 November 2010, to delegate its responsibility for the supervision of a subsidiary undertaking to the competent authorities that have authorised and supervise the parent undertaking, in order for them to take care of the supervision of the subsidiary undertaking in accordance with the provisions of this

Act, its implementing regulations and Regulation (EU) No. 575/2013, of 26 June 2013. The National Securities Market Commission shall inform the European Banking Authority of the existence and content of such agreements.

(f) Cooperate with the European Banking Authority for the purposes of Regulation (EU) No. 575/2013, of 26 June 2013, in accordance with Regulation (EU) No. 1093/2010, of 24 November 2010.

**Article 252.** *Cooperation in the supervision of official secondary market.*

1. The CNMV shall establish proportionate cooperation arrangements with the competent authority of the host Member State where trading venues establish arrangements in other Member States of the European Union to allow remote access and transactions of that trading venue and where, given the situation of the securities markets in the host Member State, trading venues have become of material importance for the functioning of the markets and the protection of investors in that State.

2. In addition, the CNMV and the competent authority of a trading venue in another Member State of the European Union shall establish proportionate cooperation arrangements when such venue has established mechanisms in Spanish territory to ensure remote access, and the transactions carried out in Spain and when, given the situation of the Spanish securities markets, they have become of material importance for the functioning of the markets and the protection of investors in Spain.

3. For the purposes of this article, transactions shall be deemed to be of material importance when the provisions of Article 90 of Commission Delegated Regulation (EU) No. 2017/565, of 25 April 2016, supplementing Directive 2014/65/EU, 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, are complied with.

**Article 253.** *Cooperation on matters covered by Directive 2014/65/EU, of the European Parliament and of the Council, of 15 May 2014, and Regulation (EU) No. 600/2014, of the European Parliament and of the Council, of 15 May 2014.*

1. The CNMV may communicate information to the competent authorities of other Member States of the European Union relating to the matters regulated in the national rules transposing Directive 2014/65/EU, of 15 May 2014, and in Regulation (EU) No. 600/2014, of the European Parliament and of the Council, of 15 May 2014.

In such cases, the CNMV must indicate whether the information may only be disclosed with its express consent.

In addition, where the CNMV receives information from the competent authorities of other Member States and those authorities have indicated that the information may only be disclosed with their express consent, the CNMV shall only use that information for the purposes authorised by that authority.

Where a request for information from the CNMV to other competent authorities of other Member States of the European Union has been rejected or has not been complied with, the CNMV shall inform ESMA, which may act in accordance with the powers conferred on it by Article 19 of Regulation (EU) No. 1095/2010, without prejudice to the possibility of refusing a request for information under Article 83 of Directive 2014/65/EU, of 15 May 2014, and the power of ESMA to take the measures under Article 17 of Regulation (EU) No. 1095/2010.

2. Where the CNMV has reasonable grounds to suspect that entities not subject to its supervision are carrying on or have carried on in the territory of another Member State of the European Union activities contrary to the national provisions transposing Directive 2014/65/EU, of 15 May 2014; or Regulation (EU) No. 600/2014, of the European Parliament and of the Council, of 15 May 2014, it shall notify the competent authority of that Member State and ESMA as specifically as possible. This communication shall be without prejudice to the powers that the CNMV may exercise.

3. Likewise, when the CNMV receives notification from the competent authority of another Member State of the European Union that it has reasonable grounds to suspect that entities not subject to its supervision are carrying on or have carried on activities in Spanish territory in breach of this Act and its implementing regulations, it must take the appropriate measures to correct this situation. In addition, it shall inform the notifying competent authority and ESMA of the outcome of its action and, to the extent possible, of significant intermediate developments.

4. The CNMV may request the cooperation of other competent authorities in the European Union in a supervisory activity, for an on-the-spot verification or an investigation related to matters regulated in national rules transposing Directive 2014/65/EU, of 15 May 2014, as well as to matters related to Regulation (EC) No. 1060/2009, of the European Parliament and of the Council, of 16 September 2009.

When this request for cooperation has been rejected or has not been complied with, the CNMV shall inform ESMA, which may act in accordance with the powers conferred to it by Article 19 of Regulation (EU) No. 1095/2010, without prejudice to the possibilities of rejecting a request for information provided for under Article 83 of Directive 2014/65/EU, of 15 May 2014, and the power of ESMA to take the measures provided for under Article 17 of Regulation (EU) No. 1095/2010.

5. In the case of investment firms authorised in another Member State which are remote members of a regulated market, the CNMV may choose to address them directly, in which case it shall duly inform the competent authority of the home Member State of the remote member.

6. In the event that the CNMV receives a request for an on-the-spot verification or an investigation, within the framework of its powers:

- (a) It shall carry out the verification or investigation itself;
- (b) it shall allow it to be carried out by the authorities that have made the application;

or

(c) it shall allow it to be carried out by auditors or experts.

**Article 254.** *Cooperation on market abuse.*

**(Without content).**

**Article 255.** *Cooperation in the field of securities clearing, settlement and registration systems.*

1. In accordance with international standards and European Union law relating to central counterparties, central securities depositories and other financial market infrastructures, the National Securities Market Commission and the Bank of Spain shall ensure that the operation of national securities clearing, settlement and registration systems preserves the stability of the financial system as a whole. To this end, these authorities shall assess the degree of adaptation of Spanish market infrastructure procedures to international best practices and recommendations, and shall prepare and publish a biennial report.

2. The National Securities Market Commission and the Bank of Spain shall sign a collaboration agreement in order to carry out the work provided for in the previous paragraph. This agreement shall determine their respective roles and responsibilities in the matter, as well as the system for the exchange of information between the two authorities.

3. The provisions contained herein shall not alter the respective powers granted to each of these authorities by their regulations.

### PART III

#### **Prudential supervision**

**Article 256.** *Supervisory programme.*

1. The National Securities Market Commission shall approve, at least once a year, a supervisory programme in relation to the following investment firms:

(a) Those whose results in the stress tests referred to under Article 257, or in the monitoring and evaluation process, reveal the existence of significant risks to their financial soundness or reveal non-compliance with solvency legislation.

(b) Those that pose a systemic risk to the financial system.

(c) Any others that the National Securities Market Commission deems necessary in the exercise of its supervisory functions.

2. This programme shall contain at least the information referred to under Article 5(2) of Act 10/2014 of 26 June, and the National Securities Market Commission may, in view of the results of the programme, adopt the measures it deems appropriate in each case, including those provided for under Article 55(3) of the said Act.

3. When establishing its supervisory programme, the National Securities Market Commission shall take into account the information received from the authorities of other Member States in relation to the branches of investment firms established there. For the same purposes, it shall also take into consideration the stability of the financial system of those Member States.

4. This Article 256 and Article 257 shall not apply to investment firms not authorised to provide the ancillary services referred to under Article 141(a), which provide or carry out only one or more of the investment services or activities listed under Article 140(a), (b), (d) and (g), and which are not permitted to hold in deposit money or securities of their clients and which, for this reason, may never be in a debit position with respect to such clients.

**Article 257.** *Stress tests.*

1. At least once a year, the National Securities Market Commission shall place investment firms subject to its supervision under stress tests in order to facilitate the review and evaluation process provided for under Article 256.

2. To this end, the National Securities Market Commission may adopt and transmit as such to institutions and groups the guidelines approved by the European Banking Authority for these purposes.

**Article 258.** *Consolidation obligations.*

1. In order to fulfil the minimum equity requirements and restrictions imposed by virtue of Regulation (EU) No. 575/2013, of 26 June 2013, investment firms shall consolidate their accounts with those of other investment firms and financial institutions with which they constitute a decision-making unit, as provided for under Article 42 of the Code of Commerce and in accordance with the provisions of the said Regulation.

2. 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 a 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.

3. 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 42 of the Code of Commerce for the purposes of determining their impact on the legal, financial and economic situation of investment firms and their Consolidated groups.

4. The consolidation obligation provided for under Article 42 of the Code of Commerce shall be understood to be complied with through the consolidation referred to in the preceding paragraphs for those groups of companies whose controlling company is an investment firm or a company whose principal activity comprises holdings in investment firms. Additionally, this obligation shall be understood to be complied with by the governing

bodies of official secondary markets, central counterparty entities and central securities depositories.

The above is understood to be without prejudice to the consolidation obligation which may exist between subsidiary undertakings that are not financial institutions in cases where it is required in accordance with the aforementioned Article 42 of the Code of Commerce.

**Article 259.** *Prudential supervision of investment firms and their Consolidated groups.*

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

(a) Review the systems, agreements, strategies, procedures and mechanisms of any type used to comply with the solvency rules contained in this Act and its implementing regulations, as well as in Regulation (EU) No. 575/2013, of 26 June 2013.

(b) Determine whether the systems, own resources and liquidity held by investment firms ensure sound and prudent management and sound hedging of their risks.

(c) Determine from the review and assessment referred to in the preceding subparagraphs whether the systems referred to in point (a) and the own funds and liquidity held ensure sound risk management and hedging, respectively.

The analyses and evaluations referred to in the previous paragraphs shall be updated at least once per year.

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

(a) Duly take into account the potential impact of its resolutions 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.

(c) Cooperate with the competent authorities of other Member States of the European Union, as parties to the European System of Financial Supervision (ESFS), with trust and full mutual respect, in particular to ensure the flow of relevant and reliable information between them and other parties to the ESFS, in accordance with the principle of loyal cooperation provided for under Article 4(3) of the Treaty on European Union.

(d) Participate in the activities of the European Banking Authority and, where appropriate, in the professional colleges of supervisors.

(e) Endeavour to comply with the guidelines and recommendations issued by the European Banking Authority pursuant to Article 16 of Regulation (EU) No. 1093/2010, of 24 November 2010, and to abide by the warnings and recommendations issued by the European Systemic Risk Board pursuant to Article 16 of Regulation (EU) No. 1092/2010, of 24 November 2010.

(f) Cooperate closely with the European Systemic Risk Board.

**Article 260.** *Prudential supervision measures.*

1. The National Securities Market Commission shall require investment firms or Consolidated groups of investment firms to promptly adopt the necessary measures to return to compliance under the following circumstances:

(a) When they do not comply with the obligations contained in the solvency regulations or when serious deficiencies are identified in the organic structure or in the internal control, accounting or valuation procedures and mechanisms, including those provided for under Article 190(2) of this Act.

(b) When the National Securities Market Commission itself has information according to which it is reasonably foreseeable that the entity shall fail to comply with the obligations referred to in the preceding sub-paragraph within the following twelve months.

2. In the circumstances provided for in the preceding paragraph, the National Securities Market Commission may adopt one or more of the following measures it deems most appropriate in light of the situation of the investment firm or group:

(a) Require investment firms to maintain own resources in excess of the capital requirements provided for under Article 196 and in Regulation (EU) No. 575/2013, of 26 June, concerning risks and risk elements not covered by Article 1 of the said Regulation.

(b) Require investment firms and their groups to strengthen or modify the internal control, accounting or valuation procedures, the mechanisms and strategies adopted to comply with the applicable rules, including those established to comply with the provisions of Article 190(2).

(c) Require investment firms and their groups to submit a plan to restore compliance with the supervisory requirements provided for in this Act and in Regulation (EU) No. 575/2013, of 26 June 2013, to set a time limit for its implementation and to make the necessary improvements to the plan in terms of its scope and implementation time limit.

(d) Require investment firms and their groups to apply a specific provisioning policy or particular treatment of assets in terms of capital requirements.

(e) Restrict or limit the business, transactions or network of investment firms or request the abandonment of activities that pose excessive risks to the soundness of an investment firm.

(f) Require the reduction of risk inherent to the activities, products and systems of investment firms.

(g) Require investment firms and their groups to limit variable remuneration as a percentage of net income, where this is incompatible with maintaining a sound capital base.

(h) Require investment firms and their groups to use net profits to strengthen their own resources.

(i) Prohibit or restrict the distribution by the investment firm of dividends or interest to shareholders, partners or holders of Tier 1 additional capital instruments, provided that the prohibition does not constitute an event of default by the investment firm of payment obligations.

(j) Impose additional or more frequent reporting requirements, including information on the capital and liquidity situation.

(k) The obligation to have a minimum amount of liquid assets available to deal with potential outflows of funds arising from liabilities and commitments, including in the event of serious events that could affect the availability of liquidity, and the obligation to maintain an adequate structure of funding sources and maturities in its assets, liabilities and commitments

in order to avoid potential liquidity imbalances or tensions that could damage or jeopardise the financial position of the investment firm.

3. The provisions of the foregoing paragraph are without prejudice to the application of the disciplinary rules provided for in this Act.

**Article 261.** *Additional own resources requirements.*

1. The National Securities Market Commission shall require investment firms to maintain their own resources above those established, in accordance with the provisions of Article 260(2)(a), at least in the following cases:

(a) If the investment firm does not comply with the requirements provided for under Article 190(2) and Article 393 of Regulation (EU) No. 575/2013, of 26 June 2013.

(b) If there are risks or risk elements that are not covered by the own resources requirements provided for under Article 196 and in Regulation (EU) No. 575/2013, of 26 June 2013.

(c) Whether it is likely that the implementation of other measures alone shall not suffice to sufficiently improve systems, procedures, mechanisms and strategies within an appropriate timeframe.

(d) If the review referred to under Article 259(1) shows that non-compliance with the requirements for the application of a method of calculating own resources requirements requiring prior authorisation in accordance with Part Three of Regulation (EU) No. 575/2013, of 26 June 2013, could result in insufficient own resources requirements, or if valuation adjustments in respect of specific positions or portfolios within the trading portfolio, as provided for under Article 105 of Regulation (EU) No. 575/2013, of 26 June 2013, do not allow the investment firm to sell or hedge its positions in a short period of time without incurring significant losses under normal market conditions.

(e) If there are reasonable grounds to consider that the risks may be underestimated despite compliance with the applicable requirements of Regulation (EU) No. 575/2013, of 26 June 2013, and of this Act and its implementing regulations.

(f) If the investment firm notifies the National Securities Market Commission, pursuant to Article 377(5) of Regulation (EU) No. 575/2013, of 26 June 2013, that the results of the stress test referred to in the said article significantly exceed the equity requirements derived from the correlation trading portfolio.

2. For the purposes of determining the appropriate level of own resources on the basis of the review and evaluation carried out pursuant to Article 259(1), the National Securities Market Commission shall evaluate the following:

(a) The quantitative and qualitative aspects of the investment firm evaluation process referred to under Article 190(2).

(b) The systems, procedures and mechanisms related to recovery and resolution plans of investment firms.

(c) The results of the review and evaluation carried out pursuant to Article 259(1).

(d) Systemic risk.

**Article 262.** *Supervision of mixed financial holding companies and mixed holding companies.*

1. When a mixed financial holding company under the supervision of the National Securities Market Commission is subject to equivalent provisions by virtue of this Act and of Act 5/2005 of 22 April, on financial conglomerates (supervision) particularly in terms of risk-based supervision, the National Securities Market Commission, after consulting the other authorities responsible for the supervision of the subsidiary undertakings of the mixed financial holding company, may decide that only the provisions of Act 5/2005, of 22 April, and its implementing regulations shall apply to that company.

2. Likewise, when a mixed financial holding company subject to the supervision of the National Securities Market Commission is subject to equivalent provisions by virtue of this Act and of Act 20/2015, of 14 July, on the organisation, supervision and solvency of insurance and reinsurance undertakings, particularly in terms of risk-based supervision, the National Securities Market Commission, after consulting the other authorities responsible for the supervision of the subsidiary undertakings of the mixed financial holding company, may decide that only the provisions of Act 20/2015, of 14 July, apply to such company.

3. The National Securities Market Commission shall inform the European Banking Authority and the European Insurance and Pension Funds Authority of the resolutions adopted pursuant to the preceding paragraphs.

4. Without prejudice to the provisions of Part Four of Regulation (EU) No. 575/2013, of 26 June 2013, where the parent undertaking of one or more Spanish firms is a mixed holding company, the National Securities Market Commission shall carry out the general supervision of transactions between the investment firm and the mixed holding company and its subsidiary undertakings.

5. Investment firms that are subsidiary undertakings of a mixed holding company shall have adequate risk management systems and internal control mechanisms, including sound reporting and accounting procedures, in order to properly identify, measure, monitor and control transactions with their parent mixed holding company and its subsidiary undertakings. The National Securities Market Commission shall require the investment firm to report any significant transactions with such entities other than those referred to under Article 394 of Regulation (EU) No. 575/2013, of 26 June 2013. Such significant procedures and transactions shall be subject to the supervision of the National Securities Market Commission.

**Article 263.** *Supervision of investment firms from non-EU Member States.*

1. The obligations provided for in the solvency rules shall not apply to branches of investment firms with their head office in a non-Member State of the European Union provided that they are subject to equivalent obligations on terms to be determined by regulation.

2. Investment firms whose parent undertaking is a financial institution domiciled outside the European Union shall not be subject to supervision on a Consolidated basis, provided that they are already subject to such supervision by the relevant competent authority of the third country, which is equivalent to that provided for in this Act and its implementing regulations, and in Part One, Title Two, Chapter Two of Regulation (EU) No. 575/2013, of 26 June 2013.

The National Securities Market Commission shall verify this equivalence, taking into account the guidelines drawn up by the European Banking Authority for this purpose, which it shall consult before taking a decision on the matter.

Where there is no equivalent supervisory regime, the supervisory regime on a Consolidated basis provided for in the solvency rules shall apply to the investment firms referred to in the first sub-paragraph of this paragraph.

Notwithstanding the provisions of the preceding paragraph, the National Securities Market Commission may establish other methods for supervision on a Consolidated basis of the groups referred to in this paragraph. Such methods shall include the power of the National Securities Market Commission to require the establishment of a controlling financial institution with its registered office in the European Union. The methods shall meet the objectives of supervision on a Consolidated basis as defined in this Act and shall be communicated to the other competent authorities involved, to the European Commission and to the European Banking Authority.

**Article 264.** *Requests for the designation of branches as significant.*

1. The National Securities Market Commission may submit requests to the competent supervisory authorities of an investment firm authorised 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 provided for by regulation, the National Securities Market Commission shall promote the adoption of a resolution on the request jointly with the competent authorities of other Member States responsible for supervising the various entities comprising the group.

2. The National Securities Market Commission shall also be responsible, in accordance with the procedure provided for by regulation, for resolving, by joint decision, the equivalent requests sent by the competent authorities in the countries where Spanish investment firm branches are located; should there be no joint decision on this matter, the CNMV may recognise the decision of that competent authority on the branch's significance.

3. The matters that the National Securities Market Commission must take into consideration when deciding if a branch is significant or not shall be provided for by regulation, and shall include the branch's market share, the potential impact of the entity's insolvency or cessation of transactions on market liquidity, and the size and importance of the branch

**Article 265.** *Relations with other supervisors in the field of supervision on a Consolidated basis.*

1. All regulations implementing the provisions of this Act and which may affect financial institutions subject to supervision by the Bank of Spain or the Directorate-General for Insurance and Pension Funds shall be issued following consultation with those bodies.

2. 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 for Economy and Competitiveness may establish the necessary rules to ensure appropriate coordination.

3. The Minister for Economy and Competitiveness, 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 Consolidated group of credit institutions and thus be subject to supervision by the Bank of Spain on a Consolidated basis.

**Article 266.** *Colleges of supervisors.*

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 regulation in the cooperation framework referred to under Article 244, and in accordance with confidentiality requirements established in applicable legislation and with EU law, shall, where appropriate, establish adequate coordination and cooperation with the competent authorities of third countries.

2. The colleges of supervisors shall constitute the framework in which the following tasks shall 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, of 24 November 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 259.

(d) Increase the effectiveness of supervision, eliminating all duplications of unnecessary prudential requirements, specifically those relating to the requests for information referred to under Article 246.

(e) Apply the prudential requirements provided for in Regulation (EU) No. 575/2013, of 26 June 2013, to all entities of a group of investment firms, without prejudice to the options and powers provided for under EU law;

(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.

3. When the National Securities Market Commission acts as the supervisor of an investment firm with branches deemed to be significant in accordance with the criteria provided for under Article 264, it shall also establish and chair a college of supervisors to facilitate the exchange of information referred to under Article 246.

4. The establishment and functioning of the colleges shall be based on rules provided for in writing and established, following consultation with the competent authorities involved, by the National Securities Market Commission 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 organisation of meetings of the colleges, of the main matters to be discussed and issues to be considered.

The National Securities Market Commission shall also fully inform all members of the college of the resolutions adopted in the meetings and of the measures executed. Implementing regulations 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.

5. As a member of a college of supervisors, the National Securities Market Commission shall work closely with the other competent authorities that comprise it. The confidentiality requirements provided for 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.

6. The establishment and functioning of colleges of supervisors shall not affect the rights and duties of the National Securities Market Commission provided for in this Act and in the respective implementing regulations.

**Article 267.** *Joint decisions.*

As part of the cooperation framework referred to under Article 244, the National Securities Market Commission, as supervisor on a Consolidated basis of a group or as the competent authority responsible for supervising the subsidiary undertakings of a European Union parent investment firm or of a financial holding company or a parent mixed financial holding company of the European Union in Spain, shall do everything in its power to reach a joint decision on:

(a) The application of Articles 190(2) and 259(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 Article 259(2), for each of the entities in the group of investment firms and on a Consolidated basis.

(b) The measures to address any significant matters and findings related to liquidity monitoring.

Joint decisions shall be adopted in accordance with the procedure to be established for this purpose by regulation.

**Article 268.** *Disclosure obligations of the National Securities Market Commission.*

1. The National Securities Market Commission shall periodically disclose the following information relating to the solvency regulations of investment firms:

(a) Aggregate statistical data on the fundamental aspects of the application of the prudential framework in Spain, including the number and nature of supervisory measures adopted pursuant to Articles 190, 196, 260 and 261 and the administrative sanctions imposed; all in accordance with the regime of professional secrecy provided for under Article 248.

(b) The general criteria and methods adopted to verify compliance with Articles 405 to 409 of Regulation (EU) No. 575/2013, of 26 June 2013.

(c) A concise description of the outcome of the supervisory review and the description of the measures imposed in cases of non-compliance with Articles 405 to 409 of Regulation (EU) No. 575/2013, of 26 June 2013, on an annual basis, and without prejudice to the secrecy obligations provided for under Article 248.

(d) The results of stress tests carried out in accordance with Article 257 or Article 32 of Regulation (EU) No. 1093/2010, of 24 November 2010.

Where the European Banking Authority so determines, the information referred to in this subparagraph shall be transmitted to that authority for subsequent publication of the result at a European Union level.

(e) Other information to be determined by regulation.

2. The information published in accordance with paragraph 1 shall be sufficient to allow a meaningful comparison of the approaches adopted by the National Securities Market Commission with those of its counterpart authorities in the different Member States of the European Union. The information shall be published in a format to be determined by the European Banking Authority and shall be regularly updated. It shall be accessible on the website of the National Securities Market Commission.

**Article 269.** *Reporting obligations of the National Securities Market Commission in emergency situations.*

The National Securities Market Commission shall, as soon as practicable, advise the Minister for Economy and Competitiveness, the other affected national or foreign supervisory authorities, the European Banking Authority and the European Systemic Risk Board of the occurrence of an emergency situation, including a situation as defined under Article 18 of Regulation (EU) No. 1093/2010, of 24 November 2010, and in particular in those cases where there are adverse financial market developments which could compromise market liquidity and the stability of the financial system of any Member State of the European Union in which investment firms of a group subject to supervision on a Consolidated basis by the National Securities Market Commission have been authorised or in which significant branches of a Spanish investment firm are established, as referred to under Article 264.

**Article 270.** *Preparation of guides on supervisory matters.*

1. The National Securities Market Commission may draw up technical guides for the entities and persons subject to its supervision, indicating the criteria, practices and procedures it considers appropriate for compliance with securities market legislation. These guides, which must be made public, may include the criteria that the National Securities Market Commission itself shall follow in the exercise of its supervisory activities.

2. To this end, the National Securities Market Commission may make its own, and transmit as such, as well as develop the guides that, addressed to the persons subject to its supervision, are approved by active international bodies or committees, relating to the criteria, practices and procedures suitable to favour best compliance with the rules of organisation and discipline of the securities markets and the supervision of their compliance.

## PART IV

### General provisions on infringements and sanctions

**Article 271.** *General matters.*

1. 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 breach the regulations for the organisation or control of the securities markets shall be held liable under administrative law and may be sanctioned pursuant to the provisions of this Part.

The rating agencies established in Spain and registered by virtue of Part One of Title Three 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, 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 sanctioned pursuant to the provisions of this Part.

2. For the purposes of this Part *et seq.* 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 discharge responsibilities as directors or managers at the entities referred to in the preceding paragraph.

3. The persons who discharge responsibilities as directors or managers shall be held liable for serious or very serious infringements when such infringements result from their wilful misconduct or negligence.

Notwithstanding the provisions of the preceding paragraph, such persons discharging responsibilities as directors or managers shall be held accountable for the very serious or serious infringements committed by the undertakings where they discharge such responsibilities, except in the following cases:

(a) Where the persons comprising the collegiate governing bodies did not attend the corresponding meetings on justified grounds, or where they voted against or abstained from voting on resolutions or decisions that gave rise to such infringements.

(b) Where those infringements can be exclusively attributed to executive committees, managing directors, general managers and similar bodies, or to other people with similar functions within the undertaking.

4. Laws and provisions of a general nature containing rules referring specifically to the undertakings covered by Article 233(1)(a) and (b) or to activities relating to the securities market conducted by the persons or entities referred to under Article 233(1)(b) and (c) which must mandatorily be observed by those parties shall be deemed to be regulations for the organisation and control of the Securities Market. The aforementioned provisions shall be understood to include those approved by bodies of the State, of the regional governments with jurisdiction in the matter, regulations of the European Union and other rules approved by European Union institutions that are directly applicable, as well as the Circulars approved by the National Securities Market Commission provided for under Article 21.

In particular, the following shall be considered rules for the organisation and discipline of the securities market:

- (a) Commission Regulation (EU) No. 1031/2010, of 12 November 2010.
- (b) Regulation (EU) No. 236/2012 of 14 March 2012.
- (c) Regulation (EU) No. 648/2012, of 4 July 2012.
- (d) Regulation (EU) No. 575/2013, of 26 June 2013.
- (e) Regulation (EU) No. 909/2014, of 23 July 2014.
- (f) Regulation (EU) No. 600/2014, of 15 May 2014.
- (g) Regulation (EU) No. 2016/1011, of 8 June 2016.
- (h) Regulation (EU) No. 596/2014, of 16 April 2014.
- (i) Regulation (EU) No. 1286/2014, of 26 November 2014.
- (j) Regulation (EU) No. 2015/2365, of 25 November 2015.

(k) Delegated or Implementing Regulations adopted by the European Commission in the implementation of EU law on the organisation and discipline of the securities market.

**Article 272.** *Criminal pre-judiciality.*

1. Exercise of the disciplinary authority referred to in this Act shall be independent of any possible concurrent liability for serious or minor criminal offences.

2. Notwithstanding the provisions of the foregoing paragraph, when criminal proceedings are underway for the same events or for other events which cannot rationally be separated from the events sanctionable under this Act, the proceedings relating to such events shall be suspended pending the court's ruling. On resumption of the proceedings, if applicable, any resolution made must respect the court's findings

**Article 273.** *Rules for initiation, investigation and sanctioning.*

1. The power to commence and pursue investigations and impose sanctions in the disciplinary proceedings referred to in this Part 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 very serious, serious and minor infringements shall be vested in the National Securities Market Commission. The National Securities Market Commission shall give a reasoned account to the Minister for Economy and Competitiveness of the imposition of sanctions for very serious infringements and, at any event, shall send them, on a quarterly basis, key information on the proceedings underway and the resolutions adopted.

When the entity in breach 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 infringements.

2. The time limit for resolving and notifying the resolution shall be one year, which may be extended in accordance with the provisions of Articles 23 and 32 of Act 39/2015, of 1 October 2015.

3. When the power to impose sanctions lies with the regional governments, 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 regional government.

**Article 274.** *Legislation applicable to the disciplinary proceedings.*

1. As regards disciplinary proceedings, Act 39/2015, of 1 October and Act 40/2015, of 1 October and their implementing regulations shall apply, with the qualifications provided for under Articles 108, 110 and 112 of Act 10/2014, of 26 June, as well as in this Act and its implementing regulations.

2. Likewise, in the exercise of the disciplinary power assigned to the National Securities Market Commission, the provisions of Article 106 of Act 10/2014, of 26 June, shall be applicable to the entities referred to under Article 233(1)(a).

**Article 275.** *Enforcement of sanctions.*

Resolutions imposing sanctions in accordance with the provisions of this Act shall be enforceable when they bring an end to the administrative procedure. They shall adopt, where appropriate, the necessary precautionary measures to ensure their effectiveness as long as they are not enforceable.

**Article 276.** *Remission of sanctions.*

1. Any person who has reasonable knowledge or suspicion of the commission of possible or actual infringements provided for in this Act, in Regulation (EU) No. 600/2014, in Regulation (EU) No. 596/2014, of 16 April on market abuse, in Regulation (EU) No. 1286/2014, of the European Parliament and of the Council, of 26 November 2014, in Regulation (EU) No. 575/2013, of the European Parliament and of the Council, of 26 June, on prudential requirements for credit institutions and investment firms or in Act 35/2003, of 4 November, on collective investment institutions, may communicate it to the National Securities Market Commission in the manner and with the safeguards provided for in this article.

2. The above shall in no way include those sanctions imposed on individuals holding office as a director or a manager in the legal entity at the time of the infringement.

3. The remission or deferral of sanctions shall not take place under any circumstances if the sanctioned entity's shares were sold for a price or where the entity might be in a position to pay the sanction once the situation of insolvency has been surmounted.

PART IV *bis*

**Notification of infringements**

**Article 276 bis.** *Types and channels of communication of infringements.*

1. Any person who has reasonable knowledge or suspicion of the commission of possible or actual infringements provided for in this Act, in Regulation (EU) No. 600/2014, in Regulation (EU) No. 596/2014, of 16 April, on market abuse, in Regulation (EU) No. 1286/2014, of the European Parliament and of the Council, of 26 November 2014, in Regulation (EU) No. 575/2013, of the European Parliament and of the Council, of 26 June, on prudential requirements for credit institutions and investment firms or in Act 35/2003, of 4 November, on collective investment institutions, may communicate it to the National Securities Market Commission in the manner and with the safeguards provided for in this article.

2. Communications may be made:

- (a) In written form, in electronic format or on paper,
- (b) orally, by telephone, which may be recorded,
- (c) through a physical meeting with the specialised personnel of the CNMV; or
- (d) in any of the forms established by the Ministry of Economy and Competitiveness.

3. The CNMV shall provide the channels, technical means and personnel necessary to receive and manage the communications indicated in paragraph 1 in the most appropriate way to achieve the maximum usefulness of the information received in the detection and treatment of infringements. The channels shall be adapted to the way in which the information is presented.

4. Before receiving the communication or, at the latest, at the time of receiving it, the CNMV shall provide the person reporting the situation with:

(a) Basic information on the reporting of infringements, including, in particular, the possibility of anonymity and measures to protect one's identity, in the event of wishing to identify oneself; and

(b) written acknowledgement of receipt of the information received at the postal or electronic address chosen by the person supplying it, unless that person expressly requests otherwise or the acknowledgement jeopardises the protection of their identity.

**Article 276 ter.** *Minimum content of communications.*

1. The communications referred to in the preceding article may be anonymous or include the identification of the person sending them. At any event, they must provide factual evidence from which at least a well-founded suspicion of an infringement can reasonably be inferred.

2. Within 20 days of receipt of the information, the CNMV shall determine whether or not there is a well-founded suspicion of an infringement. If this does not exist, it shall require the person sending the information to clarify the content or to supplement it with new information within a reasonable time limit.

3. Once the time limit fixed for the clarification or provision of new information has elapsed, without justified suspicion being established, the person sending the information shall be notified of this in a reasoned manner.

4. At any event, the CNMV shall inform the person sending the communication of the initiation, where applicable, of disciplinary proceedings based on the facts communicated or the forwarding of the facts to other authorities, inside or outside Spain.

5. The requirements and communications of the CNMV *vis-à-vis* the person sending an anonymous communication shall be performed in such a way that anonymity is maintained in all cases, unless the person communicating the information expressly decides otherwise.

**Article 276 quater.** *Guarantees of confidentiality.*

1. The CNMV shall keep a register with all the information received through the channels referred to under Article 276 bis (3). The register shall ensure full confidentiality of the information received, with access limited exclusively to specialised personnel responsible for the processing and handling of these communications.

The communications received shall have no probative value and cannot be directly incorporated into judicial or administrative proceedings.

2. Any transmission of the communication, inside or outside the CNMV, shall be carried out without revealing, directly or indirectly, the personal details of the person reporting the situation, if known, or of the persons included in the communication, except in the following cases:

(a) The personal details of the person allegedly in breach that are necessary to conduct preliminary proceedings, for the initiation, investigation and resolution of administrative disciplinary proceedings, or for a judicial process, which shall, at any event, have a level of protection equivalent to that of the persons under investigation or sanction by the competent body;

(b) the personal details of the person reporting the situation where known and expressly requested by a competent criminal court in the course of investigation or judicial proceedings, where this constitutes an essential element of such proceedings; and

(c) all personal details included in the communication that are necessary to authorities equivalent to national competent authorities within the scope of the European Union, subject to compliance with the requirements provided for in the applicable EU or national law, or that of third countries, provided that the level of protection of the confidentiality of personal data is equivalent to that in force in Spain.

**Article 276 quinquies.** *Protection at an employment and contractual law level.*

1. The communication of any of the infringements referred to under Article 276 bis (1):

(a) Shall not constitute a breach or non-compliance with the restrictions on disclosure of information imposed by contract or by any statutory, regulatory or administrative provision that could affect the person reporting the situation, persons closely connected with them, the companies they administer or of which they may be the beneficial owner,

(b) shall not constitute an infringement of any kind within the scope of employment law by the person reporting the situation, or result in unfair or discriminatory treatment by the employer; and

(c) shall not give rise to any right to compensation or indemnification in favour of the undertaking to which the person reporting the situation provides services or in favour of a

third party, even if an obligation to give prior notice to that undertaking or to a third party has been agreed.

2. The CNMV shall accurately inform the person reporting the situation of the means of redress and procedures available at law for protection against possible harm that may derive from any of the situations provided for in the previous paragraph and in such a way as to enable them in practice to make easy use of the said means and procedures. It shall also provide effective assistance by informing the person reporting the situation of their rights, issuing, as the case may be, the appropriate certification of their status as a complainant in order to make it effective before the employment jurisdiction. It shall also provide the necessary means to assist the person reporting the situation who requires it in the face of real risks arising from the communication, which shall include, in particular, proof of the existence, content and material value that may have derived from the communication.

**Article 276 *sexies*.** *Empowerment of the Ministry of Economy and Competitiveness.*

The Minister for Economy and and Competitiveness and, with their express authorisation, the CNMV, may:

1. Establish the content of the information to be published by the CNMV on its website on the reporting of infringements.
2. Develop the specific procedure to be followed in the reception and processing of communications, as well as the content of the basic information to be provided to the person reporting the situation in accordance with Article 276 *bis* (4).
3. Establish the characteristics and requirements of the channels for receiving information in communications so as to ensure their independence, security and confidentiality.
4. Establish the criteria, time limits and indicators for the assessment of the effectiveness of the communication system referred to in the preceding articles.

PART V

**Very serious infringements**

**Article 277.** *Persons liable.*

The natural and legal persons referred to under Article 271 are liable for very serious infringements when they commit the acts or omissions provided for in this Part.

**Article 278.** *Infringements for non-compliance with the reservation of activity and the obligation to obtain required authorisations.*

The following actions or omissions are very serious infringements:

1. The exercise, not merely occasional or isolated, by the entities referred to under Article 233(1)(a)(1), (2) and (3) or by the management companies of investment guarantee funds, of activities without authorisation or, in general, outside of their object.

2. Breach of the reservation of activity provided for under Articles 144, 145, 146, 147 and 197 *bis*, as well as the performance by investment firms, by data reporting services providers or by any natural or legal persons of activities for which they are not authorised, and serious or repeated breach by an investment firm or its agents of the rules provided for under Articles 146 and 147.

3. Breach by the entities referred to under Article 233(1)(a)(1), (2) and (3) of the obligations related, in each case, to the authorisation, approval or non-opposition of their articles of association, regulations, or any other matter subject to the previous regime, provided for in this Act, its implementing regulations or EU law.

4. The establishment of an official secondary market, multilateral trading facility or system for recording, clearing and settlement of securities or central counterparties without having obtained any of the authorisations required by this Act.

5. Breach by investment firms and by entities referred to in the Sixth Additional Provision of their authorisation regime.

6. Obtaining authorisation as an investment firm by means of false statements or by any other unlawful means.

7. Obtaining authorisation as a data reporting services provider by means of false statements or other unlawful means.

8. The provision of investment services or performance of investment activities, as well as the provision of ancillary services, under the freedom to provide services in another Member State of the European Union, by investment firms authorised in Spain, without the communications referred to under Article 166 having been sent to the CNMV.

9. The establishment of a branch by a Spanish investment firm in another Member State of the European Union, without having sent the notifications referred to under Article 165(1) to the CNMV.

**Article 279.** *Infringements due to a breach of the obligations required for the proper functioning of the primary securities market and the trading of financial instruments on secondary securities markets.*

The following actions or omissions are very serious infringements:

1. The placement of issuances referred to under Article 35 without fulfilling the requirement of intervention by an authorised entity provided for in that rule, without fulfilling the basic conditions advertised, omitting relevant data or including inaccuracies, falsehoods or misleading data in advertising.

2. Making public offers for sale or subscription or admission to trading without complying with the requirements of Articles 33(2), 36(1), 35, 76 or 77, the placement of the issuance without regard to the basic conditions provided for 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 offer or admission to trading or the number of investors affected is material.

3. The admission to trading of financial instruments for trading on official secondary markets by their market operators without the prior vetting provided for under Article 76, and the suspension or exclusion from trading of any security by such bodies in breach of the provisions of Articles 80, 81 and 82.

4. Breach, other than on a merely occasional or isolated basis, by the entities referred to under Article 233(1)(a)(1) and (2) of the rules governing such markets or systems, including their own regulations, or of the legislation governing their own activities.

5. Failure by members of official secondary markets or multilateral trading facilities to issue the documents evidencing the transactions referred to under Article 75(1) (c), 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.

6. Breach, other than on a merely occasional basis, of the obligations provided for under Article 71(3).

**Article 280.** *Infringements relating to a takeover bid.*

The following actions or omissions are very serious infringements:

1. Breach of the obligations provided for under Articles 128 to 133, and 137 and in the regulations issued under this article. In particular:

(a) Breach of the obligation to announce a takeover bid; the announcement 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.

(b) 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 announce 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.

(c) 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.

2. Breach by the governing and management bodies of the obligations provided for under Article 134 and its implementing regulations.

3. Breach of the obligations provided for under Articles 82 and 135 and in its implementing regulations.

**Article 281.** *Infringements relating to securities clearing, settlement and registration systems.*

The following actions or omissions are very serious infringements:

1. Breach by members of central counterparties of their obligations to provide collateral when such failure endangers the risk management of central counterparties, except where the failure is the result of a situation of insolvency or insolvency proceedings.

2. Breach by members of official secondary markets and members of multilateral trading facilities of the obligations referred to under Article 93(1) and Article 328(4), respectively, or inadequate coordination with central counterparties and their members, when such conduct is not merely occasional or isolated.

3. Breach by central securities depositories of the obligations provided for under Article 115, when such conduct is not merely occasional or isolated.

4. Breach by central securities depositories and by entities participating in the registration systems of the rules on registration of securities contained in Part II of Title I, and Part I of Title IV, when property damage occurs to a plurality of investors.

5. Breach by official secondary markets, multilateral trading facilities, central counterparties and central securities depositories, as well as their respective members and participating entities, of the obligations provided for under Article 116(1), when it is not merely an occasional or isolated failure or when it seriously affects the functioning of the information system referred to in the said article.

6. Breach of the prohibition provided for under Article 15(4) 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.

7. Breach by entities which are members of systems managed by central securities depositories 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.

8. The serious or repeated breach by the central counterparty, or clearing and settlement systems existing in Spanish territory to recognise the right of investment firms and credit institutions from other Member States of the European Union to have access to them under the terms provided for under Article 113.

**Article 282.** *Infringements for breach of transparency and market integrity obligations.*

The following actions or omissions are very serious infringements:

1. Breach of the consolidation obligation provided for under Article 258.

2. Breach by the entities referred to under Articles 118 to 122, 241 and 258 of the obligation to have their individual and Consolidated annual accounts and directors' reports audited as defined under Article 118; breach of the obligation to present the information regulated under Articles 118 to 122 due to intent to conceal or gross negligence, having regard to the materiality of the omitted 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.

3. Failure to comply with the disclosure duties provided for under Articles 123, 125, 126 or under Article 19 of Regulation (EU) No. 596/2014, of the European Parliament and of the Council, of 16 April 2014, due to intent to conceal or gross negligence, having regard to the materiality of the omitted disclosure and the delay which occurred.

4. Failure to publish the required information in breach of Article 431(1) to (3) or Article 451(1) of Regulation (EU) No. 575/2013, of 26 June, as well as publication of such information in an incomplete or inaccurate manner.

**5. (Deleted)**

6. Breach of the obligations provided for under Article 227(1) 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 their profession, work or functions, or where the information appears or should have appeared in the registers referred to under Articles 229 and 230.

7. Breach by securities issuers of the obligation provided for under Article 228 when this entails serious harm to market transparency and integrity, breach of the requirements established by the National Securities Market Commission in accordance with Article 237, and the provision to the National Securities Market Commission of inexact or false data, misleading information or the omission of relevant aspects or data.

**8. (Deleted)**

9. Breach, not merely occasional or isolated, by investment firms, operators of a trading venue, of any other entity or person of the position limits to the size of a net position in commodity derivatives provided for under Article 85.

10. Breach, not merely occasional or isolated, by investment firms and operators of a trading venue of the establishment and application of the management of the control of positions as referred to under Article 85 or of the disclosure and classification obligations provided for under Articles 86 to 88.

11. Breach, not merely occasional or isolated, of the reporting, submission and retention of data and information obligations for the purposes of the size limitation mechanism and the obligation to trade derivatives, which are imposed on APAs and CTPs in Commission Delegated Regulation (EU) 2017/577, of 13 June 2016, supplementing Regulation (EU) No. 600/2014, of the European Parliament and of the Council, on markets in financial instruments with regard to regulatory technical standards on the volume cap mechanism and the provision of information for the purposes of transparency and other calculations.

12. Breach of the obligations provided for under Article 22(2) of Regulation (EU) No. 600/2014, of the European Parliament and of the Council, of 15 May 2014, where market transparency and integrity has been seriously jeopardised, regarding the storage of information data for transparency purposes and other calculations by APAs and CTPs.

13. Failure to comply with the duty to provide information or notification provided for under Articles 109, 111 and 112 and under Article 19 of Regulation (EU) No. 596/2014, of the European Parliament and of the Council, of 16 April 2014 where there is an interest in concealment or gross negligence, taking into account the importance of the communication omitted and the delay incurred.

14. Failure to publish the required information in breach of Article 431(1) to (3) and Article 451(1) of Regulation (EU) No. 575/2013, of the European Parliament and of the Council, of 26 June, as well as publication of such information in an incomplete or inaccurate form.

15. Breach of the provisions of Article 15 of Regulation (EU) No. 596/2014, of the European Parliament and of the Council, of 16 April 2014, where one of the following circumstances applies:

- (a) the conduct results in a significant alteration of the quotation;
- (b) the amount of funds used or the volume or value of financial instruments used in the commission of the infringement is material; or
- (c) the actual or potential profits or losses avoided as a result of the commission of the infringement are material.

16. Breach of any of the prohibitions provided for under Article 14 of Regulation (EU) No. 596/2014, of the European Parliament and of the Council, of 16 April 2014, where one of the following circumstances applies:

- (a) the amount of funds used or the volume or value of financial instruments used in the commission of the infringement is material,
- (b) the actual or potential profit or loss avoided as a result of the commission of the infringement is material; or
- (c) the offender has become aware of the information by virtue of their membership of the issuer's governing, management or controlling bodies, by virtue of the discharge of their profession, work or duties or is or should have been included in the records referred to under Article 18 of Regulation (EU) No. 596/2014, of the European Parliament and of the Council, of 16 April 2014.

17. Breach by an issuer or emission allowance market participant of the obligations provided for under Article 17(1), (2), (4), (5) and (8) of Regulation (EU) No. 596/2014, of the European Parliament and of the Council, of 16 April 2014, when market transparency or integrity has been seriously jeopardised.

18. Breach of the obligation to establish and maintain mechanisms, systems and procedures to prevent, detect and report orders or transactions suspected of constituting market abuse, as provided for under Article 16(1) and (2) of Regulation 596/2014, of the European Parliament and of the Council, of 16 April 2014.

19. Breach of the obligation to keep lists of insiders provided for under Article 18 of Regulation (EU) No. 596/2014, of the European Parliament and of the Council, of 16 April 2014, or to keep such lists with essential faults or defects which make it impossible to know the identity of persons with access to inside information or the exact date and time of such access.

20. Breach of the notification obligations provided for under Article 4(1) of Regulation (EU) No. 596/2014, of the European Parliament and of the Council, of 16 April 2014.

21. Breach of the obligations provided for in the following articles of Regulation (EU) No. 2015/2365, of the European Parliament and of the Council, of 25 November 2015, on

transparency of securities financing transactions and of reuse, and amending Regulation (EU) No. 648/2012, of 4 July, when market transparency or integrity has been seriously jeopardised:

(a) Article 4 on the obligation of counterparties to securities financing transactions to notify and to retain information relating to such transactions,

(b) Article 15 on the conditions to be met for the reuse of financial instruments received as collateral.

**Article 283.** *Infringements for non-compliance with internal organisation measures and due prudential requirements.*

The following actions or omissions are very serious infringements:

1. 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.

2. 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 organic 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.

3. Repeated and serious breach by those providing investment services and performing investment activities of the governance agreements provided for under Article 182, of the selection and assessment obligations in respect of members of the management body, senior management and the suchlike provided for under Article 185, with the organisational requirements provided for under Article 193, as well as with the obligations regarding the provision of services through another investment firm provided for under Article 220 and with the obligations regarding remuneration provided for under Article 220 *bis*.

4. Failure to set up the appointments committee provided for under Article 186 or the remuneration committee as provided for under Article 188.

5. Breach by investment firms, other financial institutions or commissioners for oaths of the obligations, restrictions or prohibitions deriving from Articles 83 and 84, or of the provisions or rules provided for under Articles 75 and 85 to 88, without prejudice to the provisions of Articles 286 to 287.

6. Breach by the entities listed under Article 233(1)(a)(1) and (2) of the requirements regarding the capital structure or own funds that apply to them as provided for in this Act and its implementing regulations or EU law, breach of the obligations in which they must grant access to them, in accordance with the provisions of this Act, its implementing regulations or EU law, and the failure to comply with the exceptions or limitations on their prices, fees or commissions to be applied as imposed by the National Securities Market Commission.

7. The payment or distribution to holders of instruments which count as own resources in the investment firm where this is in breach of Article 196(6) or Articles 28, 51 or 63 of Regulation (EU) No. 575/2013, of 26 June 2013.

8. A reduction in own funds of investment firms or the Consolidated group or financial conglomerate to which they belong to below 80% 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.

9. Accept an exposure in excess of the limits provided for under Article 395 of Regulation (EU) No. 575/2013, of 26 June 2013.

10. Accept exposure to a credit risk in a securitisation position that does not satisfy the conditions provided for under Article 405 of Regulation (EU) No. 575/2013, of 26 June 2013.

11. Failure by investment firms to file with any data or documents with the National Securities Market Commission that must be submitted thereto under this Act and its implementing regulations, in accordance with Regulation (EU) No. 575/2013, of 26 June 2013, or which the CNMV 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 Consolidated group or financial conglomerate to which it belongs.

For the purposes of this paragraph, the absence of a referral shall also be understood to mean a referral outside the period provided for in the appropriate rule or the time limit granted when the appropriate request is made, as the case may be.

In particular, the following are understood to be included in this paragraph: the lack of referral or the incomplete or inaccurate referral of:

(a) The data referred to under Article 101 of Regulation (EU) No. 575/2013, of 26 June 2013.

(b) Information on large exposures in breach of Article 394(1) of Regulation (EU) No. 575/2013, of 26 June.

(c) Information on compliance with the obligation to maintain own resources provided for under Article 92 of Regulation (EU) No. 575/2013, of 26 June 2013, in breach of Article 99(1) of the Regulation.

(d) Information on established liquidity requirements as well as non-compliance with Article 415(1) and (2) of Regulation (EU) No. 575/2013, of 26 June 2013.

(e) Information on the leverage ratio, in breach of Article 430(1) of Regulation (EU) No. 575/2013, of 26 June 2013.

12. Serious breach or omission by firms providing investment services with the obligation to have the procedures, policies or measures provided for under Article 208 *bis* (1), or the not merely occasional or isolated breach of the obligations regarding the manufacture and distribution of products provided for under Article 208 *ter*.

13. Repeated and serious breach by those providing data reporting services of the operating and internal organisation obligations provided for under Articles 197 *undecies* to 197 *quaterdecies*.

14. Repeated and serious breach by those providing data reporting services of the dissemination, communication and handling of reporting obligations provided for under Articles 197 *octies* to 197 *decies*.

**Article 284.** *Infringements for breach of the obligation to inform and protect the investor.*

The following actions or omissions are very serious infringements:

1. Lack of the means or policies for handling conflicts of interest or a 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 provided for under Articles 208, 209 to 217, or lack of the register of contracts regulated under Article 218.

2. Lack of policies for managing and executing client orders, or failure to apply them, or their application without the client's prior consent, where this occurrence is not merely occasional or isolated.

3. Failure to have a customer service department.

4. Not merely occasional or isolated breach by investment firms of their obligations to act honestly, impartially and professionally and to communicate fair, clear and not misleading information in their relationship with eligible counterparties, as well as to obtain express confirmation that the undertaking, which complies with the provisions of Article 207(2), agrees to be treated as an eligible counterparty, either in a general form or on trade-by-trade basis, as provided for under Article 207(5) and (6).

5. Not merely occasional or isolated breach by investment firms of their obligations under Article 220 *ter* to 220 *sexies*.

**Article 285.** *Infringements for failure to comply with measures adopted by the National Securities Market Commission in the exercise of its supervisory, inspection and control powers and for repeated serious infringements.*

The following actions or omissions are very serious infringements:

1. Failure to submit to the National Securities Market Commission, by the entities referred to under Article 233, within the period established by regulation or granted by the CNMV, any documents, data or information that must be submitted by virtue of the provisions in this Act and its implementing regulations or in EU law, or which the CNMV 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.

2. Repeated failure to present to the National Securities Market Commission the notifications referred to under Article 89.

3. 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.

4. Failure by an investment firm or Consolidated 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 organic structure or level of resources, when this jeopardises its solvency or viability.

5. Refusal or resistance by the natural and legal persons referred to under Article 233 to submit to inspection by the National Securities Market Commission, provided that express written instructions to that effect have been served.

6. 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.

7. Breach of the precautionary measures imposed in parallel with the sanctions imposed by the National Securities Market Commission and, in particular, those provided for under Article 234(2) (e), (g), (i), (j) and (k).

8. 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 in the risks inherent to its activities, products or systems, where such breach consists of a 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.

9. The commission of serious infringements provided for in Part VI when during the five years prior to their commission the person in breach has been sanctioned for the same type of infringement.

**Article 286.** *Infringements of Regulation (EU) No. 236/2012, of 14 March 2002.*

Without prejudice to the infringements provided for in this Part, the following actions or omissions are very serious infringements of Regulation (EU) No. 236/2012, of 14 March 2012:

1. Breach of the obligations provided for under Articles 5 to 8 of the aforementioned Regulation without respecting the provisions of Article 9 of the same, in the event that the delay in the notification is significant or there has been a request by the National Securities Market Commission, and a breach of the duty to conserve the information contained in the said Article 9.

2. Breach of the duty of notification referred to under Article 17(9) and (10) of the Regulation, when the delay in the notification or the number and volume of transactions are significant; as well as breach of the duty of notification provided for under Article 17(11), when there has been a delay in the notification or there has been a request for information from the National Securities Market Commission.

3. Carrying out short sales when the conditions described under Article 12 of the Regulation are not met, and at least one of the following circumstances applies:

- (a) The short sale is not merely occasional or isolated.
- (b) The short sale has a significant impact on share prices.
- (c) The transaction is of relative importance with respect to the volume traded in the security in the session on the multilateral trading facility.
- (d) There is high volatility in the market or in the particular security.
- (e) The transaction increases the potential risk of failure or delay in settlement.

4. Carrying out transactions with sovereign credit default swaps when they are not permitted by Article 14 of the same Regulation, in a significant volume.

5. Breach of the obligations provided for under Articles 13, 15, 18 and 19 of the Regulation.

6. Carrying out transactions that have been prohibited or limited by the National Securities Market Commission, by virtue of Articles 20, 21 and 23 of the Regulation.

**Article 287.** *Infringements of Regulation (EU) No. 648/2012, of 4 July.*

Without prejudice to the infringements provided for in this Part being very serious infringements, the following actions or omissions are breaches of Regulation (EU) No. 648/2012, of 4 July 2012:

(a) Breach of the obligations provided for under Articles 11(1), 11(2), 11(3) and 11(4) and in Titles IV and V of the Regulation, when this would jeopardise the solvency or viability of the person in breach or its group.

(b) Breach of the obligations provided for under Articles 4 and 10 of the Regulation, not merely on an occasional or isolated basis or with substantial irregularities.

(c) Breach of any of the obligations provided for under Article 9 of the Regulation by the financial counterparties referred to under Article 2(8) of the said Regulation and by central counterparties, not merely on an occasional or isolated basis or with substantial irregularities.

**Article 288.** *Infringements of Regulation (EU) No. 909/2014 of 23 July 2014.*

Without prejudice to the infringements provided for in this Part, the following actions or omissions are very serious infringements of Regulation (EU) No. 909/2014, of 23 July 2014:

1. On the part of central securities depositories, and of those holding office as a director or a manager in the said entities:

(a) The provision of the services established in Sections A, B and C of the Annex to the Regulation, in breach of the provisions of Articles 16, 25 and 54, unless they are merely occasional or isolated.

(b) Obtaining the authorisation provided for under Articles 16 and 54 by means of false representations or any other unlawful means.

(c) Breach of the capital requirements provided for under Article 47(1), when this would jeopardise the solvency or viability of the offender or its group.

(d) Breach, not merely on an occasional or isolated basis, or with substantial irregularities, of the organisational requirements provided for under Articles 26 to 30.

(e) Breach, not merely on an occasional or isolated basis, or with substantial irregularities, of the rules of conduct provided for under Articles 32 to 35.

(f) Breach of the requirements to be met in the services it provides, as provided for under Articles 37 to 41, where this would seriously jeopardise the integrity of the settlement or registration system, or seriously harm the interests of participants or security holders, or seriously jeopardise the securities of participants or their clients.

(g) Breach of the prudential requirements provided for under Articles 43 to 47, when this would jeopardise the solvency or viability of the offender or its group.

h) Breach of the requirements to be met by links between central securities depositories provided for under Article 48, when this would seriously jeopardise the integrity and functioning of the settlement or registry system.

i) Failure to comply with the duty to grant access after having been requested to do so by the National Securities Market Commission in accordance with Articles 49 to 53.

2. Breach of the obligations regarding discipline in settlements as referred to under Articles 6 and 7 by market operators of official secondary markets, multilateral trading facilities, central counterparties, central securities depositories and investment firms.

3. On the part of designated credit institutions, as well as those who hold office as a director or manager in the said entities:

(a) Breach of the specific prudential requirements for credit risk provided for under Article 59(3), where this would jeopardise the solvency or viability of the offender or its group.

(b) Breach of the specific prudential requirements for liquidity risk provided for under Article 59(4), when this would jeopardise the solvency or viability of the offender or its group.

**Article 289.** *Infringements relating to credit rating agencies and major holdings.*

The following actions or omissions are very serious infringements:

1. Breach of the obligations provided for under Article 5 *bis* of Regulation (EC) No. 1060/2009, of 16 September 2009, other than on a merely occasional or isolated basis.

2. Failure by credit rating agencies to submit any data or documents to the National Securities Market Commission that required to be submitted thereto 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 required by the CNMV in exercising the functions delegated to it or under the regime of cooperation with 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 the way that it performs its activities.

3. Breach of the provisions of Articles 48, 97 to 102, 103 to 110 and 174 to 180 in the purchase of a significant participation, and where the holder of such participations falls under the case provided for under Article 180(1).

4. 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.

5. The performance of corporate operations without fulfilling the requirements provided for under Article 159.

**Article 289 bis.** *Infringements of Regulation (EU) No. 1286/2014, of the European Parliament and of the Council, of 26 November 2014, on key information documents for packaged retail and insurance-based investment products.*

Without prejudice to the infringements provided for in this Part, the following infringements of Regulation (EU) No. 1286/2014, of the European Parliament and of the Council, of 26 November 2014, are very serious infringements:

1. Breach of the obligation for the producer to draw up the key information document and to publish it on its website, as referred to under Article 5(1) of the Regulation.
2. Breach of Articles 6, 7 and 8(1) to (3) of the Regulation, on the form and content of the key information document when the information in the document affected by the breach is important or the number of investors affected by it is significant.
3. Not merely occasional or isolated marketing communications relating to the packaged retail investment product that breach the provisions of Article 9 of the Regulation.
4. Not merely occasional or isolated breach of the provisions of Article 10(1) of the Regulation relating to the review and revision of the key information document.
5. Not merely occasional or isolated breach of the obligations to supply the key information document imposed by Article 13(1), (3) and (4) and Article 14 of the Regulation.
6. Breach of the obligation to establish the complaint procedures and mechanisms referred to under Article 19 of the Regulation or failure to apply them where the number of investors concerned is significant.

**Article 289 *ter*.** *Infringements of Regulation (EU) No. 2016/1011, of the European Parliament and of the Council, of 8 June 2016, on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds, amending Directives 200/49/EC and 2014/17/EU and Regulation (EU) No. 596/2014.*

Without prejudice to the infringements provided for in this Part, the following infringements of Regulation (EU) No. 2016/1011, of the European Parliament and of the Council, of 8 June 2016, are very serious infringements:

1. Not merely occasional or isolated breach by directors of governance and control requirements provided for under Articles 4 to 10 of the Regulation.
2. Not merely occasional or isolated breach of the provisions of Article 11(1)(a), (b), (c) and (e) and Article 11(2) and (3) of the Regulation concerning the input data for the creation of a benchmark.
3. Not merely occasional or isolated breach by directors of the provisions of Article 12 of the Regulation, relating to the methodology for determining the benchmark.
4. Not merely occasional or isolated breach by directors of the obligations regarding transparency and the requirements of the consultation procedures provided for under Article 13 of the Regulation.
5. Breach by directors of the obligations provided for under Article 14 of the Regulation, provided that the conduct is not merely occasional or isolated or seriously prejudicial to the interests of natural or legal persons.

6. Not merely occasional or isolated breach by directors of the obligations provided for under Article 15 of the Regulation.

7. Breach by supervised contributors of the governance and control requirements provided for under Article 16 of the Regulation where the conduct is not merely occasional or isolated or seriously prejudicial to the interests of natural or legal persons.

8. Breach by directors of the obligations provided for under Article 21 of the Regulation.

9. Breach by directors or supervised contributors of the obligations provided for under Article 23 of the Regulation when there is serious negligence due to the importance of the omission or delay that has occurred.

10. Breach by directors of the provisions of Articles 24, 25 and 26 of the Regulation where there is an interest in concealment or serious negligence due to the importance of the omission or delay that may have occurred.

11. Not merely occasional or isolated breach by directors of the obligations provided for under Articles 27 and 28(1) of the Regulation.

12. Not merely occasional or isolated breach by supervised entities of the obligations provided for under Article 28(2) of the Regulation.

13. Not merely occasional or isolated use of benchmarks by supervised entities in breach of the obligation provided for under Article 29(1) of the Regulation.

14. Omission or falsehood in the information that the prospectus must contain as provided for under Article 29(2) of the Regulation.

15. Failure to comply with the duty to obtain authorisation or registration in accordance with the provisions of Article 34 of the Regulation in such a way that it involves the not merely occasional or isolated performance of the activities of a director without the appropriate authorisation or registration.

16. Obtaining the authorisation or registration referred to under Article 34 of the Regulation by means of false statements or by any other unlawful means.

17. Not merely occasional or isolated breach by directors of the other obligations provided for under Article 34 of the Regulation.

18. Not merely occasional or isolated breach by directors or contributors of the obligations established in Annex I to the Regulation in relation to interest rate benchmarks.

19. Not merely occasional or isolated breach by directors of the obligations established in Annex II to the Regulation in relation to commodity benchmarks.

20. Actions or omissions that involve a breach of the measures adopted by the CNMV in the exercise of its supervisory, inspection and oversight powers, as well as a refusal or resistance to such action in accordance with the provisions of Article 41 of the Regulation.

## PART VI

### **Serious and minor infringements.**

**Article 290.** *Persons liable.*

The natural and legal persons referred to under Article 271 are liable for serious infringements when they commit the actions or omissions listed in this Part.

**Article 291.** *Infringements for breach of the reservation of activity and the obligation to obtain required authorisations.*

The following actions or omissions are serious infringements:

1. The appointment, by the bodies referred to under Article 233(1)(a)(1), (2) and (6), of directors, general managers and similar without the prior approval of the National Securities Market Commission or, as the case may be, of the regional government with jurisdiction in matters regarding regional markets.

2. The failure to disclose, deposit or publish a regulatory disclosure as referred to under Article 531(3) of the Consolidated Text of the Corporate Enterprises Act, approved by Royal Legislative Decree 2/2010, of 2 July. This infringement shall be imposed jointly and severally on any of the participants in the shareholders' agreement.

3. Improper use of the names referred to under Article 144(2).

4. The performance, on an occasional or isolated basis, by persons providing investment services, of activities for which they are not authorised and the occasional or isolated breach by an investment firm or its agents of the rules provided for under Articles 146 and 147.

5. The *de facto* discharge of powers as a director or manager in the entities referred to under Article 233(1)(a)(1), (2), (3) and (5) by persons that do not hold such positions *de jure*.

6. 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 in this Act.

**Article 292.** *Infringements due to breach of the obligations required for the correct functioning of the primary securities market and the trading of financial instruments in the secondary securities markets.*

The following actions or omissions are serious infringements:

1. Failure by market operators of official secondary markets to respond to demands made by the National Securities Market Commission by virtue of the provisions of Articles 80 and 81.

2. The unjustified refusal or repeated unjustified delays in the transmission and execution of orders for the subscription, purchase or sale of securities on an official secondary market or multilateral trading facility received by persons legally authorised to carry on such activities.

3. Failure to disclose to the market operators 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 provided for under Articles 118 to 123, where this does not constitute a very serious infringement under the preceding Part.

4. Advertising which breaches Article 240 of this Act or its implementing regulations.

5. The launching of public offers for sale or subscription or admission to trading without complying with the requirements of Articles 33(2), 34, 36(1) or 76, the placement of the issuance without regard to the basic conditions provided for 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 considered a very serious infringement.

6. The placement of issuances as referred to under Article 35(1) and (2) without the participation of an authorised entity as required by that article, without fulfilling the basic conditions that were advertised, or omitting significant data or including data that are inaccurate, false or misleading, when, in all these cases, the amount of the issuance or the number of investors affected is not significant.

7. Breach by issuers of securities admitted to trading on secondary markets of their obligations regarding the system of record-keeping of such securities.

8. Breach of the obligations provided for under Article 71(3), where this does not constitute a very serious infringement.

9. Failure to disclose, in a listed company's directors' report, the information required under Article 262 of the Consolidated Text of the Corporate Enterprises Act, approved by Royal Legislative Decree 2/2010, of 2 July, or the existence of omissions or false or misleading data.

10. Breach, by an investment firm, of the limits provided for major risks, when those risks did not occur suddenly, but rather were the result of actions and decisions adopted by the firm itself.

11. Breach by members of multilateral trading facilities, issuers of financial instruments admitted to these systems, registered advisors and any other entity participating in the rules provided for in Title X, its implementing provisions or its operating regulations, when such breach is not considered a very serious infringement under the preceding Part.

**Article 293.** *Infringements relating to takeover bids.*

The following actions or omissions are serious infringements:

1. 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 announce a takeover bid, during such a bid or once it is completed, where this does not constitute a very serious infringement.

2. 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.

**Article 294.** *Infringements relating to securities clearing, settlement and registration systems.*

The following actions or omissions are serious infringements:

1. Breach by central securities depositories and by entities participating in registration systems of the rules on the registration of securities in Part II of Title I and Part VI of Title IV, where such failure does not constitute a very serious infringement.

2. Breach by members of central counterparties of their obligations regarding the provision of guarantees when such failure does not constitute a very serious infringement, except if it is the consequence of a situation of insolvency or insolvency proceedings.

3. Breach by members of official secondary markets and members of multilateral trading facilities of the obligations referred to under Articles 93 and 328(4) respectively or inadequate coordination with central counterparties and their members, where such conduct is of a merely occasional or isolated nature.

4. Breach by official secondary markets, multilateral trading facilities, central counterparties, their respective members and the participating entities of central securities depositories of the obligations provided for under Article 116(1), where such breach does not constitute a very serious infringement.

5. Breach by central securities depositories of the obligations provided for under Articles 114 to 116 where such breach does not constitute a very serious infringement.

6. Failure of the central counterparty, or clearing and settlement systems existing in Spanish territory to recognise the right of those who provide investment services and perform investment activities and credit institutions from other Member States of the European Union to have access to them under the terms provided for under Article 113, where this does not constitute a very serious breach.

**Article 295.** *Infringements for breach of the obligations of transparency and market integrity.*

The following actions or omissions are serious infringements:

1. Breach by the entities covered by Articles 241 and 258 of the current rules on record-keeping of transactions, authorisation of accounts and the form in which the books and records must be kept, and the rules on consolidation, except where this constitutes a very serious infringement.

2. Receipt by investment firms 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.

3. Failure to have a website as provided for under Article 539(2) of the Consolidated Text of the Corporate Enterprises Act, approved by Royal Legislative Decree 2/2010, of 2 July, and failure to publish on such website the information indicated in that article and under Article 17 of Regulation (EU) No. 596/2014, of the European Parliament and of the Council, of 16 April 2014 or their implementing regulations, where this does not constitute a very serious infringement.

4. to 7. **(Deleted).**

8. Breach on a merely occasional or isolated basis, by investment firms and operators of a trading venue, of position limits to the size of a net position in commodity derivatives as provided for under Article 85.

9. Breach by investment firms and operators of a trading venue of the communication and classification obligations provided for under Articles 86 to 88, where this does not constitute a very serious breach.

10. Breach on a merely occasional or isolated basis, of the obligations to provide information, to submit and retain data, and to provide information for the purposes of the size limitation mechanism and the obligation to trade derivatives, which are imposed on APAs and CTPs in Commission Delegated Regulation No. 2017/577, of 13 June 2016.

11. Failure by the entities referred to under Article 233 to forward to the National Securities Market Commission, within the time limit provided for in the rules or granted thereby, any documents, data or information that must be sent by virtue of the provisions of this Act, its implementing regulations or EU law, or that the National Securities Market Commission requires in the performance of its functions, as well as the forwarding of incomplete information or information with inaccurate or untrue data, when they do not constitute a very serious infringement.

12. Breach of the provisions provided for under Article 11 of Regulation (EU) No. 596/2014, of the European Parliament and of the Council, of 16 April 2014, on market abuse in the course of market sounding which does not constitute a very serious infringement insofar as constituting unlawful insider trading.

13. Breach of Article 15 of Regulation (EU) No. 596/2014, of the European Parliament and of the Council, of 16 April 2014, on market abuse, where it does not constitute a very serious infringement.

14. Breach of the obligation to notify the CNMV of orders or transactions suspected of constituting market abuse, as provided for under Article 16(1) and (2) of Regulation (EU) No. 596/2014, of the European Parliament and of the Council, of 16 April 2014.

15. Breach of any of the prohibitions or obligations provided for under Article 14, or under Article 17(1), (2), (4), (5) or (8) of Regulation (EU) No. 596/2014, of the European Parliament and of the Council, of 16 April 2014, where it does not constitute a very serious infringement.

16. Breach of any of the obligations provided for under Article 18 of Regulation (EU) No. 596/2014, of the European Parliament and of the Council, of 16 April 2014, where it does not constitute a very serious infringement.

17. Breach of the duty to provide information or notification provided for under Articles 115, 117, 118 or 19 of Regulation (EU) No. 596/2014, of the European Parliament and of the Council, of 16 April 2014, on market abuse, where it does not constitute a very serious infringement.

18. Breach of the prohibition provided for under Article 19(11) of Regulation (EU) No. 596/2014, of the European Parliament and of the Council, of 16 April 2014.

19. Preparation or disclosure of investment recommendations or other information recommending or suggesting an investment strategy without complying with Article 20(1) of Regulation (EU) No. 596/2014, of the European Parliament and of the Council, of 16 April 2014.

20. Breach of the obligations provided for under Article 22(2) of Regulation (EU) No. 600/2014, of the European Parliament and of the Council, of 15 May 2014, concerning the storage of data relating to information for the purposes of transparency and other calculations by APAs and CTPs, where this does not constitute a very serious infringement.

21. Breach of the obligations provided for in the following articles of Regulation (EU) No. 2015/2356, of the European Parliament and of the Council, of 25 November 2015, on transparency of securities financing transactions and of reuse and amending Regulation (EU) No. 648/2012, of 4 July, where they do not constitute a very serious infringement:

(a) Article 4 on the obligation of counterparties to securities financing transactions to notify and to keep information relating to such transactions.

(b) Article 15 on the conditions to be met for the reuse of financial instruments received as collateral.

22. Breach of the obligation to have available the procedures referred to under Article 24(3) of Regulation (EU) No. 2015/2365, of the European Parliament and of the Council, of 25 November 2015.

**Article 296.** *Infringements for breach of internal organisational measures and due prudential requirements.*

The following actions or omissions are serious infringements:

1. The failure to draft or publish the annual report on corporate governance or the annual report on director remuneration referred to under Articles 540 and 541 of the Consolidated Text of the Corporate Enterprises Act, approved by Royal Legislative Decree 2/2010, of 2 July and the Seventh Additional Provision of this Act, or the existence in those reports of omissions or false or misleading data; breach of the obligations provided for under Articles 512 to 517, 525(2), 526, 528, 529, 530, 531, 532, 533, 534, 538, 539, 540 and 541 of the said Act, failure by issuers of securities admitted to trading on official secondary markets to have an Audit Committee and an Appointments and Remuneration Committee under the terms provided for under Articles 529 *quaterdecies* and *quindecies* of the aforementioned Act or breach of the rules of composition and assignment of functions of the said Audit Committees of the public interest entities provided for in the aforementioned Article 529 *quaterdecies*.

2. Deficiencies, on the part of investment firms, Consolidated groups of investment firms and the financial conglomerates to which they belong, in administrative and accounting procedures; in internal control mechanisms, including those relating to risk management; or in their organic structure, after the deadline given to them by the competent authorities to remedy such deficiencies has passed, except where this constitutes a very serious breach.

3. Breach by parties other than investment firms, financial institutions or commissioners for oaths of the obligations, restrictions or prohibitions deriving from Articles 83 and 84, or with the provisions and regulations provided for under Articles 75, and 85 to 88, without prejudice to the provisions under Articles 286 to 288.

4. A delay of over four months in the keeping of the obligatory accounting records and registers by the undertakings referred to under Article 241.

5. Breach by those who provide investment services and perform investment activities of the corporate governance obligations provided for under Article 182; of the selection and assessment obligations of Board members, senior management and similar positions provided for under Article 185; of the organisational requirements provided for under Article 193 as well as of the obligations regarding the provision of services through another investment firm provided for under Article 220 and with the obligations regarding remuneration provided for under Article 220 *bis*.

6. The poor operation of the customer service department.

7. The merely occasional or isolated breach of the obligation to maintain the general feasibility plan provided for under Article 193(2)(f)) updated.

8. Breach by investment firms of the regulations issued under the provisions of Article 190(1)(b).

9. Breach of the disclosure obligations provided for under Articles 191 and 192, and publication of information that is incomplete, false, misleading or untruthful

10. Breach, by investment firms or the Consolidated group or financial conglomerate to which they belong, of the minimum own funds requirements established by regulation or required 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 Part.

11. 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 in 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 Article 279.

12. Breach or omission by firms that provide investment services, of the obligation to have the procedures, policies or measures provided for under Article 208 *bis* (1), or the merely occasional or isolated breach of the obligations regarding the manufacture and distribution of products provided for under Article 208 *ter*.

13. Merely occasional or isolated breach by investment firms of their obligations to act honestly, impartially and professionally and to communicate fair, clear and not misleading information in their relationship with eligible counterparties, as well as to obtain express confirmation that the undertaking agrees to be treated as an eligible counterparty, in a general form or on a trade-by-trade basis, as provided for under Article 207(5) and (6).

14. Merely occasional or isolated breach by those who provide investment services of the obligations, rules and limitations provided for under Articles 208 to 216, 218 and 220 to 224.

15. Breach by those providing data reporting services of the operating and internal organisation obligations provided for under Article 197 *undecies* to 197 *quaterdecies*, where this does not constitute a very serious infringement.

16. Breach by those providing data reporting services of the obligations of disclosure, communication and processing of information provided for under Articles 197 *octies* to 197 *decies*, where this does not constitute a very serious infringement.

**Article 297.** *Infringements for failure to comply with measures adopted by the National Securities Market Commission in the exercise of its supervisory, inspection and oversight powers and for repeated serious infringements.*

The following actions or omissions are serious infringements:

1. Failure to file with the National Securities Market Commission the disclosures provided for under Article 89, where this is not a very serious infringement, or the repeated disclosure of trades in a deficient form.

2. The commission of minor infringements under Part VI where a sanction has been imposed on the same person for an infringement of the same kind within the previous two years.

**Article 298.** *Infringements due to breach of European Union Regulations.*

Without prejudice to the infringements provided for in this Part, the following actions or omissions are serious infringements:

1. The following breaches of Regulation (EU) No 236/2012, of 14 March 2012:

(a) Breach of communication and publication obligations provided for under Articles 9 and 17 of the Regulation, when such breach does not constitute a very serious infringement.

(b) The conduct described under Article 286(1) to (4), where this does not constitute a very serious infringement.

2. The following breaches of Regulation (EU) No 648/2012, of 4 July:

(a) Breach of the obligations referred to under Article 287, where such breach does not constitute a very serious infringement.

(b) Breach, not on a merely occasional or isolated basis, or with substantial irregularities, of any of the obligations provided for under Article 9 of the Regulation by the non-financial counterparties referred to under Article 2(9) of the said Regulation.

3. Breach by central securities depositories and by those holding office as a director or manager in such entities, of the obligations referred to under Article 288(1)(a) to (h), except point (b), where such breach does not constitute a very serious infringement.

4. Breach by designated credit institutions and by those holding office as a director or manager in such institutions of the requirements referred to under Article 288(3)(a) and (b), where such breach does not constitute a very serious infringement.

5. The following breaches of Regulation (EU) No. 1286/2014, of the European Parliament and of the Council, of 26 November 2014:

(a) Breach of the provisions of Articles 6, 7 and 8(1) to (3) of the Regulation where this does not constitute a very serious infringement.

(b) Merely occasional or isolated transmission of marketing communications on the packaged retail investment product that do not comply with the provisions of Article 9 of the Regulation.

(c) Merely occasional or isolated breach of Article 10(1) of the Regulation concerning the review and revision of the key information document.

(d) Merely occasional or isolated breach of the obligations imposed by Articles 13(1), (3) and (4), and 14 of the Regulation.

(e) Failure to apply the complaint procedures and mechanisms referred to under Article 19 of the Regulation, where this does not constitute a very serious infringement.

6. The following breaches of Regulation (EU) No. 2016/1011, of 8 June 2016:

(a) Breach of the obligations referred to under Article 289 *ter* where this does not constitute a very serious infringement.

(b) Breach of the provisions of Article 11(1)(d) and 11(4) of the Regulation.

(c) Failure to cooperate or contempt in connection with an investigation, inspection or request made by the CNMV pursuant to Article 41 of the Regulation, where such conduct should not be classified as very serious.

**Article 299.** *Infringements relating to credit rating agencies and major holdings.*

The following actions or omissions are serious infringements:

1. Acquisition of a holding as referred to under Article 175(1) without notifying the National Securities Market Commission, the breach of obligations provided for under Article 181, and the increase or decrease of a significant holding without fulfilling the provisions of Articles 48(1), 99, 103 to 110 and 179(1).

2. The infringements provided for under Article 278(1) and under Article 279(4), (6) and (7), where they are occasional or isolated.

**Article 300.** *Minor infringements.*

1. Infringements by the entities and persons referred to under Article 271 of the duty of due observance provided for in the regulations concerning the organisation and control of the securities market constitute minor infringements where they do not constitute serious or very serious infringements in accordance with the provisions of Articles 277 to 299.

2. The following in particular are minor infringements:

(a) Failure to submit to the National Securities Market Commission, before the deadline established in the rules and granted by the CNMV, any documents, data or information that must be submitted to it by virtue of the provisions of this Act or that the CNMV demands in the exercise of its functions and by virtue of Regulation (EC) No. 1060/2009, of 16 September 2009, in exercising the functions delegated to it or under the regime of cooperation with other competent authorities, and failure in its duty to cooperate with the supervisory activities of the National Securities Market Commission, including non-appearance when summoned to make a statement, when such conduct does not constitute serious or very serious infringements, in accordance with the provisions of Articles 277 to 299.

(b) A one-time breach, within the framework of a relationship with clients, of the rules of conduct provided for in Part I of Title VII.

(c) Breach of the obligation provided for under Article 8 *quinquies* of Regulation (EC) No 1060/2009, of 16 September 2009, to state, where applicable, the failure to appoint at least one credit rating agency with a market share of less than 10% of the total market.

3. The failure to send the National Securities Market Commission, within the established time limit, any documents, data or information that must be sent to it in the exercise of the functions assigned thereto under a system of delegation or cooperation with other competent authorities, as well as a failure to comply with the duty to cooperate with

supervisory actions of the National Securities Market Commission, including failure to appear in response to a summons to make a statement constitute minor infringements in relation to Regulation (EU) No 648/2012, of 4 July 2012, when the said conduct does not constitute a serious or very serious infringement in accordance with the provisions of the preceding articles.

The breach of the obligations under Regulation (EU) No 236/2012, of 14 March 2012, and Regulation (EU) No 648/2012, of 4 July 2012, which does not constitute a serious or very serious infringement as provided for in the previous paragraphs, shall also be considered a minor infringement.

4. The following breaches of Regulation (EU) No. 2016/1011, of the European Parliament and of the Council, of 8 June 2016:

(a) Breach of the obligations referred to under Article 289 *ter* where this does not constitute a very serious or serious infringement.

(b) Breach of the provisions of Article 11(1)(d) and 11(4) of the Regulation, when this does not constitute a serious infringement due to its scant importance.

(c) Failure to cooperate or contempt in connection with an investigation, inspection or request made by the CNMV pursuant to Article 41 of the Regulation, where such conduct should not be classified as very serious or serious.

## PART VII

### Statute of limitations for infringements

**Article 301.** *Statute of limitations for infringements.*

1. The statute of limitations for serious or very serious infringements is five years and two years for minor infringements.

2. The period for the statute of limitations for infringements shall count as from the day that the infringement was committed. As regards infringements arising from continuous activity, the period shall commence upon the conclusion of that activity or from the last infringement that was committed.

3. The statute of limitations period shall 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.

## PART VIII

### Sanctions

**Article 302.** *Sanctions for very serious infringements.*

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

1. A fine of up to the highest of the following amounts:

- five times the gross profit or loss avoided as a result of the acts or omissions constituting the infringement,
- 5% of the offender's own resources,
- 5% of the total funds, own or borrowed, used in the infringement,
- 10% of the total annual turnover of the offender, according to the latest available accounts approved by the governing body. If the offender is a parent undertaking, or a subsidiary of the parent undertaking that is required to prepare Consolidated accounts, the total applicable annual turnover shall be that shown in the latest available Consolidated accounts;
- EUR 5,000,000.

In the case of investment firms which fail to comply with the rules contained in Regulation (EU) No. 575/2013, of 26 June, or which commit very serious infringements as referred to under Article 275(4)(a), the fine to be imposed shall be up to the highest of the following amounts:

- five times the gross profit obtained as a result of the acts or omissions constituting the infringement;
- 10% of the total annual net turnover, including gross income from interest receivable and similar income, income from shares and other fixed-income or equity securities, and fees or brokerages receivable, in accordance with Article 316 of Regulation (EU) No. 575/2013, of 26 June, which the firm has earned in the preceding financial year,
- the offender's own resources,
- 5% of the total funds, own or borrowed, used in the infringement, or
- EUR 10,000,000.

If the undertaking referred to in this paragraph is a subsidiary undertaking, the relevant gross income shall be the gross income resulting from the Consolidated accounts of the parent undertaking to which it reports in the preceding financial year.

In the case of central securities depositories and designated credit institutions referred to under Article 54(2)(b) of Regulation (EU) No. 909/2014, of 23 July 2014, which commit very serious infringements as referred to under Article 288(1) and (3), the fine to be imposed shall be at least twice the amount of the gross profit obtained as a result of the acts or omissions constituting the infringement, if this can be determined, and at the most up to the highest of the following amounts:

- five times the gross profit obtained as a result of the acts or omissions constituting the infringement,
- 10% of the total annual turnover of the offender, according to the latest available accounts approved by the governing body,

- 5% of the total funds, own or borrowed, used in the infringement, or
- EUR 20,000,000.

If the offender is a parent undertaking, or a subsidiary of the parent undertaking that is required to prepare Consolidated accounts, the total applicable annual turnover shall be that shown in the latest available Consolidated accounts.

In the case of breaches of the obligations provided for under Articles 118 to 126, which constitute a very serious infringement, the following fine shall be imposed:

(i) in the case of legal persons, the amount shall be up to the highest of the following amounts:

- EUR 10,000,000 or 5% of its total annual turnover, according to the latest available approved annual accounts. If the legal person is a parent undertaking, or a subsidiary of a parent undertaking that is required to prepare Consolidated accounts in accordance with commercial law, the total turnover to be taken into account shall be the total annual turnover or the relevant type of income, in accordance with applicable accounting legislation and according to the most recently available approved annual Consolidated accounts of the parent undertaking.

- Double the amount of the profits made or losses avoided as a result of the commission of the infringement, if they can be determined.

(ii) In the case of natural persons, it shall be for an amount of up to the greater of the following amounts: EUR 2,000,000, or double the amount of the profits made or losses avoided due to the breach, if they can be determined.

2. 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.

3. Suspension of membership of an official secondary market or multilateral trading facility for a period not greater than five years.

4. Exclusion of a financial instrument from trading on an official secondary market or multilateral trading facility.

5. Withdrawal of authorisation in the case of investment firms, registered dealers in the public-debt market and other firms registered at the National Securities Market Commission. In the case of investment firms authorised by another EU Member State, the sanction involving withdrawal shall be replaced by a prohibition from commencing new operations in Spanish territory.

6. Suspension of an offender from holding office as a director or manager at a financial institution for a period not greater than five years.

7. Removal of the offender from office and disqualification from holding office as a director or manager at the same entity for a period not greater than five years.

8. Removal of the offender from office and disqualification from holding office as a director or manager at any financial entity of those provided for under Article 233(1)(a) and (c)(2), (4) and (5) for a period not exceeding ten years.

9. Restitution of profits made or losses avoided by the commission of the infringement, if they can be determined.

10. Suspension for no more than ten years of the authorisation of an investment firm or of other institutions registered in the registers of the National Securities Market Commission.

11. Prohibition on trading for own account for a period not exceeding ten years by any person holding office as a director or manager at an investment firm or any other natural person held liable for the infringement.

12. Disqualification from holding office as a director or manager at investment firms for a period not exceeding ten years or permanently in the event of repeat infringements.

13. Public reprimand in the “Official State Gazette”, indicating the person responsible and the nature of the infringement, in accordance with the provisions of Article 313 *ter*.

14. Likewise, in the case of a breach of the reservation of activity provided for under Article 278, the offender shall be subject to the sanction provided for in paragraph (1), understood in this case as gross profit - the income obtained by the offender in the performance of the reserved activity - without the fine being less than EUR 600,000.

15. In the event that an investment firm acquires a holding despite the opposition of the CNMV, regardless of any other sanction that may be imposed, provision shall be made either for the suspension of the exercise of the relevant voting rights, or for the invalidity of the votes cast or the possibility of invalidating them.

16. In the case of infringements committed by the persons referred to under Article 233(1)(b), the sanctions imposed shall not prejudice the ability of other competent authorities of the European Union to impose sanctions in accordance with Regulation (EC) No. 1060/2009, of the European Parliament and of the Council, of 16 September.

In the event that an investment firm acquires a holding despite the objection of the National Securities Market Commission, regardless of any other sanction that may be imposed, either the suspension of the exercise of the relevant voting rights or the nullity of the votes cast or the possibility of their annulment.

17. In the case of breaches of obligations or prohibitions under Regulation (EU) No. 596/2014, of the European Parliament and of the Council, of 16 April 2014, which constitute a very serious infringement, the fine to be imposed shall be:

(a) If the offender is a legal person, the amount shall be up to the highest of the following amounts:

(1) EUR 30,000,000 or 30% of the total annual turnover of the legal entity according to the latest available accounts approved by the governing body, for infringements of Articles 14 or 15 of the Regulation,

(2) EUR 5,000,000 or 4% of its total annual turnover according to the latest available accounts approved by the governing body, for infringements of Articles 16 or 17 of the Regulation,

(3) EUR 2,000,000 for infringements of Articles 18, 19 or 20 of the Regulation.

(b) If the offender is a natural person, the amount shall be up to:

- (1) EUR 10,000,000 for infringements of Articles 14 or 15,
- (2) EUR 2,000,000 for infringements of Articles 16 or 17,
- (3) EUR 1,000,000 for infringements of Articles 18, 19 or 20 of Regulation (EU) No. 596/2014, of the European Parliament and of the Council, of 16 April 2014.

The sanctions provided for in paragraphs 9 to 13 of this article may also be applied to breaches of Regulation 596/2014, of the European Parliament and of the Council, of 16 April 2014 provided for in this paragraph.

18. For breaches of obligations or prohibitions provided for in Regulation (EU) No. 1286/2014, of the European Parliament and of the Council, of 26 November 2014, which constitute a very serious infringement, the fine to be imposed shall be:

(a) If the offender is a legal person, the amount shall be up to the highest of the following amounts:

- (1) EUR 10,000,000.
- (2) 5% of the total annual turnover of the legal entity according to the latest available accounts approved by the governing body.
- (3) Five times the amount of the profits made or losses avoided through the infringement, where these can be determined.

(b) If the offender is a natural person, the amount shall be up to the highest of the following amounts:

- (1) EUR 2,000,000.
- (2) Five times the amount of the profits made or losses avoided through the infringement, where these can be determined.

19. In the event that one or more sanctions or any of the administrative measures provided for under Article 272(2)(y) of this Act are imposed, the CNMV may issue a direct communication, or require its issuance to the producer of the packaged retail investment product or to the person who advises on it or who sells it, intended for the retail investors affected and in which they are informed of the sanction or administrative measure and indicate where to file complaints or claims to obtain compensation.

20. In the case of breaches of obligations or prohibitions provided for in Regulation (EU) No. 2016/1011, of the European Parliament and of the Council, of 8 June 2016, which constitute a very serious infringement, the fine to be imposed shall be:

(a) If the offender is a natural person, the amount shall be up to the highest of the following amounts:

(1) In the event of an infringement of Articles 4, 5, 6, 7, 8, 9 and 10, Article 11(1)(a), (b), (c) and (e), Article 11(2) and (3), and Articles 12, 13, 14, 15, 16, 21, 23, 24, 25, 26, 27, 28, 29 and 34, a fine of EUR 500,000.

(2) In the event of an infringement of Article 11(1)(d) or Article 11(4), a fine of EUR 100,000, or three times the amount of the profits made or losses avoided in euros as a result of the infringement, where these can be determined.

(b) If the offender is a legal person, the amount thereof shall be up to the highest of the following amounts:

(1) in the event of an infringement of Articles 4, 5, 6, 7, 8, 9, 10, 11(1)(a), (b), (c) and (e), 11(2) and (3), 12, 13, 14, 15, 16, 21, 23, 24, 25, 26, 27, 28, 29 and 34:

- EUR 1,000,000, or
- 10% of its total annual turnover, in accordance with the latest available accounts approved by the governing body,

(2) In the event of a breach of Article 11(1)(d) or Article 11(4):

- EUR 250,000, or
- 2% of its total annual turnover in accordance with the latest available accounts approved by the governing body, or
- three times the amount of the profits made or losses avoided as a result of the infringement, where these can be determined.

For the purposes of point (b) of this paragraph 20, where the legal person is a parent undertaking, or a subsidiary of the parent undertaking that is required to prepare Consolidated financial accounts under Directive 2013/34/EU, of the European Parliament and of the Council, of 26 June 2013, the relevant total annual turnover shall be the total annual turnover or the appropriate type of income under Council Directive 86/635/EEC, of 8 December 1986, for banks and Council Directive 91/674/EEC, of 19 December 1991, for insurance companies on the basis of the latest available Consolidated accounts as approved by the governing body of the ultimate parent undertaking or, if the person operates as a partnership, 10% of the aggregate turnover of its members.

21. Without prejudice to the sanctions described in the previous sections, the CNMV may also impose any of the following sanctions for breach of Regulation (EU) No. 2016/1011, of the European Parliament and of the Council, of 8 June 2016:

(a) issue an injunction requiring the director or the supervised entity responsible for the infringement to bring an end to the infringement and refrain from repeating it.

(b) demand restitution of the profits made or losses avoided as a result of the infringement, where these can be determined.

(c) public reprimand, indicating the director or supervised entity responsible and the nature of the infringement.

(d) revoke or suspend for a period not exceeding 10 years the authorisation or registration of a director.

(e) prohibit for a period not exceeding 10 years any natural person held liable for the infringement from discharging managerial responsibilities as directors or supervised contributors.

22. In the event of breaches of obligations or prohibitions under Regulation (EU) No. 2015/2365, of the European Parliament and of the Council, of 25 November, on transparency of securities financing transactions and of reuse and amending Regulation (EU) No. 648/2012, which constitute a very serious infringement, the fine shall be imposed up to the highest of the following amounts:

- five times the amount of profits made or losses avoided by the infringement, if they can be determined and even if they are higher than the amounts determined below,

- in the case of a legal person, for infringements of Article 4 of Regulation (EU) No. 2015/2365, the fine shall be EUR 7,000,000 or 12% of its total turnover during the preceding financial year, according to the latest available accounts approved by the governing body,

- in the case of a legal person, for infringements of Article 15 of Regulation (EU) No. 2015/2365, the fine shall be EUR 20,000,000 or 12% of its total turnover during the preceding financial year, according to the latest available accounts approved by the governing body,

In both cases, where the legal person is a parent undertaking, or a subsidiary of the parent undertaking that is required to prepare Consolidated accounts in accordance with Directive 2013/34/EU, the relevant total annual turnover shall be the total annual turnover, or the type of relevant income, in accordance with the relevant accounting legislation of the European Union, on the basis of the most recent available Consolidated accounts approved by the governing body of the ultimate parent undertaking,

- in the case of a natural person, the fine shall be up to EUR 7,000,000.

**Article 303.** *Sanctions for serious infringements.*

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

1. Fine of up to the highest of the following amounts:

- three times the gross profit obtained as a result of the acts or omissions constituting the infringement,

- 2% of the offender's own resources,

- 2% of the total funds, own or borrowed, used in the infringement, or

- EUR 300,000.

In the case of investment firms which fail to comply with the provisions contained in Regulation (EU) No. 575/2013, of 26 June, or which commit the serious infringements referred to under Article 275(4)(a), the fine to be imposed shall be up to the highest of the following amounts:

- double the gross profit obtained as a result of the acts or omissions constituting the infringement,
- 5% of the total annual net turnover, including gross income from interest receivable and similar income, income from shares and other fixed-income or equity securities, and fees or brokerages receivable, in accordance with Article 316 of Regulation (EU) No. 575/2013, of 26 June, which the firm has earned in the preceding financial year,
- 2% of the total funds, own or borrowed, used in the infringement, or
- EUR 5,000,000.

If the firm referred to in this paragraph is a subsidiary of a parent undertaking, the relevant gross income shall be the gross income resulting from the Consolidated accounts of the parent undertaking in the preceding financial year.

In the case of central securities depositories and designated credit institutions referred to under Article 54(2)(b) of Regulation (EU) No. 909/2014, of 23 July 2014, which commit the serious infringements referred to under Article 298(3) and (4), the fine imposed shall be at least twice the amount of the gross profit obtained as a result of the acts or omissions constituting the infringement, if this can be determined, and at the most, up to the highest of the following amounts:

- Double the profit obtained as a consequence of the acts or omissions constituting the infringement,
- 5% of the total annual turnover of the offender, according to the latest available accounts approved by the governing body,
- 2% of the total funds, own or borrowed, used in the infringement, or
- EUR 10,000,000.

If the offender is a parent undertaking, or a subsidiary of the parent undertaking that is required to prepare Consolidated accounts, the total annual turnover shall be that shown in the latest available Consolidated accounts.

2. Suspension or restriction of the type or volume of transactions which the offender may perform in the securities markets for a period not greater than one year.

3. Suspension of membership of an official secondary market or multilateral trading facility for a period not greater than one year.

4. Suspension for a period not exceeding one year from holding office as a director or manager by the offender in a financial institution.

5. Restitution of profits made or losses avoided by the commission of the infringement, where these can be determined.

6. Revocation or suspension of the authorisation as an investment firm for not more than five years.

7. Prohibition on dealing on own account for a period not exceeding five years for any person holding the office as a director or manager at an investment firm or any other natural person held liable for the infringement.

8. Disqualification from holding office as a director or manager at an investment firm for a period not exceeding seven years, or ten years in the case of repeat infringements.

9. Public reprimand in the “Official State Gazette” indicating the person liable and the nature of the infringement, in accordance with the provisions of Article 313 *ter*.

10. The commission of the infringement provided for under Article 278(2) shall, at any event, entail the cancellation of the registration of the agent or legal representative in the CNMV registers.

11. In the event that an investment firm acquires a major holding despite the opposition of the CNMV, regardless of any other sanction that may be imposed, provision shall be made either for the suspension of the exercise of the relevant voting rights, or for the invalidity of the votes cast or the possibility of their invalidation.

12. In the case of breaches of obligations or prohibitions under Regulation (EU) No. 596/2014, of the European Parliament and of the Council, of 16 April 2014, which constitute a serious infringement, the fine to be imposed shall be:

(a) If the offender is a legal person, the amount shall be up to the highest of the following amounts:

(1). EUR 15,000,000 or 15% of the total annual turnover of the legal entity according to the latest available accounts approved by the governing body, for infringements of Articles 14 or 15 of the Regulation,

(2) EUR 2,500,000 or 2% of its total annual turnover according to the latest available accounts approved by the governing body, for infringements of Articles 16 or 17 of the Regulation,

(3) EUR 1,000,000 for infringements of Articles 18, 19 or 20 of the Regulation.

(b) If the offender is a natural person, the amount shall be up to:

(1) EUR 5,000,000 for infringements of Articles 14 or 15 of the Regulation,

(2) EUR 1,000,000 for infringements of Articles 16 or 17 of the Regulation,

(3) EUR 500,000 for infringements of Articles 18, 19 or 20 of Regulation (EU) No. 596/2014, of the European Parliament and of the Council, of 16 April 2014.

The sanctions provided for in paragraphs 6 to 9 of this article may also be applied to breaches of Regulation 596/2014, of the European Parliament and of the Council, of 16 April 2014, provided for in this paragraph.

13. For breaches of obligations or prohibitions provided for in Regulation (EU) No. 1286/2014, of the European Parliament and of the Council, of 26 November 2014, which constitute a serious infringement, the fine to be imposed shall be:

(a) If the offender is a legal person, the amount shall be up to the highest of the following amounts:

(1) EUR 5,000,000 .

(2) 3% of the total annual turnover of the legal entity according to the latest available accounts approved by the governing body.

(3) Twice the amount of the profits made or losses avoided through the infringement, where these can be determined.

(b) If the offender is a natural person, the amount shall be up to the highest of the following amounts:

(1) EUR 1,000,000.

(2) Twice the amount of the profits made or losses avoided through the infringement, where these can be determined.

In the event that one or more sanctions or administrative measures provided for under Article 234(2)(z) of this Act are imposed, the CNMV may issue a direct communication, or require its issuance to the producer of the packaged retail investment product or to the person who advises on it or who sells it, intended for the retail investors affected and in which they are informed of the sanction or administrative measure, indicating where to file complaints or make claims for compensation.

14. In the case of breaches of obligations or prohibitions provided for in Regulation (EU) No. 2016/1011, of the European Parliament and of the Council, of 8 June 2016, which constitute a serious infringement, the fine to be imposed shall be:

(a) If the offender is a natural person, the amount shall be up to the highest of the following amounts:

(1) In the event of an infringement of Articles 4, 5, 6, 7, 8, 9 and 10, Article 11(1)(a), (b), (c) and (e), Article 11(2) and (3), and Articles 12, 13, 14, 15, 16, 21, 23, 24, 25, 26, 27, 28, 29 and 34, a fine of EUR 250,000.

(2) In the event of an infringement of Article 11(1)(d) or Article 11(4), a fine of EUR 50,000.

(3) Twice the amount of the profits made or losses avoided in euros as a result of the infringement, where these can be determined.

(b) If the offender is a legal person, the amount thereof shall be up to the highest of the following amounts:

(1) in the event of an infringement of Articles 4, 5, 6, 7, 8, 9, 10, 11(1)(a), (b), (c) and (e), 11(2) and (3), 12, 13, 14, 15, 16, 21, 23, 24, 25, 26, 27, 28, 29 and 34:

- EUR 500,000, or
- 5% of its total annual turnover, in accordance with the latest available accounts approved by the governing body,

(2) In the event of a breach of Article 11(1)(d) or Article 11(4):

- EUR 125,000, or
- 1% of its total annual turnover in accordance with the latest available accounts approved by the governing body, or
- twice the amount of the profits made or losses avoided as a result of the infringement, where these can be determined.

For the purposes of point (b) of this paragraph 14, where the legal person is a parent undertaking, or a subsidiary of the parent undertaking that is required to prepare Consolidated accounts in accordance with Directive 2013/34/EU, of the European Parliament and of the Council, of 26 June 2013, the relevant total annual turnover shall be the total annual turnover or the appropriate type of income under Council Directive 86/635/EEC, of 8 December 1986, for banks, and Council Directive 91/674/EEC, of 19 December 1991, for insurance companies on the basis of the latest available Consolidated accounts as approved by the governing body of the ultimate parent undertaking or, if the person operates as a partnership, 5% of the aggregate turnover of its members.

15. Without prejudice to the sanctions described in the previous sections, the CNMV may also impose any of the following sanctions for breach of Regulation (EU) No. 2016/1011, of the European Parliament and of the Council, of 8 June 2016:

(a) issue an injunction requiring the director or the supervised entity responsible for the infringement to bring an end to the infringement and refrain from repeating it.

(b) demand restitution of the profits made or losses avoided as a result of the infringement, where such profits or losses can be determined.

(c) public reprimand, indicating the director or supervised entity responsible and the nature of the infringement.

(d) revoke or suspend for a period not exceeding five years the authorisation or registration of a director.

(e) prohibit for a period not exceeding five years any natural person held liable for the infringement from discharging functions as directors or supervised contributors.

16. In the event of breaches of obligations or prohibitions provided for in Regulation (EU) No. 2015/2365, of the European Parliament and of the Council, of 25 November, on transparency of securities financing transactions and of reuse and amending Regulation (EU) No. 648/2012, which constitute a serious infringement, the fine shall be imposed up to the highest of the following amounts:

- Three times the amount of profits made or losses avoided by the infringement, if these can be determined and even if they are higher than the amounts determined below,

- in the case of a legal person, for infringements of Article 4 of Regulation (EU) No. 2015/2365, EUR 5,000,000 or 10% of its total turnover during the preceding financial year, according to the latest available accounts approved by the governing body, and, for infringements of Article 15 of Regulation (EU) No. 2015/2365, EUR 15,000,000 or 10% of its total turnover during the preceding financial year, according to the latest available accounts approved by the governing body,

In both cases, where the legal person is a parent undertaking, or a subsidiary of the parent undertaking that is required to prepare Consolidated accounts in accordance with Directive 2013/34/EU, the relevant total annual turnover shall be the total annual turnover, or the type of relevant income, in accordance with the relevant accounting legislation of the European Union, on the basis of the most recent available Consolidated accounts approved by the governing body of the ultimate parent undertaking,

- in the case of a natural person, EUR 5,000,000.

**Article 304.** *Publication of sanctions.*

Sanctions imposed for serious and very serious infringements shall be published in the Official State Gazette once they have become final in the administrative jurisdiction.

**Article 305.** *Sanctions for minor infringements.*

1. A fine of up to EUR 30,000 shall be imposed upon any offender committing minor infringements.

2. Where the infringements were committed by the persons referred to under Article 233(1)(b), the sanctions shall be imposed in accordance with the provisions of Articles 274 to 276 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 16 September 2009.

**Article 306.** *Supplementary sanction for very serious infringements on those who hold office as a director or manager.*

Where the offender is a legal person, in addition to the sanction imposed on the offender for very serious infringements, one or more of the following sanctions may be

imposed upon those holding office as a director or a manager therein who are responsible for the infringement:

1. A fine of up to EUR 400,000.

In the case of investment firms that breach the rules contained in Regulation (EU) No 575/2013, of 26 June, or commit the very serious infringements referred to under Article 275(4)(a), the fine to be imposed shall be up to EUR 5,000,000.

In the case of central securities depositories and designated credit institutions referred to under Article 54(2)(b) of Regulation (EU) No 909/2014, of 23 July 2014, which commit the very serious infringements referred to under Article 288(1) and (3), the fine to be imposed shall be up to EUR 5,000,000.

2. Suspension of the offender from holding office as a director or manager in the firm for a period not greater than three years.

3. Removal from office and disqualification from holding office as a director or manager in the same entity for a period not greater than five years.

4. Removal from office and disqualification from holding office as a director or manager in any firm of the type provided for under Article 233(1)(a) and in credit institutions for a period not greater than ten years.

5. Public reprimand in the “Official State Gazette” with the identity of the offender and the nature of the infringement or private reprimand.

6. Removal from the offender holding office as a director or a manager in any financial institution, with permanent disqualification from holding office as a director or a manager in any other entity of those listed under Article 233(1)(a) and 233(c)(2), (4) and (5) if the same person has been sanctioned for committing two or more breaches of the obligations or prohibitions provided for under Article 14 or 15 of Regulation (EU) No. 596/2014, of the European Parliament and of the Council, of 16 April 2014, within ten years.

In the case of the infringement provided for under Article 282(6), the sanctions provided for in paragraph 1 of this article shall be imposed at any event, the fine not being less than EUR 30,000.

**Article 307.** *Supplementary sanction for serious infringements on those who hold office as a director or manager*

Where the offender is a legal person, in addition to the sanction imposed on the offender for very serious infringements, one or more of the following sanctions may be imposed upon those holding office as a director or a manager therein who are responsible for the infringement:

1. A fine of up to EUR 250,000.

In the case of investment firms that breach the rules contained in Regulation (EU) No. 575/2013, of 26 June, or commit the serious infringements referred to under Article 275(4)(a), the fine to be imposed shall be up to EUR 2,500,000.

In the case of central securities depositories and designated credit institutions referred to under Article 54(2)(b) of Regulation (EU) No. 909/2014, of 23 July 2014, which commit

the serious infringements referred to under Article 298(3) and (4), the fine to be imposed shall be up to EUR 2,500,000.

2. Removal of the offender from holding office as a director or a manager in the firm for a period not greater than one year.

3. Public reprimand in the “Official State Gazette” with the identity of the offender and the nature of the infringement or private reprimand.

In the case of the infringement provided for under Article 295(5) in connection with breaches of the obligations provided for under Article 227, the sanction provided for in paragraph 1 of this article shall be imposed at any event, the fine being not less than EUR 12,000.

**Article 308.** *Publication of supplementary sanctions.*

The sanctions imposed in accordance with Articles 306 and 307 shall be published in the “Official State Gazette” once they have become final in the administrative jurisdiction.

**Article 309.** *Sanctions for infringements relating to obligations of Consolidated groups of investment firms and of financial conglomerates.*

1. When the infringements provided for under Articles 289 to 300 refer to obligations of Consolidated groups of investment firms, the undertaking subject to the obligation and, if applicable, its directors and managers, shall be sanctioned.

2. Furthermore, when such breaches refer to the obligations of financial conglomerates, the sanctions provided for 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 Securities Market Commission is empowered to act as coordinator of additional supervision of such financial conglomerate. The aforementioned sanctions may be extended, if applicable, to the directors and managers of the entity subject to the obligation.

**Article 310.** *Determining criteria for sanctions.*

1. The applicable sanctions in each case due to very serious, serious or minor infringements shall be determined according to the criteria provided for under Article 29(3) of Act 40/2015, of 1 October, and to the following:

(a) The nature and magnitude of the infringement.

(b) The degree of liability of the natural or legal person responsible for the infringement.

(c) The financial soundness of the natural or legal person responsible for the infringement reflected, *inter alia*, in the total turnover of the liable legal person or in the annual income and net assets of the natural person.

(d) The seriousness and persistence in time of the danger or damage caused.

(e) Losses caused to third parties by the infringement.

(f) The profits made or, as the case may be, the losses avoided as a result of the acts or omissions constituting the infringement, to the extent that these can be determined.

(g) The adverse consequences of the infringement for the financial system or the national economy.

(h) Whether the infringement was committed on the undertaking's own initiative.

(i) Repair of the losses suffered or damage caused.

(j) Collaboration with the National Securities Market Commission, provided that the natural or legal person has provided relevant elements or data for the clarification of the facts under investigation, without prejudice to the need to guarantee recovery of the profits made or the losses avoided by the same.

(k) In the event of insufficient own funds, the objective difficulties that prevented the legally required level from being attained or maintained.

(l) The undertaking's prior conduct in relation to the rules on order and discipline which affect it, having consideration for the sanctions imposed on it in the last five years.

2. To determine the applicable sanction from among those provided by Articles 306 and 307 of this Act, the following circumstances shall 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 them during the last five years.

(c) The representative position held by the party.

3. Without prejudice to the provisions of the preceding paragraphs, the sanctions applicable for breaches of obligations or prohibitions provided for in Regulation (EU) No. 2016/1011, of the European Parliament and of the Council, of 8 June 2016, shall be determined by the criteria provided for under Article 43 of that Regulation.

**Article 311.** *Intervention or substitution measures.*

1. The provisions for credit institutions referred to under Article 106 and Part V of Title III of Act 10/2014, of 26 June, shall apply to the entities listed under Article 233(1)(a)(1) to (6). Responsibility for establishing the intervention or replacement measures shall lie with the National Securities Market Commission.

2. Resolutions by the National Securities Market Commission which mark the end of proceedings may be subject to ordinary appeal before the Minister for Economy and Competitiveness.

**Article 312.** *Injunction on the person presumed liable for minor infringements.*

1. In the case of conduct classified as minor infringements in accordance with the provisions of Article 300(2)(b), before commencing 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 party responsible undertake the following within 30 days:

(a) Adopt the appropriate measures to avoid the continuance or recurrence of the conduct in question.

(b) provide compensation for any pecuniary loss resulting from its conduct to the investors, where they can be identified, and

(c) substantiate full compliance with the provisions in the two preceding paragraphs.

2. The injunction in this connection, duly served, shall interrupt the statute of limitations on the infringement, which shall recommence the day after the expiry date established in the injunction.

3. 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 313.** *Information and notification of administrative infringements and sanctions.*

1. Each year, the CNMV shall provide ESMA with aggregated information on infringements committed for breach of the obligations of this Act, as well as on sanctions and administrative measures imposed, with the exception of those of an investigative nature.

1 *bis*. The CNMV shall notify ESMA of all administrative sanctions and other administrative measures, with the exception of those of an investigative nature, imposed but not published pursuant to Article 313 *ter* (3)(c), including the remedies related thereto and the outcome thereof.

2. In the event that an administrative measure or sanction has been publicly disclosed, the National Securities Market Commission shall simultaneously notify the European Securities and Markets Authority.

3. Likewise, subject to the requirements of professional secrecy, the National Securities Market Commission shall notify the European Banking Authority of all administrative sanctions imposed on investment firms that are considered institutions for the purposes of the definition provided for under Article 4(1)(3) of Regulation (EU) No 575/2013, of 26 June.

**Article 313 bis.** *Information and notification of convictions.*

1. The CNMV shall notify ESMA of final convictions in relation to the offences defined under Articles 282 *bis*, 284 and 285 of the Criminal Code and affecting securities or financial products.

2. Each year, the CNMV shall provide ESMA with aggregate and anonymised information relating to:

(a) The court rulings referred to in the preceding paragraph, and

(b) the investigative measures taken by the Public Prosecutor's Office to investigate whether an act is criminal in nature and the court proceedings in the pre-trial or oral trial stage, in relation to the offences referred to in the preceding paragraph; and in respect of which it has knowledge by virtue of the provisions of Article 250 of this Act or because it has lodged a criminal complaint.

PART IX

### **Publication of sanctions**

**Article 313 ter.** *Publication of sanctions on the CNMV website.*

1. The CNMV shall publish on its official website, through the appropriate entry, and without undue delay, any resolution imposing a sanction, with prior notification to the persons sanctioned. In addition, the sanctions of suspension, expulsion and expulsion with disqualification, once they are enforceable, shall be recorded, where appropriate, in the Companies Register.

2. The publication shall at least include information on the type and nature of the infringement and the identity of the persons liable for the infringement.

3. In relation to the provisions of the previous paragraph, exceptionally, when the CNMV considers that the publication of the identity of the legal entity to which the sanction is addressed or the personal data of the sanctioned natural person could be disproportionate or could cause disproportionate harm to the sanctioned entities or natural persons, to the extent that the harm can be determined, or that such publication could jeopardise an ongoing investigation or the stability of the financial markets, it may agree to any of the following measures:

(a) Delay publication until such time as the reasons justifying the delay cease to exist;

(b) publish the sanction imposed in anonymous form, whereby such publication ensures effective protection of the personal data concerned. In this case, the publication of the relevant data may be postponed for a reasonable period of time if it is expected that during that period the reasons justifying publication with protection of anonymity shall cease to exist; or

(c) not to publish in any way the sanction imposed where it considers that such publication in accordance with points (a) and (b) would be insufficient to ensure that the:

(1) Stability of the financial markets is not endangered, or

(2) proportionality of the publication compared with the measures is considered to be of less importance.

4. The publication rules under the preceding paragraphs shall also be applicable to the provisional measures that the CNMV may decide in the course of disciplinary proceedings pursuant to the provisions of Article 234(5).

The publication obligation provided for in this article shall not apply to resolutions imposing measures of an investigative nature.

5. When a judicial appeal is lodged against the resolution to impose a sanction or measure, the CNMV shall also immediately publish that information on its official website, as well as any subsequent information relating to the outcome of that appeal. In addition, any resolution quashing or overturning a previous resolution to impose a sanction or measure shall also be published.

6. The CNMV shall keep all the information referred to in the preceding paragraphs published on its official website for at least five years after publication.

**Article 313 quater.** *Publication of sanctions in the “Official State Gazette”.*

Sanctions for very serious and serious infringements shall be published in the “Official State Gazette” once they have become final under administrative jurisdiction, and the provisions of Article 313 *ter* (2) and (3) shall also apply to this publication.

**Article 313 quinquies.** *Publication of resolutions to initiate disciplinary proceedings.*

The CNMV may make public the resolutions to initiate disciplinary proceedings once they have been notified to the interested parties, after resolving, as the case may be, the confidential aspects of their content and after disassociating the personal data referred to under Article 3(a) of Act 15/1999, of 13 December, on data protection, except with regard to the names of the offenders. Publication shall be decided on the basis of a sufficiently reasoned weighting between the public interest, taking into account its overall favourable effects on the improved transparency and functioning of securities markets and the protection of investors, and the harm it causes to offenders.

**Article 313 sexies.** *Communication of sanctions to the general meeting.*

Sanctions imposed by the CNMV on legal persons that are enforceable must be reported to the upcoming general meeting or the equivalent body meeting held.

## TITLE IX

### Taxation of securities transactions

**Article 314.** *Exemption from Value Added Tax and Transfer Tax and Stamp Duty.*

1. The transfer of securities, whether or not admitted to trading on an official secondary market, shall be exempt from Value Added Tax and Transfer Tax and Stamp Duty.

2. Transfers of securities not admitted to trading on an official secondary market carried out on the secondary market, which shall be taxed under the tax to which they are subject as asset transfers for consideration, when by means of such transfers of securities the intention was to avoid payment of the taxes that would have been levied on the transfer of real estate owned by the entities the said securities represent, are exempt from the provisions of the previous paragraph.

Without prejudice to the provisions of the preceding sub-paragraph, it shall be understood, unless there is evidence to the contrary, that the intention is to avoid the payment of the tax appropriate to the transfer of real estate in the following cases:

(a) When control is obtained over an entity whose assets consist of at least 50% of property located in Spain that are not used for business or professional activities, or when, once control has been obtained, the share of ownership in the entity increases.

(b) When control is obtained over an entity whose assets include securities that enable it to exercise control over another entity whose assets consist of at least 50% of real estate located in Spain that are not used for business or professional activities, or when, once control has been obtained, the share of ownership in the entity increases.

(c) When the securities transferred have been received for the contributions of real estate made on the occasion of the incorporation of companies or the increase in their share capital, provided that such assets do not affect business or professional activities and that a period of three years has not elapsed between the date of the contribution and the date of the transfer.

3. Where the transfer of securities is subject to the above-mentioned taxes without exemption, as provided for in paragraph 2 above, the following rules shall apply:

(1) For the purpose of calculating the asset, the net book values of all the assets entered in the accounts shall be replaced by their respective actual values determined on the date on which the transfer or acquisition takes place. For these purposes, the taxpayer shall be obliged to draw up an inventory of the assets on that date and to provide it to the tax authorities at their request.

(2) In the case of companies limited by shares, control shall be deemed to exist when ownership (direct or indirect) amounts to over 50% of the share capital. To this end, ownership by the acquirer of securities of other entities in the same group of companies shall also be counted as a participation.

(3) In the case of the transfer of shares to the company owning the real estate for subsequent amortisation, the case of avoidance defined in points (a) or (b) of the preceding paragraph shall be deemed to have taken place. In this case, the taxpayer shall be the shareholder who, as a result of those transactions, obtains control of the company as defined above.

(4) In the transfer of securities which, in accordance with paragraph 2, are subject to Value Added Tax and are not exempt, which shall be considered delivery of goods for the purposes thereof, the tax base shall be determined in proportion to the market value of the goods to be calculated as real estate. In this respect, in the cases referred to in paragraph (2)(c), the tax base shall be the proportional part of the market value of the real estate contributed on the day corresponding to the shares or holdings transferred.

(5) In the transfer of securities that, in accordance with the provisions of paragraph 2, must be taxed under the category of asset transfers for consideration under Transfer Tax and Stamp Duty, for purposes of settlement, the elements of the said tax shall be applied to the proportional part of the actual value of the assets, calculated in accordance with the rules contained in its legislation. To this end, the tax base shall be taken to be:

– In the cases referred to in paragraph 2(a), the proportion of the actual value of all the asset items that must be considered 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.

– In the cases referred to in paragraph 2(b), in order to determine the tax base, only the real estate of those whose assets comprise at least 50% of real estate not used for business or professional activities shall be taken into account.

– In the cases referred to in paragraph 2(c), the percentage of the actual value of the real estate contributed in the past that corresponds to the shares that are transferred.

**Article 315.** *Obligation of communication to the tax authorities.*

1. 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.

2. For the purposes provided for in the preceding paragraph, anyone who intends to purchase or transfer securities must, when placing an order, notify the respective issuer and financial intermediaries of their tax identity number; the said issuer and financial intermediaries shall not process the order until this obligation has been met.

**Article 316.** *Tax exemptions.*

The National Securities Market Commission shall enjoy the same tax exemptions as those attributed to the Bank of Spain by current legislation.

TITLE X

**Other trading systems: multilateral trading facilities and systematic internalisers**

PART I

**Multilateral trading facilities**

**Articles 317 to 319.**

**(Repealed).**

**Article 320.** *Regulation on functioning.*

1. The market operators shall draw up a regulation of transactions 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 advertising to be determined by regulation, which shall include registration in the corresponding register of the National Securities Market Commission.

2. 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 admitted to trading, to provide investors with a basis for their decisions. This information shall include, where appropriate, a description of the type and nature of the issuer's business activities. 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 member, in accordance with the provisions of Article 69(2) and 69(3), their rights and obligations.

(d) System of collateral.

(e) Rights and obligations of issuers and any other participants in the multilateral trading facility, including, where appropriate, a registered adviser appointed by the issuer, who shall ensure that issuers properly comply, both formally and substantively, with their reporting obligations to the operator and to investors. Regulations shall determine the general framework for the relationship of these advisers with issuers, as well as the scope and extent of the functions to be performed and their obligations.

(ii) Trading.

(a) Attainment of membership.

(b) Types of trade.

(c) Events of interruption, suspension and exclusion of listed securities from trading.

(d) Content and rules for pre-trade transparency.

(e) Content and rules for post-trade transparency.

(f) Obligations and means, if any, to ensure the liquidity of the contract.

(g) Procedure to be followed, as the case may be, for excluding securities from trading, specifying the obligations of the issuing entity.

(iii) Registration, clearing and settlement of transactions:

(a) Existence, where appropriate, of central counterparties or other novation mechanisms for transactions.

(b) Methods provided for or admissible for settling and clearing trades.

(iv) Market supervision and discipline.

(a) Methods of supervision and oversight by the market operator 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 by issuers, members, registered advisors and other participants.

(b) Disciplinary regime that the market operator can apply in the event of non-compliance with the Market Regulation, regardless of the administrative sanctions that may be applicable under the provisions of this Act.

(c) Procedure to be used by the market operator to inform the National Securities Market Commission of any incidents that have occurred or conduct by its members that may

constitute a breach of this Act or its implementing regulations or of the rules contained in the multilateral trading facility regulation.

**Articles 321 to 329.**

**(Repealed).**

PART II

**Provisions common to official secondary markets and multilateral trading facilities**

**Article 330. Preventive measures.**

**(Repealed).**

PART III

**Systematic internalisers**

**Article 331. Scope.**

1. The provisions of this Part 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, client orders on shares admitted to trading on 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 paragraph.

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

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 with 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 paragraph 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 332. 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 of their quotes. 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 admitted to trading on 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 327(3) shall apply with regard to post-trading transparency requirements and the deferrals of publication authorised by the National Securities Market Commission under Article 85(3).

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 paragraph 1 and that such prices reflect prevailing market conditions.

4. The provisions of this article must be applied in accordance with the provisions of Commission Delegated Regulation 1287/2006, of 10 August 2006.

**Article 333.** *Execution of orders.*

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 provided for under Articles 221 to 224.

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 systematic internalisers fulfil the conditions on better prices established in this paragraph.

3. Furthermore, systematic internalisers may execute orders they receive from their professional clients at prices other than their quoted ones without having to comply with the conditions established in the preceding paragraph 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 Articles 221 to 224, 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 Delegated Regulation 1287/2006, of 10 August 2006.

**Article 334.** *Treatment of clients.*

1. Systematic internalisers may 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 final settlement risk of the transaction.

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 221 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 Delegated Regulation 1287/2006, of 10 August 2006.

**First Additional Provision.** *Interbank deposit market.*

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.

**Second Additional Provision.** *Legal regime for issuances by the Provincial Governments of the Basque Country.*

For all intents and purposes, and taking account of the special characteristics of Basque Provincial Treasuries, issuances of securities by the Provincial Governments of the Basque Country shall be deemed to be equivalent to those issued by a regional government.

**Third Additional Provision.** *Legal regime for allowances.*

1. In addition to performing the activities provided for under Article 140, investment firms and credit institutions authorised to provide investment services may present bids on behalf of their clients in auctions of greenhouse gas allowances, as provided for in Commission Regulation (EU) No. 1031/2010, 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 trading greenhouse gas emission allowances within the EU and amending Council Directive 96/61/EC. Accordingly, this activity shall be included in its authorisation.

2. Any breach of the rules of conduct provided for under Article 59 of Commission Regulation (EU) No. 1031/2010, of 12 November 2010 shall be considered a very serious infringement.

3. 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 that it is necessary to perform the functions established in Commission Regulation (EU) No. 1031/2010, of 12 November 2010, and in relation with the matters and under the terms regulated by that Regulation.

4. The duty of secrecy regulated under Article 288 shall not apply to the information that the CNMV must provide to the competent authorities, the auction platforms and the auction supervisory entity in connection with auctions of emission allowances, pursuant to Commission Regulation (EU) No. 1031/2010, of 12 November 2010.

**Fourth Additional Provision.** *Marketing to retailers of preferred shares, convertible debt instruments and subordinated debt computable as own resources.*

1. The marketing or placement among clients or retail investors of issuances of preferred shares, convertible debt instruments or subordinated financing computable as own resources in accordance with the solvency rules governing credit institutions shall require compliance with the following:

(a) The issuance must have a tranche aimed exclusively at clients or professional investors of at least 50% of the total of the issue, without the total number of such investors being less than 50%, and without the provisions of Article 206 of this Act being applicable in this case.

(b) In the case of issuances of preferred shares, or convertible debt instruments of entities that are not listed companies, under the terms of Article 495 of the Corporate Enterprises Act, the minimum nominal unit value of the securities shall be EUR 100,000. In the case of the remaining issuances, the minimum nominal unit value shall be EUR 25,000.

This provision is considered to be a rule for the unified regulation and discipline of the securities market, and non-compliance therewith constitutes a very serious infringement within the meaning of Title VIII of this consolidated text of the Act.

2. The provisions of paragraphs (a) and (b) above shall not apply to the management of hybrid capital and subordinated debt instruments regulated in Part VII of this Act or to hybrid capital and subordinated debt instruments issued for the purpose of exchanging other securities of this type issued prior to 31 August 2012.

**Fifth Additional Provision.** *Restrictions on temporary financial investments by non-profit entities.*

1. The National Securities Market Commission, the Bank of Spain and the Ministry of Economy, each within the scope of their supervision, shall approve codes of conduct containing the specific rules to which temporary financial investments must conform made by foundations, establishments, institutions and non-profit associations, professional bodies and employment promotion funds, mutual insurance companies, social security mutual companies, mutual companies collaborating with the Social Security system and, where

appropriate, other companies subject to reduced rates of corporate income tax, which do not have a specific system of diversification of investments in order to optimise the profitability of the cash at their disposal and which they can use to obtain a yield in accordance with their operating rules..

2. The governing, administrative or management bodies of the entities referred to in the previous paragraph must present an annual report on the degree of compliance with the aforementioned codes so that it is known to the regulator of foundations or its participants, members or mutualists.

**Sixth Additional Provision.** *The Sociedad de Gestión de los Sistemas de Registro, Compensación y Liquidación de Valores (Securities Registrations, Clearing and Settlement Systems Management Company) and the companies that own central counterparty entities, central securities depositories and official Spanish secondary markets.*

1. The “*Sociedad de Gestión de los Sistemas de Registro, Compensación y Liquidación de Valores*” (Securities Registration, Clearing and Settlement Systems Management Company), hereinafter referred to as the *Sociedad de Sistemas* shall act as the central securities depository in accordance with the provisions of Articles 97 to 102 of this Act and shall perform such other functions as the government may entrust to it, subject to a report from the National Securities Market Commission.

The *Sociedad de Sistemas* assumes the functions of the Securities Clearing and Settlement Service and of the Bank of Spain, as management companies of the systems for registration, clearing and settlement of the securities traded on the markets entrusted to them. The *Sociedad de Sistemas* was created through the transformation of the company “*Promotora para la Sociedad de Gestión de los Sistemas Españoles de Liquidación, S.A.*” formed with the participation of the Securities Clearing and Settlement Service and the Bank of Spain.

The effective taking on by the *Sociedad de Sistemas* of its functions follows the modification of the object and corporate name of the company “*Promotora para la Sociedad de Gestión de los Sistemas Españoles de Liquidación, S.A.*” and of the corporate modification consisting of the distribution of the share capital of the *Sociedad de Sistemas* among the shareholders of the Securities Clearing and Settlement Service and the Bank of Spain, with the necessary capital increases or reductions. The non-monetary contributions received by the *Sociedad de Sistemas* shall be valued by an expert appointed for this purpose by common agreement between the Securities Clearing and Settlement Service and the Bank of Spain, which shall have the effects provided for in Part II of Title III of the Consolidated Text of the Corporate Enterprises Act, approved by Royal Legislative Decree 1/2010 of 2 July.

The provisions of Articles 304, 334 and 343 of the Consolidated Text of the Spanish Corporate Enterprises Act, approved by Royal Legislative Decree 1/2010, of 2 July, do not apply to the foregoing corporate transactions.

The appointment of the Board members, general managers and the suchlike of the *Sociedad de Sistemas* shall be subject to the approval of the National Securities Market Commission.

As long as the *Sociedad de Sistemas* does not establish other provisions and decisions in the exercise of the management, administration and organisation functions attributed to it by this Act, the provisions and decisions which, on the date of the effective assumption of its functions by the *Sociedad de Sistemas*, govern the securities registration, clearing and

settlement systems managed until then by the Securities Clearing and Settlement Service and by the Bank of Spain shall remain in force.

The *Sociedad de Sistemas* and the Bank of Spain shall maintain due coordination in order to replace the current legislation with the rules of the *Sociedad de Sistemas* that shall be approved in the future.

The acts and documents legally required for the capital transactions referred to in this article are exempt from taxes and levies of all kinds. In addition, such acts and documents shall not give rise to customs, notary or registration duties.

2. Without prejudice to the jurisdiction of regional governments with regard to securities registry, clearing and settlement systems and secondary markets, the government may, based on a report from the National Securities Market Commission, and after consultation with the regional governments with jurisdiction in this matter, at the proposal of the Minister for Economy and Competitiveness, grant permission to one or more entities to acquire, directly or indirectly, all of the capital, or a participation 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 participation is one which, as provided for in Part IX of Title IV and its implementing regulations, requires a takeover bid to be announced for all of the company's capital.

3. Apart from the exceptions to be established by regulation, the articles of association of these entities and any amendments thereto shall require prior approval from the National Securities Market Commission, as shall the appointment of Board members and general managers, who must meet the requirements provided for under Article 152(1)(f). If the buyers' registered office is not located in Spain, and their articles, amendments thereto and Board members and general managers require authorisation from the competent authority of another Member State of the European Union or from 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.

4. 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 participations, 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.

5. Authorisation from the government shall be required for the entity or entities directly or indirectly owning all of the capital or a controlling participation in any or all of the companies referred to in the first subparagraph of the second paragraph 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 regional governments with jurisdiction in this matter, following a report from the National Securities Market Commission and at the proposal of the Minister for Economy and Competitiveness.

6. The rules governing significant holdings provided for under Articles 48(1) and 99 shall not apply to transfers subject to the administrative authorisations provided for in this provision.

7. The National Securities Market Commission is vested with the power to supervise those entities.

**Seventh Additional Provision.** *Annual corporate governance report in listed companies without the form of a public limited company.*

The provisions of Article 540 of Royal Legislative Decree 1/2010, of 2 July, approving the Consolidated Text of the Corporate Enterprises Act shall apply, in accordance with their legal nature, to entities other than listed public limited companies that issue securities that are traded on official securities markets.

The Ministry of Economy and Competitiveness and, with its express authorisation, the National Securities Market Commission, may establish, taking into account the legal nature of the different categories of entities to which this provision applies, specific measures on the content and structure of the corporate governance report.

**Eighth Additional Provision.** *Remuneration obligations of companies whose shares are admitted to trading on an official secondary market.*

1. Executives of companies whose shares are admitted to trading on an official secondary market 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 provided for under Article 228.

2. The provisions of the first paragraph regarding companies whose shares are admitted to trading on an official secondary market 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.

3. Listed companies which, as at 1 January 2000, had 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 supporting documentation for the purpose of issuances and public offers of securities, the resolution of the general shareholders' meeting approving or ratifying the remuneration system must be presented for registration.

4. 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.

**Ninth Additional Provision.** *Time limit for resolving and notifying disciplinary proceedings.*

The time limit for resolving and notifying the resolution in the disciplinary proceedings applicable to persons acting in the financial markets, regulated by Royal Decree

2119/1993, of 3 December, shall be one year, extendable in accordance with the provisions of Articles 23 and 32 of Act 39/2015, of 1 October.

**Tenth Additional Provision.** *Supervisory report and internal control body of the Bank of Spain.*

1. The Bank of Spain shall have an internal control body whose functional dependence and reporting capacity shall be governed by the principles of impartiality, objectivity and avoidance of conflicts of interest.

2. The Bank of Spain shall draw up an annual report on its supervisory function in relation to its actions and procedures carried out in this area and from which information may be extracted on the effectiveness and efficiency of such procedures and actions. This shall include a report by the internal control body on the appropriateness of the decisions adopted by the governing bodies of the Bank of Spain to the procedural legislation applicable in each case. This report must be approved by the Governing Council of the Bank of Spain and shall be sent to the Spanish Parliament and Government of the Nation.

**Eleventh Additional Provision.** *Supervision of the audit committee of public interest entities.*

The supervision of compliance with the provisions of the Third Additional Provision of Act 22/2015, of 20 July on the auditing of accounts, with respect to the audit committee of public interest entities, lies with the National Securities Market Commission in accordance with the provisions of Title VIII of this consolidated text. This competence is without prejudice to the powers of the Institute of Accounting and Auditing to supervise the auditing of accounts.

**Twelfth additional provision.** *Specific provisions relating to the Official Credit Institute.*

Those public bodies whose main objective is to improve the national economy and which invest exclusively on their own account shall not be subject to this Act with regard to investment activities or services, and those provisions relating to the obligations derived from the regulation of the different markets that are provided for in this Act shall not apply to them.

**First Transitional Provision.** *Rules for certain increases in shareholdings in a listed company.*

Whoever on 13 August 2007 owned a percentage of the voting rights of a listed company equal to or greater than 30% and less than 50% shall be obliged to announce a takeover bid pursuant to the terms of Part IX of Title IV of this Act, in the event of any of the following circumstances occurring thereafter:

(a) It acquires, in a single act or in successive acts, shares in the company until it increases its shareholding by at least 5% in a period of 12 months.

(b) It reaches a percentage of voting rights equal to or greater than 50%.

(c) It acquires an additional holding and appoints a number of Board members who, together with those already appointed, if any, represent more than half of the company's Board members.

The government may provide for such measures as it deems necessary for the application of this provision as well as the transactions exempt from these rules.

At any event, the National Securities Market Commission shall conditionally waive, under the terms established by regulation, the obligation to announce a takeover bid established in paragraph (a), when another person or entity, directly or indirectly, has a voting percentage equal to or greater than that of the person required to make the bid.

**Second Transitional Provision.** *Participation shares in savings banks and association shares in the Confederación Española de Cajas de Ahorros [Spanish Confederation of Savings banks].*

The savings banks' shares and the association shares in *Confederación Española de Cajas de Ahorros* issued prior to the publication of this consolidated text shall continue to be transferable securities as referred to under Article 2(1) of this Act until they are fully cancelled.

**Third Transitional Provision.** *Adaptation to the new developments of Directive 2013/50/EU, of the European Parliament and of the Council, of 22 October 2013.*

1. The time limits referred to under Articles 118 and 119 shall apply to annual financial reports and half-yearly financial reports to be published as from 20 December 2015.

2. The obligations provided for under Article 125(3) shall not be applicable until the date determined by the regulations implementing this Act and Act 11/2015, of 18 June, on credit institutions and investment firms (recovery and resolution).

**Fourth Transitional Provision.** *New securities clearing, settlement and registration system and implementation of Regulation (EU) No. 909/2014, of the European Parliament and of the Council, of 23 July 2014, on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No. 236/2012.*

1. Amendments to Articles 9, 15, 45(2)(g), 93(1), 94, 95, 97 to 102, 114 to 117, 62, 281(1) to 6, 294(1) to (5), 328 by paragraphs four to eight, ten, twelve, thirteen, fifteen, twenty-one, twenty-two and twenty-nine of point (A) of the First Final Provision of the Credit Institutions and Investment Firms (Recovery and Resolution) Act shall not apply to official secondary markets, multilateral trading facilities and central securities depositories which, at the entry into force of this Act, are incorporated and operating in Spain until the date determined by the regulations implementing this Act and the Credit Institutions and Investment Firms (Recovery and Resolution) Act.

2. The obligations arising from Regulation (EU) No 909/2014, of the European Parliament and of the Council, of 23 July 2014, on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No. 236/2012 shall be enforceable in accordance with Articles 69 and 76 of that Regulation.

3. Securities represented by physical document of title admitted to trading on official secondary markets or multilateral trading facilities shall change their form of representation to

book entries in accordance with Article 76(2) of Regulation (EU) No. 909/2014, of 23 July 2014.

4. In accordance with regulations, and within the time limits established, the necessary measures shall be adopted for the unification of the registration systems by means of balances of variable income, fixed income and public debt represented by book entries, without prejudice to the particularities that apply to each of these securities. The rules of central securities depositories shall have to be amended in order to incorporate the precise changes resulting from the provisions of this Act and its implementing regulations.

5. The National Securities Market Commission shall supervise the technical changes necessary to undertake the reform of the current clearing, settlement and registration systems of the official secondary securities markets.

**Fifth Transitional Provision.** *Transitional regime for companies whose shares are being traded exclusively on a multilateral trading facility, with a market capitalisation of more than EUR 500,000,000.*

The six-month period referred to under Article 77(3) of this Act shall begin to run on 28 April 2015.

**Sixth Transitional Provision.** *General Feasibility Plan.*

The General Feasibility Plan provided for under Article 193(2)(f) shall become applicable to the entities six months after the completion of the regulatory implementation in which its content shall be specified.

**Seventh Transitional Provision.** *Collaboration Agreement between the National Securities Market Commission and the Bank of Spain.*

The collaboration agreement provided for under Article 255(2) must be signed within 14 months of the entry into force of this Act.

**Eighth Transitional Provision.** *The Public-Debt Book-Entry Market.*

1. Until the rules of this Act in respect of the Public-Debt Book-Entry Market are implemented by regulation, and the Market Regulation referred to under Article 60(4) of this Act is approved, those rules that, prior to the entry into force of this Act, have been regulating the aforementioned market and do not contradict the provisions of this Act, shall remain in force.

2. Issuances of securities of public entities and companies other than those referred to under Article 59 that were traded on the Public-Debt Book-Entry Market prior to 18 November 1998 may continue to be traded on this market until maturity.

**Ninth Transitional Provision.** *Regional securities clearing and settlement services.*

With regard to the functions that the regional Securities Clearing and Settlement Services have been carrying out, only a central securities depository shall take on functions, where applicable, subject to the provisions of the legislation in force in the corresponding autonomous region.

**Tenth Transitional Provision.** *Legislative references.*

1. Until the entry into force of Act 39/2015, of 1 October, and Act 40/2015, of 1 October, the reference made in this Act to these rules shall be understood as referring to Act 30/1992, of 26 November, on the legal regime and common administrative procedure, or Act 6/1997, of 14 April, on the general state administration (organisation and functioning), as the case may be.

2. Specifically, the correlation of the articles is as follows:

(a) In Article 16(2), the reference to Act 39/2015, of 1 October, and to Act 40/2015, of 1 October, must be understood as referring to Act 30/1992, of 26 November, and to Act 6/1997 of 14 April.

(b) In Article 176(3), the reference to Article 68 of Act 39/2015, of 1 October, must be understood as referring to Article 71 of Act 30/1992, of 26 November.

(c) In Article 234(6), the reference to Article 41(5) of Act 39/2015, of 1 October, must be understood as referring to Article 59(4) of Act 30/1992, of 26 November.

(d) In Article 273(2), the reference to Articles 23 and 32 of Act 39/2015, of 1 October, must be understood as referring to Articles 42(6) and 49 of Act 30/1992, of 26 November.

(e) In Article 274, the reference to Act 39/2015, of 1 October, and Act 40/2015, of 1 October, must be understood as referring to Act 30/1992, of 26 November.

(f) In Article 310, the reference to Article 29(3) of Act 40/2015, of 1 October, must be understood as referring to Article 131(3) of Act 30/1992, of 26 November.

(g) In the Ninth Additional Provision, references to Articles 23 and 32 of Act 39/2015, of 1 October, must be understood as referring to Articles 42(6) and 49 of Act 30/1992, of 26 November.

**First Final Provision.** *Jurisdictional entitlement.*

The Consolidated Text of the Securities Market Act is issued in accordance with the provisions of Article 149(1)(6), (11) and (13) of the Spanish Constitution, which grant the State exclusive jurisdiction over corporate and commercial legislation, the conditions for the unified regulation of credit, banking and insurance, and the conditions and coordination of the general planning of economic activity, respectively.

**Second Final Provision.** *Implementing powers.*

The government may issue the necessary regulations for the implementation of the provisions of this Act.

**SCHEDULE**

**Financial instruments falling within the scope of the Consolidated Text of the Securities Market Act**

(a) Transferable securities, understanding as such any ownership right, whatever it may be called, which, due to its own legal configuration and rules on transfer, is susceptible to

generalised and impersonal traffic in a financial market, including the following categories of securities, with the exception of instruments of payment:

(1) Shares in companies and other securities equivalent to shares in companies, and depositary receipts.

(2) Bonds and debt securities or other forms of securitised debt, including depositary receipts representing such securities.

For the purposes of this Act, equity securities shall mean securities traded on the capital market, which represent the ownership of the securities of a non-domiciled issuer, and may be admitted to trading on a regulated market and traded independently of the securities of the non-domiciled issuer.

(3) Other securities giving the right to acquire or sell such 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.

(b) Money-market instruments, meaning categories of instruments normally dealt in on the money market, such as treasury bills and commercial paper, excluding instruments of payment.

(c) Shares in collective investment institutions, as well as in venture capital undertakings and closed-ended collective investment institutions.

(d) Options, futures, swaps, forward rate agreements and other derivative contracts relating to securities, currencies, interest rates or yields, emission allowances or other derivative instruments, financial indices or financial measures that can be settled by physical delivery or cash.

(e) Options, futures, swaps, forward contracts and other derivative contracts relating to commodities that must be settled in cash or that can be settled in cash at the option of one of the parties for reasons other than a breach or another event leading to termination of the contract.

(f) Options, futures, swaps and other derivative contracts relating to commodities that can be settled by physical delivery, provided that they are traded on a regulated market or a multilateral trading facility (MTF) or an organised trading facility (OTF), except for wholesale energy products as defined under Article 2(4) of Regulation (EU) No. 1227/2011, that are traded on an OTF and that must be settled by physical delivery.

(g) Contracts for options, futures, swaps, forward agreements and other derivative contracts relating to commodities that can be settled by physical delivery not mentioned in the previous paragraph and not intended for commercial purposes, which have the characteristics of other derivative financial instruments.

(h) Derivative instruments for the transfer of credit risk.

(i) Financial contracts for differences.

(j) Options, futures, swaps, forward agreements and other derivative contracts relating to climatic variables, transportation costs or rates of inflation or other official economic statistics that must be settled in cash or that can be settled in cash at the option of one of the parties for reasons other than a breach or another event leading to termination of the contract, as well as any other derivative contracts relating to assets, rights, obligations, indices and measures not mentioned in this Schedule, which have the characteristics of other derivative financial instruments, taking into account, *inter alia*, whether they are traded on a regulated market, OTF or MTF.

(k) Emission allowances consisting of units recognised for the purposes of compliance with the requirements of Directive 2003/87/EC, of the European Parliament and of the Council, of 13 October 2003, establishing a greenhouse gas emission allowance trading scheme within the EU and amending Council Directive 96/61/EC.

This consolidated text has no legal value.