

International Securities Law and Regulation
Venezuela

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International Securities Law and Regulation Venezuela

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I. Introduction

1. Regulatory System

Major changes have affected the capital markets area in Venezuela in recent years. The main legal instrument regulating securities and exchange was the Capital Markets Law (*Ley de Mercado de Capitales*), which was originally enacted in 1973, then amended in 1975 and in 1998² (the “**Abrogated Law**”). The Abrogated Law was substituted in August 2010 by the Securities Market Law (*Ley del Mercado de Valores*³), which was later reprinted to correct “material errors”, in November of 2010, the “**Securities Market Law**”⁴ and is currently in force.

In general terms, the Securities Market Law allows companies to raise funds from the public by means of issuing and placing securities, under the supervision of the National Superintendence of Securities (*Superintendencia Nacional de Valores*, the “**Superintendence**”). The Securities Market Law regulates mainly the following matters: (i) the Superintendence and its functions; (ii) securities that are to be publicly offered; (iii) issuers (“**Issuers**”); (iv) brokers (“**Brokers**”); (v) investment advisers (“**Investment Advisers**”); and (vi) investor protection.

The Securities Market Law defines securities in a broad manner⁵, in article 16, where it states the following:

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² Published in Official Gazette N° 36.565, of October 10, 1998.

³ Published in Official Gazette N° 39.489, of August 17, 2010.

⁴ Published in Official Gazette N° 39.546, of November 5, 2010.

⁵ Contrary to the Abrogated Law, which defined securities simply as follows: “corporations’ shares, obligations and any other securities issued in masse that have the same characteristics and grant their holders the same rights within their class (Article 22 of the Abrogated Law.- *Se entenderán por valores, a los efectos de esta Ley, las acciones de sociedades, las obligaciones y demás valores emitidos en masa que posean iguales características y otorguen los mismos derechos dentro de su clase.*)

It will be understood as securities, for the purposes of this law, the financial instruments which represent property or credit rights over the equity of a corporation, short, medium or long term, issued en masse, which have the same characteristics and grant their holders the same rights within their class. The National Superintendence of Securities, in cases of doubt, shall determine which are the securities regulated by this Law.

... derivative instruments, different types of instruments or securities representing a right of option for the purchase or sale of securities and futures contracts on securities, where the parties agree to buy or sell a given amount of securities at a predetermined price and date, and generally any other type of instrument the value of which is determined and fixed by reference to the value of other assets or group of them.

...securities which represent property rights, warranties and other rights or contracts on agricultural products and supplies⁶.

A public offer is defined in article 17 of the Securities Market Law as “the offer made to the public, to given sectors or groups by any advertising or broadcasting means.” This definition is quite vague, so the same article states that, in case of “doubt regarding the nature of the offering,” the Superintendence has the power to decide whether it is a public offer or a private offer⁷.

If there is a public offer, an authorization granted by the Superintendence is needed. The granting of this authorization takes time and is subject to meeting certain legal requirements.

Any individual or corporation that provides investment advice or brokerage services in Venezuela must have a license as an investment adviser or as a securities broker, as the case may be, issued by the Superintendence.

⁶ Article 16, Securities Market Law: *Se entenderá por valores, a los efectos de esta Ley, los instrumentos financieros que representen derechos de propiedad o de crédito sobre el capital de una sociedad mercantil, emitidos a corto, mediano y largo plazo, y en masa, que posean iguales características y otorguen los mismos derechos dentro de su clase. La Superintendencia Nacional de Valores, en caso de duda, determinará cuáles son los valores regulados por esta Ley.*

... los instrumentos derivativos, los distintos tipos de instrumentos o valores que representan un derecho de opción para la compra o venta de valores, así como los contratos a futuro sobre valores, en donde las partes se obligan a comprar o vender una determinada cantidad de valores a un precio y a una fecha predeterminada, y en general cualquier otro tipo de instrumento cuyo valor esté determinado y fijado por referencia al valor de otros activos o conjunto de ellos.

...los valores representativos de derechos de propiedad, garantías y cualesquiera otros derechos o contratos sobre productos o insumos agrícolas.

⁷ Article 17, Securities Market Law: *Oferta pública de valores. Se considera oferta pública de valores, a los efectos de esta Ley, la que se haga al público, a sectores, o a grupos determinados por cualquier medio de publicidad o difusión. En los casos de duda acerca de la naturaleza de la oferta corresponderá calificarla a la Superintendencia Nacional de Valores.*

In June 2010, the National Financial System Organic Law (*Ley Orgánica del Sistema Financiero Nacional*⁸, “**Financial System Law**”) was enacted, and in December 2010 it was amended in order to correct a “material error”. This law created the Superior Organ for the National Financial System (*Órgano Superior del Sistema Financiero Nacional (OSFIN)*, “**Osfín**”). Osfin’s role is to regulate, supervise, control and coordinate the national financial system, which comprises the (i) banks and other entities that operate in the banking sector, (ii) the insurers and other entities that operate in the insurance sector, and (iii) the brokerage houses and other entities that operate in the capital markets sector. The Financial System Law, which provides for the creation of Osfin, states that, until Osfin is in a position to assume its role, it will be undertaken by the Ministry of Finance. The Financial System Law further provides that the regulatory agencies for each of those areas, including the Superintendence, shall coexist with and be coordinated by Osfin, which has the power to (i) issue binding opinions, (ii) issue regulations and (iii) establish penalties.

A new State-owned stock exchange, the Bicentenary Public Stock Exchange was created in November of 2010 by the Law of the Bicentenary Public Stock Exchange (*Ley de la Bolsa Pública de Valores Bicentenario*⁹). The Caracas Stock Exchange, a private forum which started operations in 1947, continues its activities, regulated by the General Regulations of the Caracas Stock Exchange (*Reglamento General de la Bolsa de Valores de Caracas, C.A.*¹⁰). However, even though there are now two active stock exchanges in Venezuela, the Venezuelan stock market is very diminished due to political and economic reasons.

The regulation regarding securities, especially from the point of view of international transactions, has been further complicated because, since February 2003 there has been an exchange control system in force, which further regulates and limits the activities of the capital markets actors, whether national or international. In addition, in September 2005 the Law Against Illicit Exchanges (*Ley contra los Ilícitos Cambiarios*) was passed, criminalizing foreign exchange transactions outside the regulations, and in December 2007 a new Law Against Illicit Exchanges was enacted. This Law Against Illicit Exchanges was modified in February 2008 and a new amendment was approved in May 2010 (the “**Illicit Exchanges Law**”¹¹).

Therefore, legally valid access to foreign currency is severely limited in Venezuela, in accordance with the exchange controls regulations, under the administrative office in charge of exchange control matters, the *Comisión de Administración de Divisas* (“**Cadivi**”). The main purpose of the exchange control regulations under Cadivi is (i) to establish the requirements and proceedings that must be complied with for the acquisition of foreign currency from the Central Bank of Venezuela, at the official

⁸ Published in Official Gazette N° 39,447, of June 16, 2010, and amended as published in Official Gazette N° 39,578 of December 21, 2010.

⁹ Published in Official Gazette N° 5.999 E, of November 13, 2010.

¹⁰ Published in Official Gazette N° 39,096, of January 12, 2009.

¹¹ Published in Official Gazette N° 5.975 E dated May 17, 2010.

exchange rate; and (ii) to create and regulate the obligation to sell foreign currency to the Central Bank of Venezuela, at the official exchange rate, in certain cases (mainly related to exports).

From 2003 until 2009 there was only one official exchange rate, which –in the beginning– varied from time to time. However, from 2005 to 2009 the official exchange rate was kept at the artificially low rate of Bs.F. 2.15 per US\$¹². In January 2010, two official exchange rates were established: Bs.F. 2.6 and Bs.F. 4.30. In January 2011, the official exchange rate was unified at Bs.F. 4.30. In all cases, foreign currency at the official exchange rate was only available for certain very specific matters and required an authorization issued by Cadivi¹³.

In addition to the system established by Cadivi, in June 2010 the Central Bank of Venezuela (the “**Central Bank**”) created a new foreign exchange mechanism for the sale and acquisition of foreign currency, by means of the Transaction System for Foreign Currency Denominated Securities (“**Sitme**”), where only banks and other financial institutions, under the supervision of the Central Bank, are allowed to broker foreign currency denominated bonds (“**FX-Bonds**”), in Venezuela, for a price in local currency; then sell the FX-Bonds and deposit the foreign currency in the purchaser’s account. However, the acquisition of FX-Bonds through the Sitme is also limited, by regulations, to very specific cases. In addition, the Republic or PDVSA have offered FX-Bonds, which have an implicit rate of exchange which is higher than the official rate of exchange (but lower than what has been called the “parallel” rate of exchange, which is now illegal).

2. Legal Sources

- *Ley contra los Ilícitos Cambiarios*¹⁴ (Illicit Exchanges Law).
- *Ley de la Bolsa Pública de Valores Bicentenario*¹⁵ (Law of the Bicentenary Public Stock Exchange).

¹² In January 2008 there was a change in the currency of Venezuela, by means of which the former bolívar (Bs.) was turned into the “bolívar fuerte” (Bs.F.), by dividing it by 1,000. Therefore, from 2005 to 2008 the rate of exchange was Bs. 2,150 per US\$, and from January 2008 to January 2010, the official exchange rate was of Bs.F. 2.15 per US\$.

¹³ Until the last reform of the current Illicit Exchange Law, an additional way of legally acquiring foreign currency was the parallel market, or “permuta” market, where individuals and corporations were able to acquire a bond denominated in local currency for a price in local currency, exchange such bond for a bond denominated in foreign currency and sell the latter bond for a price in foreign currency, or vice versa, by means of transactions made through local brokerage houses and their correspondents abroad, with no restrictions as to the amounts to be sold/acquired or to the origin or destination of the funds.

¹⁴ Published in Official Gazette N° 5.975 E dated May 17, 2010.

¹⁵ Published in Official Gazette N° 5.999 E, of November 13, 2010.

- *Ley del Mercado de Valores*¹⁶ (Securities Market Law), and the former *Ley de Mercado de Capitales*¹⁷ (Abrogated Law).
- *Ley Orgánica de Procedimientos Administrativos*¹⁸ (Organic Law of Administrative Procedures).
- *Ley Orgánica del Sistema Financiero Nacional*¹⁹ (Financial System Law).
- *Normas Relativas a la Autorización y Registro de los Corredores Públicos de Valores y Asesores de Inversión*²⁰ (Authorization Regulations).
- *Normas Relativas a la Información Económica y Financiera que deben suministrar las Personas sometidas al Control de la Superintendencia Nacional de Valores*²¹ (Economic and Financial Disclosure Rules).
- *Normas Relativas a la Oferta Pública y Colocación de Valores y a la Publicación de las Emisiones*²² (Public Offer Rules).
- *Normas Relativas a la Transparencia de los Mercados Capitales*²³ (Transparency Rules).
- *Normas Relativas a las Tasas y Contribuciones que deben cancelar las Personas sometidas al Control de esta Superintendencia*²⁴ (Rules on Fees).
- *Normas sobre Ofertas Públicas de Adquisición, de Intercambio y Toma de Control de Sociedades que hacen Oferta Pública de Acciones y otros Derechos sobre las mismas*²⁵ (Take-Over Rules).
- *Reglamento General de la Bolsa de Valores de Caracas, C.A.*²⁶ (General Regulations of the Caracas Stock Exchange).

¹⁶ Published in Official Gazette N° 39.489, of August 17, 2010.

¹⁷ Published in Official Gazette N° 36.565, of October 10, 1998.

¹⁸ Published in Official Gazette N° E 2.818, of July 1, 1981.

¹⁹ Published in Official Gazette N° 39,447, of June 16, 2010, and amended as published in Official Gazette N° 39.578 of December 21, 2010.

²⁰ Published in the Official Gazette N°39.071, of December 2, 2008.

²¹ Published in Official Gazette N° 39.547, of December 15, 2010.

²² Published in Official Gazette N° 39.585, of January 3, 2011.

²³ Published in Official Gazette N° 36.650, on February 26, 1999.

²⁴ Published in Official Gazette N° 39.720, of July 25, 2011.

²⁵ Published in Official Gazette N° 37.039, of September 19, 2000.

²⁶ Published in Official Gazette N° 39.096, of January 12, 2009.

3. Authorities

The regulatory agency under the Securities Market Law is the Superintendence. Under the Abrogated Law, the regulatory agency was the *Comisión Nacional de Valores* (the “**Commission**”), now substituted by the Superintendence.

The Superintendence is “coordinated” by Osfín, under article 14 of the Financial Systems Law, which includes among Osfín’s competencies “the coordination of the regulating entities of the National Financial System, in order to avoid distortions in the development of the intermediation activities of the supervised entities”²⁷.

Although not immediately related to the capital markets area, in view of the exchange control in force in Venezuela, one must mention the corresponding administrative authority: Cadivi; as well as the Central Bank which oversees Sitme.

4. Procedures

The Securities Market Law establishes the National Securities Registry (*Registro Nacional de Valores*), which is defined as follows:

*Article 15. National Securities Registry.- The files where shall be inscribed or recorded all the acts relative to the persons and securities subject to this Law constitute the National Registry of Securities. The National Securities Superintendence shall dictate the rules for its operation*²⁸.

Therefore, under the Securities Market Law, securities which are to be publicly offered must be registered, as well as the Issuers, Brokers²⁹, Investment Advisers, stock exchanges, risk rating agencies, and other entities regulated by the law³⁰.

In order to be registered, all the above must be approved by the Superintendence following procedures which are dictated by the Superintendence.

The Securities Market Law has made major changes to the matters under regulation, including significant issues with regard to Brokers and Investment advisers, among others. In many cases, the Securities Market Law has provided that the Superintendence shall issue further rules (*normas*) to regulate specific matters.

²⁷ Article 14.5, Financial System Law: *Coordinar los entes reguladores del Sistema Financiero Nacional a objeto de evitar distorsiones en el desarrollo de las actividades de intermediación de los entes supervisados.*

²⁸ Article 15, Securities Market Law: *Registro Nacional de Valores.- Los expedientes donde se inscribirán o asentarán todos los actos relativos a las personas y valores sometidos a esta Ley conforman el Registro Nacional de Valores. La Superintendencia Nacional de Valores dictará las normas para su funcionamiento.*

²⁹ Among the changes made by the Securities Market Law is that securities brokers were called as such (*corredores de valores*), whereas now they are called “authorized securities operators” (*operadores de valores autorizados*).

³⁰ Article 19, Securities Market Law.

Unfortunately, the Superintendence has not issued the regulations that are needed in order to comply with the terms of the Securities Market Law, and in some cases – such as with Investment Advisers which we shall cover below– the magnitude of the changes imposed by the Securities Market Law are of such nature that the previous regulations are no longer applicable, so there is currently a legal vacuum regarding certain procedures. In this work, we shall also cover the public take-over bids procedure.

II. Legal Order and Regulatory Interests

1. Admission

A. Market Participants

We shall refer to the three main market participants: Investment Advisers, Brokers and Issuers. As expressed above, any individual or corporation who provides investment advice or brokerage services in Venezuela must be licensed by the Superintendence as an Investment Adviser or as a Broker, as the case may be. And the issuers of securities which are to be publicly offered must also be registered.

a. Investment Advisers

Investment Advisers are regulated in article 22 of the Securities Market Law as follows:

Article 22.- Nationals or foreign persons who have studied securities and their issuers, and who express opinions regarding them whether publicly or privately shall be considered investment advisers. Investment advisers are not allowed to receive, directly or indirectly, funds or securities from its clients, except for their fees.

Investment advisers must obtain authorization from the National Superintendence of Securities. To that effect, the Superintendence must dictate the regulations regarding the authorization and the activities of the investment advisers³¹.

In general terms, the wording of the Securities Market Law is very deficient. This is very evident in the above quoted article 22, which regulates Investment Advisers, and makes no distinction between individuals and corporations. The wording “who

³¹ Article 22, Securities Market Law: *Asesores de inversión. Las personas nacionales o extranjeras que realicen estudios acerca de los valores y de sus emisores y emitan opinión sobre ellos de manera pública o privada, serán considerados asesores de inversión. Los asesores de inversión no estarán autorizados para recibir, salvo por sus honorarios, directa o indirectamente fondos o valores de sus clientes. Los asesores de inversión deberán contar con la autorización de la Superintendencia Nacional de Valores. A tal efecto, la Superintendencia deberá dictar las normas relativas a la autorización y actividades de los asesores de inversión.*

have studied securities and its issuers” could be taken to mean that only individuals, as opposed to corporations, can be considered Investment Advisers. However, article 8 of the Securities Market Law, when listing the powers and duties of the Superintendence, provides that it shall “dictate the regulations according to which companies incorporated in the Republic, abroad, or individuals dedicated to advising on securities investment may operate within the national territory”³².

Therefore, foreign nationals and corporations incorporated abroad are allowed to be registered as Investment Advisers. There are no exemptions from registration requirements for Investment Advisers already registered in another jurisdiction.

The definition contained in article 22 of the Securities Market Law is very broad, and thus substantially changes the regulations for Investment Advisers that had been in force in Venezuela. Under the Abrogated Law, Investment Advisers were required to be licensed by the Commission if their “principal object is to advise the public regarding investment in the capital markets”³³. In addition, article 84 of the Abrogated Law established the following:

Persons who intend to habitually perform advisory functions for the acquisition of foreign securities, or serve as a direct or indirect contact with financial intermediaries or public stockbrokers operating abroad, must obtain the respective authorization of the National Commission on Securities, which shall establish the registration regulations for such activities to be carried out in the country.

Whereas under the legislation now in force, the Securities Market Law, anyone who provides investment advice in Venezuela, whether publicly or privately, must be licensed by the Superintendence. Indeed, according to such law anyone who has studied the subject of securities and its issuers, and expresses an opinion regarding such subjects, must be licensed by the Superintendence. The most important distinction made by the Abrogated Law, that the advice had to be provided “habitually”, and that it should be the “principal object” of the activities of the investment adviser, is no longer valid.

Under the Abrogated Law, the Commission issued the Rules Regarding the Authorization and Registration of Brokers and Investment Advisers (*Normas Relativas a la Autorización y Registro de los Corredores Públicos de Valores y Asesores de Inversión*³⁴, the “**Authorization Regulations**”). Such Authorization

³² Article 8(14), Securities Market Law: *Dictar las normas conforme a las cuales podrán operar en el territorio nacional las sociedades constituidas en la República, en el extranjero o personas naturales dedicadas a la asesoría de inversión en valores.*

³³ Article 85, Abrogated Law: *Las personas que tengan como objeto principal asesorar al público en cuanto a las inversiones en el mercado de valores, deberán solicitar autorización ante la Comisión Nacional de Valores, la cual establecerá las normas para su inscripción en el Registro Nacional de Valores, así como aquellas que regulen sus actividades.*

³⁴ Published in the Official Gazette N°39.071, of December 2, 2008.

Regulations complied with the Abrogated Law, and specifically required that the advice should be provided “habitually”. However, in view of the fact that the Superintendence has yet to issue the rules regarding authorizations under the Securities Market Law, the Authorization Regulations should apply only in those matters that do not contradict the Securities Market Law. For instance, according to the Authorization Regulations, individuals who request an authorization must be over 35, have a graduate title, take and pass an exam with Commission (now the Superintendence) or obtain a waiver from it based upon their qualifications obtained abroad. This does not contradict the Securities Market Law.

The Abrogated Law established indirectly the acceptance of foreign Investment Advisers, since the functions of the Commission included the following text: “Dictate the rules according to which companies domiciled abroad may operate in the national territory...”³⁵. However, the Authorization Regulations contain no provisions for the authorization of legal entities incorporated abroad. It simply states that companies which are not incorporated or domiciled in Venezuela may not be authorized as investment advisors. In the case of corporations, the Authorization Regulations required that such entities had to be in the form of a Venezuelan “sociedad anónima” (limited liability company), and their exclusive object should be solely to provide investment advice.

In contrast, the Securities Market Law expressly accepts foreign Investment Advisers in the article which defines them, which refers to “Nationals or foreign persons who have studied securities and their issuers, and who express opinions regarding them whether publicly or privately”. In addition, and similarly to the Abrogated Law it indicates that the Superintendence shall issue “the regulations according to which companies incorporated in the Republic or abroad.... may operate within the national territory”³⁶.

The Abrogated Law and the Authorization Regulations required that corporations must render their services through individuals who must have been duly authorized as Investment Advisers by the Commission (now the Superintendence); this requirement is also implicit in the wording of the Securities Market Law.

There is a registration fee, which was set by the Superintendence in January of 2011, by means of the Regulations regarding Duties and Contributions that must be paid by the Persons under the Control of the Superintendence ³⁷ (*Normas Relativas a las*

³⁵ Article 9(8), Abrogated Law: *El Directorio de la Comisión Nacionales de Valores tendrá las siguientes atribuciones y deberes: ...8) Dictar las normas conforme a las cuales podrán operar en territorio nacional las sociedades domiciliadas en el exterior, que realicen actividades de intermediación con valores objeto de oferta pública o asesoría de inversión.*

³⁶ Article 8(14), Securities Market Law: *La Superintendencia Nacional de Valores tendrá las siguientes atribuciones: ... 14) Dictar las normas conforme a las cuales podrán operar en el territorio nacional las sociedades constituidas en la República, en el extranjero o personas naturales dedicadas a la asesoría de inversión en valores.*

³⁷ Published in Official Gazette N° 39.720, of July 25, 2011.

Tasas y Contribuciones que deben cancelar las Personas sometidas al Control de esta Superintendencia, the “**Rules on Fees**”). Investment Advisers who are individuals must pay 100 tributary units (approximately US\$ 1,767 at the official exchange rate of Bs.F. 4.30 per US\$)³⁸; and corporations must pay 200 tributary units (approximately US\$ 3,535 at the official exchange rate)³⁹. The tributary unit changes yearly, in order to adapt to the inflation rate⁴⁰, and as of January 2011 it is set at Bs.F. 76, which is the equivalent of US\$ 17.67, at the current official rate of exchange.

In addition, Investment Advisers must pay a “special yearly contribution” to the Superintendence, as established in the same Regulations regarding Duties and Contributions. If the investment adviser is an individual, the special contribution is of 100 tributary units (approximately US\$ 1,767 at the official exchange rate)⁴¹. If it is a corporation, then it must pay 1,000 tributary units (approximately US\$ 17,674 at the official exchange rate)⁴². This special contribution must be paid upon registration, and then yearly on the first 15 days of each January.

There is no established time frame for the Superintendence to register an investment adviser, or even to reply to its request. In view of the very recent changes in legislation, and since no new regulations have been issued to comply with the Securities Market Law, it is very difficult to estimate how long it will take now (under the Abrogated Law and the Authorization Regulations, it took many months).

The Organic Law of Administrative Procedures⁴³ (*Ley Orgánica de Procedimientos Administrativos*, the “**LOPA**”), which rules procedures not covered by specific laws or regulations, provides that “the processing and resolution of files” shall not exceed a period of four months; which in exceptional cases may be extended only for two additional months⁴⁴. But in practice, the term is not applied by the Superintendence.

As stated above, with regard to foreign individuals or corporations who wish to register as investment advisors, the Securities Market Law provides that the Superintendence shall “dictate the regulations according to which companies incorporated in the Republic, abroad, or individuals dedicated to advising on securities investment may operate within the national territory”. The Superintendence has yet to comply.

³⁸ Article 1, paragraph 2(4), Rules on Fees.

³⁹ Article 1, paragraph 2(3), Rules on Fees.

⁴⁰ Which in Venezuela is quite high. In 2010 the official inflation rate was of 27,2% (as indicated by the Central Bank of Venezuela).

⁴¹ Article 1(e), Rules on Fees.

⁴² Article 1(d), Rules on Fees.

⁴³ Published in Official Gazette N° E 2.818, of July 1, 1981.

⁴⁴ Article 60, Organic Law of Administrative Procedures: *La tramitación y resolución de los expedientes no podrá exceder de cuatro (4) meses, salvo que medien causas excepcionales, de cuya existencia se dejará constancia, con indicación de la prórroga que se acuerde. La prórroga o prórrogas no podrán exceder, en su conjunto, de dos (2) meses.*

In practice, the Superintendence is currently not accepting any requests to become a registered investment advisor, whether from individuals or corporations, or from national or foreign persons; and previously submitted applications are not being processed. And there has been no announcement regarding the regulations to be issued.

b. Brokers

According to the Securities Market Law, Brokers or “corredores públicos de valores” are now denominated “authorized securities operators” (*operadores de valores autorizados*).

Article 20 of the Securities Market Law defines the concept of Brokers as follows:

Authorized securities operators: Individuals or corporations who habitually or regularly engage in the performance of activities of intermediation with securities in the primary or secondary securities market, or in the raising of funds or securities for investment in securities regulated by this Law, in their own name and their own account, or on account of a third party, on in the name and account of a third party⁴⁵.

The same article further states that Brokers may adopt the form of corporations and may be shareholding members of a stock exchange.

The Abrogated Law did not define Brokers, it only established that persons who engaged in brokerage operations, whether within or outside a stock exchange, had to request authorization from the Commission.

According to the Securities Market Law, all Brokers (even those who were previously authorized under the Abrogated Law) must request from the Superintendence an authorization to act as such authorized securities operators within a period of 180 days from the entry into force of the Securities Market Law, which may be prorogued for a further 180 days, during which period they may act as “temporary” Brokers⁴⁶.

⁴⁵ Article 20, Securities Market Law: *Operadores de valores autorizados: Las personas naturales o jurídicas que se dediquen en forma regular o habitual a realizar actividades de intermediación con valores en los mercados primario o secundario de valores, o a la captación de fondos o valores destinados a la inversión en valores regulados por esta Ley, en nombre propio por cuenta propia o de un tercero, o en nombre de un tercero por cuenta de éste, deberán estar autorizados por la Superintendencia Nacional de Valores como operadores de valores autorizados. Los operadores de valores autorizados podrán adoptar la forma de sociedades y ser miembros accionistas de una bolsa de valores.*

⁴⁶ Transitory Provision, Securities Market Law: *Los corredores públicos de valores pasarán temporalmente a ser operadores de valores autorizados y en un lapso de noventa días prorrogables, por una sola vez por el mismo lapso, a partir de la entrada en vigencia de la presente Ley, solicitarán a la Superintendencia Nacional de Valores la autorización para actuar de manera definitiva como operador de valores autorizados, para lo cual deberán cumplir con los requisitos que establezca la Superintendencia Nacional de Valores.*

With regard to non-Venezuelan individual or corporate Brokers, the Securities Market Law's definition of Brokers does not expressly state that they may be foreign. However, when establishing the functions of the Superintendence, it provides that the latter shall issue "the regulations according to which individuals or companies incorporated in the Republic or abroad.... may operate within the national territory"⁴⁷. These regulations have yet to be issued.

The Authorization Regulations, issued under the Abrogated Law, require that corporate Brokers had to be in the form of a Venezuelan "sociedad anónima" (limited liability company), and their exclusive object should be solely to act as securities intermediaries⁴⁸.

Article 20 of the Securities Market Law also establishes that the Superintendence shall dictate the norms that will regulate the Brokers, regarding not only the authorization to act as Brokers, but also all the activities performed as such, the technical requirements of solvency and liquidity, the financial information, the transfer of shares of Broker corporations, etc.

Brokers are supervised by the Superintendence, which shall authorize and supervise their acts as provided in article 8(1) of the Securities Market Law, which establishes the latter's functions. Among the supervisory faculties of the Superintendence is included that it may revoke or suspend the Broker's authorization and cancel the inscription in case of a grave violation of the norms that regulate their activities. The law does not specify what it considers a grave violation of the norms.

The Securities Market Law has indicated that the following activities are forbidden to Brokers: (i) to perform and register simulated operations, (ii) to execute operations without a transfer of securities; (iii) to liquidate its operations outside the official site of the stock exchange; and (iv) to perform intermediacy operations for the banking and insurance sectors⁴⁹.

⁴⁷ Article 8(14), Securities Market Law: *La Superintendencia Nacional de Valores tendrá las siguientes atribuciones: ... 14) Dictar las normas conforme a las cuales podrán operar en el territorio nacional las sociedades constituidas en la República, en el extranjero o personas naturales dedicadas a la asesoría de inversión en valores.*

⁴⁸ Article 7, Authorization Regulations: *Las personas jurídicas que decidan actuar en los mercados primario y secundario como Corredores Públicos de Valores o Asesores de Inversión en los términos indicados en los artículos precedentes, deberán revestir la forma de sociedad anónima y tener como objeto exclusivo la realización de dichas actividades, especificando la naturaleza de la actividad a ser desarrollada a través de la misma.*

⁴⁹ Article 27, Securities Market Law: *1. Realizar y registrar operaciones simuladas. 2. Celebrar operaciones sin transferencia de valores. 3. Liquidar sus operaciones fuera de la dependencia oficial de la bolsa de valores. 4. Realizar operaciones de intermediación a las que se refiere la Ley que regula el sector bancario ni las operaciones contempladas en la Ley que regula el sector asegurador.*

The Securities Market Law establishes that Brokers may not deal with national public debt bonds⁵⁰.

As with Investment Advisors, there is a registration fee, which is set by the Rules on Fees. Brokers who are individuals must pay 100 tributary units (approximately US\$ 1,767 at the official exchange rate of Bs.F. 4.30 per US\$)⁵¹; and corporations must pay 200 tributary units (approximately US\$ 3,535 at the official exchange rate)⁵².

In addition, Brokers must pay a “special yearly contribution” to the Superintendence, as established in the same Regulations regarding Duties and Contributions. If the Broker is an individual, the special contribution is of 100 tributary units (approximately US\$ 1,767 at the official exchange rate)⁵³. If it is a corporation, then it must pay 1,000 tributary units (approximately US\$ 17,674 at the official exchange rate)⁵⁴. This special contribution must be paid upon registration, and then yearly on the first 15 days of each January.

As with Investment Advisers, there is no established time frame for the Superintendence to register a Broker, or to reply to its request. No new regulations have been issued to comply with the Securities Market Law in this regard, so it is very difficult to estimate how long it will take now (under the Abrogated Law and the Authorization Regulations, it took many months).

As stated above, there is a time limit set by the LOPA (a period of four months; which in exceptional cases may be extended only for two additional months), but this is not applied in practice by the Superintendence.

The Superintendence is currently not accepting requests to become a registered Broker, whether from individuals or corporations, or from national or foreign persons; and previously submitted applications are not being processed. And there has been no announcement regarding the regulations to be issued.

B. Securities

The definition of securities contained in the Securities Market Law is as follows⁵⁵:

⁵⁰ Article 2, Securities Market Law: “Los operadores de valores autorizados no podrán tener en su cartera Títulos de Deuda Pública Nacional”.

⁵¹ Article 1, paragraph 2(4), Rules on Fees.

⁵² Article 1, paragraph 2(3), Rules on Fees.

⁵³ Article 1(e), Rules on Fees.

⁵⁴ Article 1(d), Rules on Fees.

⁵⁵ Article 16, Securities Market Law: *Se entenderá por valores, a los efectos de esta Ley, los instrumentos financieros que representen derechos de propiedad o de crédito sobre el capital de una sociedad mercantil, emitidos a corto, mediano y largo plazo, y en masa, que posean iguales características y otorguen los mismos derechos dentro de su clase. La Superintendencia Nacional de Valores, en caso de duda, determinará cuáles son los valores regulados por esta Ley.*

... los instrumentos derivados, los distintos tipos de instrumentos o valores que representan un derecho de opción para la compra o venta de valores, así como los contratos a futuro sobre valores, en donde las partes

It will be understood as securities, for the purposes of this law, the financial instruments which represent property or credit rights over the equity of a corporation, short, medium or long term, issued en masse, which have the same characteristics and grant their holders the same rights within their class. The National Superintendence of Securities, in cases of doubt, shall determine which are the securities regulated by this Law.

... derivative instruments, different types of instruments or securities representing a right of option for the purchase or sale of securities and futures contracts on securities, where the parties agree to buy or sell a given amount of securities at a predetermined price and date, and generally any other type of instrument whose value is determined and fixed by reference to the value of other assets or group of them.

...securities which represent property rights, warranties and other rights or contracts on agricultural products and supplies.

The treatment of securities in the Securities Market Law differs from the same subject in the Abrogated Law. The latter also established a definition of the securities; however, such definition simply stated that “corporations’ shares, obligations and any other securities issued en masse that have the same characteristics and grant their holders the same rights within their class” shall be considered securities in accordance with such law⁵⁶. The Abrogated Law then went on to regulate each of the most common securities, establishing their legal regime.

In the Securities Market Law the securities are only defined in general terms, but there is no explicit mention of bonds, participation certificates and commercial papers, and no specific provisions apply to them. The Securities Market Law simply states, in very general terms (when establishing the functions of the Superintendence and within the context of authorizing and registering the public offer of securities), that the Superintendence shall issue rules regarding securities⁵⁷.

se obligan a comprar o vender una determinada cantidad de valores a un precio y a una fecha predeterminada, y en general cualquier otro tipo de instrumento cuyo valor esté determinado y fijado por referencia al valor de otros activos o conjunto de ellos.

...los valores representativos de derechos de propiedad, garantías y cualesquiera otros derechos o contratos sobre productos o insumos agrícolas.

⁵⁶ Article 22, Abrogated Law. *.- Se entenderán por valores, a los efectos de esta Ley, las acciones de sociedades, las obligaciones y demás valores emitidos en masa que posean iguales características y otorguen los mismos derechos dentro de su clase. La Comisión Nacional de Valores, en caso de duda, determinará cuáles son los valores regulados por esta Ley.*

⁵⁷ Article 8(2), Securities Market Law: *Autorizar e inscribir en el Registro Nacional de Valores la oferta pública, en el territorio nacional, de valores emitidos por personas domiciliadas en la República, en el extranjero o por organismos internacionales, gobierno e instituciones extranjeras y cualesquiera otras personas que se asimilen a los mismos, cumplidos los requisitos establecidos en las normas que se dicten al efecto.*

Only with regard to bonds (*obligaciones*), has the Superintendence complied with its obligation to issue rules: In January 2011, the Superintendence issued the Rules Regarding the Public Offer and Placement of Securities and the Publicizing of Issues (*Normas Relativas a la Oferta Pública y Colocación de Valores y a la Publicación de las Emisiones*⁵⁸, the “**Public Offer Rules**”). The Public Offer Rules contain a chapter dedicated to bonds.

It is interesting to note that the Securities Market Law does explicitly include derivatives in the definition of securities, and gives them the same treatment as the rights of option for purchase or sale of securities and future contracts of securities. It also explicitly includes securities which represent property rights, warranties and other rights or contracts on agricultural products and supplies.

Issuer requirements in order to make a public offer of securities are contained in the Public Offer Rules, which were issued under the Securities Market Law.

Article 2 of the Public Offer Rules establishes as its first requirement that the Issuer must obtain from the Superintendence the authorization to make a public offer. Article 4 provides that such authorization and the registration of the issue in the National Securities Registry are indispensable prerequisites needed in order to make a public offer of securities.

2. Periodic Disclosure

The Venezuelan capital markets regulations strictly establish the information that its actors must disclose periodically to the Superintendence.

Article 43 of the Securities Market Law establishes that corporations subject to it must notify the Superintendence in advance regarding the following: (i) variations of equity; (ii) sale of the main asset; (iii) change in the object of the company; (iv) merger or transformation of the company; (v) any other actions which the Superintendence may establish⁵⁹. According to the Rules regarding the Economic and Financial Information that must be supplied by the Persons subject to the Control of the National Superintendence of Securities (*Normas Relativas a la Información Económica y Financiera que deben suministrar las Personas sometidas al Control de la Superintendencia Nacional de Valores*⁶⁰, the “**Economic and Financial Disclosure Rules**”), the actors regulated by the Superintendence are required to

⁵⁸ Published in Official Gazette N° 39.585, of January 3, 2011.

⁵⁹ Article 43, Securities Market Law: *Las personas jurídicas sometidas al control de esta Ley, deben participar a la Superintendencia Nacional de Valores, con anticipación y en la forma que establezcan las normas que ésta dicte, la realización de los siguientes actos: 1. El reintegro, aumento o reducción del capital social. 2. La enajenación del activo social en los casos y en las formas que determine la Superintendencia Nacional de Valores. 3. El cambio de objeto social. 4. La transformación o fusión. 5. Las reformas de los estatutos en las materias expresadas en los ordinales anteriores. 6. Todos aquellos actos que la Superintendencia establezca.*

⁶⁰ Published in Official Gazette N° 39.547, of December 15, 2010.

provide certain information periodically. The Economic and Financial Disclosure Rules establish the type of information required depending on the subject entity: (i) Issuers, (ii) collective investments entities and its administrating corporations; (iii) Brokers and (iv) transfer agents. We shall refer here mainly to the Issuers and the Brokers.

A. Issuers

In accordance with the Economic and Financial Disclosure Rules, within the seven days following the annual ordinary shareholders meeting, such companies must deliver to the Superintendence, among others, the following documents: (i) the approved financial statements; (ii) the internal auditor's report; (iii) a certified copy of the minutes of the shareholders meeting; (iv) information regarding dividends and the remuneration of the board of directors; (v) a report from the board of directors which must include the most important variations, new contracts, new activities, litigation, and any other important new fact that may affect the company; (vi) a list of shareholders; (vii) a report regarding the compliance with the good corporate government principles established by the Superintendence; (viii) a report on the methods and procedures used to prevent money laundering; and (ix) the last income tax declaration.

Also, every quarter, within 30 days after the accounting closing, Issuers must provide the Superintendence with their quarterly financial statements, explaining the most significant variations compared to the same quarter from the earlier year.

In addition, Issuers must publish monthly the following information: (a) Financial statements, compared to the same month of the previous year and adjusted for inflation. (b) Solvency indicators, working capital indicators, long and short term debt, and the return over equity and the return over assets.

The Issuers must also inform the Superintendence of any economical or financial fact or legal action which may be important for the estimation of the prices or the circulation of the securities. Also they must inform about declared dividends and any transactions between the companies and the board of directors or its principal shareholders, or with companies related to either. Issuers must inform, with 30 days anticipation, of any shareholders meeting which is to be convened to decide the dissolution of the company, or the extension of its term, or its merger to another company, or the sale of its main asset, or the change of its object. And in the case of meetings to decide the increase or reduction of its capital, the Issuer must inform the Superintendence with 15 days anticipation.

Issuers who have been authorized by the Superintendence to issue securities through public offers abroad must provide to the Superintendence the information above, as well as any other information requested by the regulatory institution abroad.

B. Brokers

Brokers must also provide economic and financial information, periodically, to the Superintendence, in accordance with the Economic and Financial Disclosure Rules.

Brokers must provide to the Superintendence, in the first 5 days of each quarter, operations of their own and related portfolio of the previous quarter, including a report on the date of the operation, the issuer of the securities, the type of operation, the conditions, the quantity, etc.

Annually, within 15 days from each year's closing, Brokers must provide a report of the owners of the securities of the related portfolio. Subsequently, if there is any change they must also inform the Superintendence.

Corporate Brokers must provide the Superintendence, within the next 15 days after the last monthly closing, the following information: (i) Financial statements elaborated by a public accountant. (ii) Report of their own portfolio, mentioning issuers, description of the securities, date of acquisition, date of maturity, value, currency and exchange rate among others. (iii) Report of the related portfolio organized by each of the holders of securities related to the Broker, mentioning issuers, description of the securities, date of acquisition, date of maturity, value, currency and exchange rate among others. (iv) Report of the administrated portfolio organized by the clients, mentioning each contract and including the securities included in the contract. (v) Report of the portfolio in custody.

The corporate Brokers must celebrate the ordinary shareholder meeting in the first 90 days following the annual closing. Within the 8 days following the shareholders meeting, such companies must deliver to the Superintendence a certified copy of the minute of the shareholders meeting. In addition, the corporate Brokers must within the thirty days following the shareholder meeting, the registered certified copy of the minute.

Within the 15 days following the closing of each semester companies must deliver to the Superintendence a report of the operations done during the last semester.

Also, every quarter, within 5 days after the accounting closing, Brokers must provide to the Superintendence their portfolio operations and the related portfolio operations, mentioning the date, the issuer, type of operation, conditions, amount, price and custody among others.

Within the ninety days following the semester closing, corporate Brokers must deliver to the Superintendence, among other, the following documents: (i) the approved financial statements; (ii) a report on the methods and procedures used to prevent money laundering; and (iii) the last income tax declaration.

The corporate Brokers must also inform the Superintendence of any economical or financial fact or legal action which may affect them. Additionally, they must inform

about any litigation, changes in their statutes, changes in bank loans situations, changes in the board of directors or relevant personnel.

C. Other participants

Members or shareholders of a stock exchange must, within the ninety days following the semester closing, deliver to the Superintendence the following documents: (i) Financial statements; (ii) a report of their operations; (iii) their last income tax declaration.

Brokers who are not members or shareholders of a stock exchange must, within the thirty days after the closing of the financial year, deliver to the Superintendence the following documents: (i) Financial statements; (ii) a report of their operations; (iii) the last income tax declaration.

Other participants, such as transfer agents must also disclose information periodically to the Superintendence.

Additionally, the Authorization Regulations, which were issued under the Abrogated Law, provided for the Commission, now the Superintendence, to exercise control over Investment Advisers. For instance, (i) by requiring that certain documents be kept by the Investment Adviser or submitted by the Investment Adviser to the Superintendence⁶¹; (ii) by requiring that whenever the Investment Adviser renders advice in connection with related corporations, the Investment Adviser must previously notify the Superintendence, as well as its clients; and (iii) by requiring that any marketing material related to investment advisory services should be previously approved by the Superintendence.

3. Trading Rules

A. Securities Offerings

As stated above, the Public Offer Rules provide that the indispensable prerequisites needed in order to make a public offer of securities are: (i) the Superintendence's authorization to make a public offer and (ii) the registration of the issue in the National Securities Registry.

The primary placement can be done by the Issuer or by a placement agent (who must be a Broker or have been expressly authorized as placement agent by special laws). The price of the offer must be mentioned in the prospectus and must be maintained during all the placement period.

⁶¹ Correspondence, memoranda, books and other registries (of memoranda, of instructions, of received fees), invoices, recommendations.

The Issuer must publish in a national journal and in a local journal a notice publicizing the issue, at least five days before the primary placement takes place. In the notice the Issuer must mention the names, addresses, emails, and phone numbers of the placement agents. In addition, within five days after the end of the placement process the Issuer must also publish a notice of the end of the process. Those notices must be approved by the Superintendence. Once the primary placement ends the Issuer must deliver to the Superintendence the results, with the identification of the buyers and the amount acquired.

Article 8 establishes that the Issuer must indicate the term in which the placement of the issue will take place. That term will begin at the time published in the public notice, and will not exceed six months.

The Public Offer Rules establish that the Issuer and the intermediaries who participate in the primary placement must give preference to small and medium investors to purchase the securities, during the five (5) first days following the publication, in accordance with the guidelines established by the Superintendence for each case. These features should be included in the prospectus and in any other publications⁶².

The Issuers, the placement agents and the distributors, must follow the rules established in the prospectus and in the contract of primary placement (which must be approved by the Superintendence).

The placement agents can celebrate distribution contracts with Brokers or with distribution agents. The Issuers, the placement agents and the distributors have to register operations daily, and the information contained in those registries must be delivered to the Superintendence monthly.

The prospectus must be authorized by the Superintendence. Once the securities are registered in the Superintendence, the Issuer must provide the Superintendence with the final prospectus in order to begin the public offer. The Issuer must also deliver to the Superintendence the placement contracts, the common representative contracts, the payment agent contract and the custody contract, all of them notarized. Although the prospectus cannot circulate publicly before the issue is authorized, the Issuer can privately deliver it to the agents of placement and distribution. All the advertising related to the issue must be authorized by the Superintendence.

⁶² Article 19, Public Offer Rules: *El emisor y los intermediarios que participen en el proceso de colocación primaria de acciones de compañías anónimas u obligaciones cuya oferta vaya destinada al público en general deberán dar preferencia a los pequeños y medianos inversionistas para la adquisición de dichos valores, durante los cinco (5) primeros días siguientes a la publicación del aviso de inicio de la colocación, conforme a las directrices que establezca la Superintendencia Nacional de Valores para cada caso concreto. Estas características deberán señalarse en el prospecto y demás publicaciones relacionadas con la oferta.*

B. Disclosure of Acquisition of Substantial Holdings

Article 18 of the Securities Market Law regulates public take-over bids. Within that context, its sole paragraph establishes the following with regard to “significant participations”, as the law terms it⁶³:

The person who wishes to acquire in a single or by successive acts a volume of shares listed on a stock exchange that will lead to reaching a significant participation in the capital of a company, or to the ability to control administrative organs thereof, shall make public the information public in the media and within the periods that the National Superintendence of Securities shall determine in the rules that it will dictate to that effect.

The person who has not made the notifications referred to in this article shall not be able to exercise the rights derived from the acquired securities and the agreements adopted with such person’s participation shall be null and void without prejudice to the penalties provided in the Law.

The rules which develop public take-over bids, Rules on Public Offers of Acquisition, Interchange and Take-over of Companies who make Public Offer of their Stock and Other Securities (*Normas sobre Ofertas Públicas de Adquisición, de Intercambio y Toma de Control de Sociedades que hacen Oferta Pública de Acciones y otros Derechos sobre las mismas*⁶⁴, the “**Take-Over Rules**”), were issued by the Commission in 2000, under the Abrogated Law, which had a similar article regarding public take-over bids.

The Take-Over Rules include a definition of a what is called a “participation [which is] reputed significant”:

Any participation in the capital of the company which represents –directly or indirectly– by means of ownership, beneficial interest, control rights over the right to vote, business integration agreements or any other manner, which allows the Initiator to obtain control or to increase its participation in more than ten percent.

According to the Take-Over Rules, the person who is initiating a public offer bid must notify the Commission, now the Superintendence, within the procedure established for public offer bids (see below).

⁶³ Article 18, Securities Market Law. *Quien pretenda adquirir en un sólo acto o en actos sucesivos un volumen de acciones inscritas en una bolsa de valores, que conlleven a alcanzar participación significativa en el capital de una sociedad, o la capacidad de controlar los órganos administrativos de la misma deberá hacerlo del conocimiento público por los medios y dentro de los plazos que la Superintendencia Nacional de Valores determine en las normas que deberá dictar al efecto. Quien no haya realizado las notificaciones a las que se refiere este artículo no podrá ejercer los derechos derivados de los valores que adquiera y los acuerdos adoptados con su participación serán nulos sin perjuicio de las sanciones establecidas en la Ley.*

⁶⁴ Published in Official Gazette N° 37.039, of September 19, 2000.

In addition, the Abrogated Law established, under its article 122, that persons who directly or indirectly, under whatever title, reached ownership or beneficial rights over more than 10% of any kind of shares of an Issuer, needed to notify the Commission within 2 days from the transaction. And it also established that the administrators of an Issuer had to notify the Commission of any acquisition of shares of such Issuer made by such administrators, also within 2 days⁶⁵. The Rules relating to the Transparency of the Capital Markets (*Normas Relativas a la Transparencia de los Mercados Capitaless*⁶⁶, the “**Transparency Rules**”), which were issued under the Abrogated Law, develop the provisions of article 122 of the Abrogated Law.

The Securities Market Law has no equivalent provision, but since the regulations of the Transparency Rules do not contradict the Securities Market Law, they are applicable.

C. Privileged Information

Article 38 of the Securities Market Law defines privileged information as follows:

Privileged information is that information which is not accessible or available to the public, of a precise character, and which if made public, influences or may influence, in an appreciable manner, the trading of securities. It is not privileged information that information which may be developed by third parties independently, or which is available to the public otherwise”⁶⁷.

The use of privileged information in the securities market in order to obtain an economic benefit is a criminal act, and article 52 of the Securities Market Law provides that it is punished by prison (3 months to 2 years), fines and disqualification. The Securities Market Law also states the employees of the Superintendence should not divulge data or confidential or privileged information, under the penalties established above and dismissal⁶⁸.

⁶⁵ Article 122, Abrogated Law: *Aquellas personas que directa o indirectamente, llegaren por cualquier título a tener la propiedad o el usufructo de más del diez por ciento (10%) de cualquier clase de acciones de una sociedad cuyos valores sean objeto de oferta pública, deberán dentro de los dos (2) días hábiles siguientes a la fecha de la respectiva transacción, comunicar a la Comisión Nacional de Valores, dicha negociación, la tenencia accionaria de la misma, y manifestar su intención o planes de compra o venta y cualquier otra información que solicite la Comisión Nacional de Valores. **Parágrafo Único:** Los administradores de las sociedades cuyos valores sean objeto de oferta pública, comunicarán a la Comisión Nacional de Valores, dentro de los dos (2) días hábiles siguientes a su realización, toda adquisición o transacción de acciones de las sociedades administrativas por ellos, realizada directa o indirectamente, con independencia de su cuantía.*

⁶⁶ Published in Official Gazette N° 36.650, on February 26, 1999.

⁶⁷ Article 38, Securities Market Law: *Se entenderá por información privilegiada, aquella inaccesible o no disponible al público de carácter precisa y que, de hacerse pública, influya o pueda influir, de manera apreciable, sobre la cotización de valores. No es privilegiada aquella información que podría ser desarrollada por terceros de manera independiente, o la que es disponible al público de otra forma.*

⁶⁸ Article 11, Securities Market Law.

The wording of the Securities Market Law's definition of privileged information, stresses that it influences or may influence trading in an appreciable manner. The law does not specify further. However, the Transparency Rules, which were issued under the Abrogated Law, explain that the terms "may influence in an appreciative manner the trading of securities" are to be understood as referring to "any fact or event of any nature, such as legal or economic, financial, managerial, technological, natural events, which in the opinion of the issuing company affects or may affect it"⁶⁹.

Issuers are obliged to divulge privileged information in accordance with the provisions of the Securities Market Law⁷⁰ and the Transparency Rules. Issuers must prepare and deliver "immediately" to the Commission, now the Superintendence, a report with a succinct summary of the information, including economic, financial and other details which are "indispensable" for the market to reach a reasonable criterion about the facts, events or situation provided⁷¹. Such report must then be delivered "immediately" to at least three national or international news agencies (which provide national coverage), one of which must provide "real time" information⁷².

According to the Abrogated Law, if the Issuer considered that the immediate disclosure of the information could be damaging to its legitimate interests or to the interests of the holders of securities issued by the Issuer, it should provide the information to the Commission, requesting that the matter should remain confidential. If the Commission did not answer within 2 days, the Issuer had to make public the information. This provision was further developed in article 20 of the Transparency Rules, which indicated that it must be a reasoned request which must explain with clarity the motivations, of fact or law. The Securities Market Law contains no equivalent provision.

D. Public Take-Over Bids

In 2000, under the Abrogated Law, the Commission issued the Take-Over Rules. Article 109 of the Abrogated Law stated that the Commission, now the Superintendence, should issue the rules governing the procedure of public take-over bids. The Securities Market Law also contains a similar provision, so the Take-Over Rules continue to apply.

⁶⁹ Article 1, Transparency Rules: *Se entenderá que puede influir de manera apreciable sobre la cotización de valores emitidos, todo hecho o evento de naturaleza jurídica, económica, financiera, gerencial, tecnológica, eventos naturales o de cualquier otra índole que a juicio de la sociedad emisora, afecte o pueda afectar a la misma.*

⁷⁰ Article 38, Securities Market Law. *Las sociedades que hagan oferta pública de valores, deberán tener a disposición de los inversores, toda la información financiera y legal exigida por la Superintendencia Nacional de Valores en la norma que a tal efecto dicte, a fin de que puedan formarse un adecuado juicio sobre su inversión. Estas sociedades deberán hacer del conocimiento público de manera inmediata todo hecho o evento que pueda influir en la cotización de alguno de los valores emitidos por ella. Mientras no hubiere sido divulgada dicha información se considerará como privilegiada.*

⁷¹ Articles 2 and 3 of the Transparency Rules.

⁷² Article 4 of the Transparency Rules.

The aim sought by the Take-Over Rules, as established in Article 2, is fourfold:

- 1) To provide a transparent procedure, in order to prevent erratic fluctuations and deviations in the value of shares and other securities.
- 2) To allow the orderly participation, in conditions of equality, of all shareholders.
- 3) To permit bids by other interested parties, who may wish to equal or improve the offers' conditions.
- 4) To promote the supply of the information required by the existing shareholders, regarding their decision on whether or not to sell.

The Take-Over Rules cover (i) Public Offers of Acquisition or *Ofertas Públicas de Adquisición* (OPA), (ii) Exchange Public Offers or *Ofertas Públicas de Intercambio* (OPI), and (iii) Public Take-over Offers or *Ofertas Públicas de Toma de Control* (OPTC).

In the first two cases, the initiator of the offer does not have and seeks to own a "Significant Participation" (to obtain control or to increase its participation in more than 10% of the capital) with the proviso that the procedure "does not have the effects of a Takeover". The difference between OPA (Acquisition) and OPI (Exchange) regards compensation: in the first case it is the payment of money, whereas in the second case it is the transfer of securities.

A take-over offer (OPTC) is the procedure whereby the initiator seeks to acquire or to complete (by the transfer of money and/or securities) a controlling majority, or to increase its existing share participation by a percentage equivalent to a Significant Participation.

The Take-Over Rules also apply to (i) the shareholders who wish to increase their participation by more than 10% —or by any percentage, if in a takeover situation; and (ii) the majority shareholders who wish to increase their participation.

Regarding sellers, the provisions of the Take-Over Rules apply also to shareholders who offer publicly to sell to the best bidder a Significant Participation or the majority control (more than 50% or the effective control of the decisions of the shareholders' meeting).

The Take-Over Rules establish the common procedure to be complied with, which can be briefly summarized as follows:

—The initiator must file a report before the Superintendence, stating the information relevant to the offer. The duration of the offer shall be set by the initiator, within a limit of no less than 20 and no more than 30 stock market working days.

—The Superintendence shall then accept or deny the authorization for the release of the report.

—The target company must then consign its observations, including a report from its board of directors. These observations shall also be released to the public, after notifying the Superintendence.

—Any person, including the shareholders of the company involved, may present a competing offer, thus becoming an initiator.

—Initial offers may be modified, subject to the Superintendence's approval of the release of the modified report.

—The offers may also be revoked simply by previously notifying the Superintendence provided the revocation is made before the offer becomes effective. The Superintendence must approve the revocation if made afterwards.

—The acceptance of the offer must be notified to its initiator. The acceptance may also be revoked, but only in certain cases.

—The payment due must be made in a stock exchange within the 5 stock market working days following the closing of the offer.

Additionally, certain formalities apply to each of the different types of public offer, such as, in case of take-overs, the filing of a special report with detailed information (including future plans).

There is also a simplified procedure, which applies (i) if the initiator already owns at least 2/3 of the shares and offers to acquire total control of the company; (ii) if the offer is limited to 10% of the shares; and (iii) if the company concerned proceeds to a plan of acquisition of treasury shares.