

**Supervision and inspection procedures for
persons and firms operating in the securities
markets (P01)**

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1. SCOPE

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

- a) Spanish investment services firms. The scope of supervision extends to any office or facility of such firms whether nationally or abroad, and to non-EU investment services firms operating in Spain.
- b) Consolidated groups of investment services firms and financial conglomerates.
- c) Investment services firms authorized in any other member State of the European Union and operating in Spain, including their associated agents and branches in this country, and the Spanish branches of credit institutions authorized in any other member State of the European Union.
- d) Agents of investment services firms.
- e) Credit institutions and their agents, insofar as they may conduct business in the securities markets, and non-EU credit institutions operating in Spain.
- f) Collective investment schemes, their asset management firms and agents, and their depositaries.
- g) Venture capital schemes and other closed-ended collective investment schemes, and their asset management firms and depositaries where applicable.
- h) Investor Compensation Scheme asset management firms.
- i) Crowdfunding platforms.
- j) Stock exchange management companies, multilateral trading systems management companies, central counterparty entities and central securities depositaries.
- k) The *“Sociedad de Bolsas”* and companies holding all shares, or a direct or indirect controlling interest in the share capital, of any of the entities mentioned in the preceding paragraph j).
- l) Issuers of securities, insofar as their activities concern the securities markets.
- m) Members of any official stock exchange and clearing houses engaged in the settlement of trades.
- n) All other entities or persons mentioned in article 233 of the Consolidated Text of the Spanish Securities Market Act.
- o) Securitization funds, banking asset funds and their asset management firms.
- p) Credit rating agencies, issuers and originators of securitization funds.
- q) Any other natural persons or legal entities, insofar as their professional activity or business may involve the securities markets.

- r) Public interest entities as regards their obligations in relation to the membership and functions of audit committees.
- s) Natural persons and legal entities found to be in breach of activities and names reserved by law.

2. APPLICABLE LEGISLATION

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

1. Supervision and inspection of entities and natural persons operating in the securities markets. The procedure is governed by the following legislative and regulatory provisions:
 - Consolidated text of the Spanish Securities Market Act approved by Royal Legislative Decree 4/2015, of 23 October, Part V Investment Services Firms, Part VI Investor Compensation Scheme, Part VII Standards of Conduct and Part VIII Supervisory, Inspection and Sanctions Regime.
 - Business Financing Act(Law 5/2015, of 27 April). Chapter IV, Supervisory and Sanctions Regime, of Part III Legal Framework for Securitizations, and Part V Legal Regime for crowdfunding platforms.
 - Bank Restructuring and Resolution Act (Law 9/2012, of 14 November). Tenth additional provision concerning Banking Asset Funds.
 - Law 22/2014, of 12 November, regulating venture capital schemes, other closed-ended collective investment schemes and asset management firms operating closed-ended collective investment schemes. Part II Closed-Ended Collective Investment Scheme Asset Management Firms, and Part IV Standards of Conduct, Supervision, Inspection and Sanctions.
 - Bank Regulation, Supervision and Solvency Act (Law 10/2014, of 26 June). Article 4.2.h).
 - Audit Act (Law 22/2015, of 20 July). Article 32.c.
 - Collective Investment Schemes Act (Law 35/2003, of 4 November). Part IV Collective Investment Scheme Asset Management Firms, Part V Depositary Entities, and Part VI Standards of Conduct Supervision, Intervention and Sanctions.
 - Financial Conglomerates Supervision Act (Law 5/2005, of 22 April), which amends other finance industry laws. Articles 1 to 8.
 - Regulation (EC) 1060/2009 of the European Parliament and of the Council, of 16 September, on credit rating agencies.
 - Consolidated text of the Limited Companies Act, approved by Royal Legislative Decree 1/2010, of 2 July.
2. Supervision and inspection of compliance with the obligations incumbent upon stock exchange management companies, the Stock Exchange Company, central counterparty entities, central securities depositaries and stock exchange members, and of the conduct

of their shareholders or partners. The procedure is governed by the following legislative and regulatory provisions:

- Consolidated text of the Spanish Securities Market Act approved by Royal Legislative Decree 4/2015, of 23 October. Part IV Official Secondary Markets, Part VII Standards of Conduct, Part VIII Supervisory, Inspection and Sanctions Regime, and Part X Other Trading Systems: Multilateral Trading Systems and Systemic Internalization.
 - Consolidated text of the Limited Companies Act, approved by Royal Legislative Decree 1/2010, of 2 July. Part XIV, Listed Public Companies.
 - Royal Decree 1333/2005, of 11 November, implementing the market abuse provisions of the Securities Market Act (Law 24/1988, of 28 July).
 - 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.
 - 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 (EMIR).
 - Regulation (EU) No. 596/2014 of the European Parliament and of the Council, of 16 April 2014, on market abuse (Market Abuse Regulation), and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC.
 - 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.
 - 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.
3. Supervision and inspection of compliance with obligations incumbent on investors trading OTC derivatives contracts. The procedure is governed by the following legislative and regulatory provisions:
- Consolidated text of the Securities Market Act approved by Royal Legislative Decree 4/2015, of 23 October, Article 234.9.
 - Regulation (EU) 648/2012 of the European Parliament and of the Council, of 4 July 2012, on OTC derivatives, central counterparties and trade repositories (EMIR).
4. Supervisory and inspection procedures related with persons or entities in breach of names and activities reserved by prevailing legislation. The procedure is governed by the following regulatory provisions:
- Consolidated text of the Securities Market Act approved by Royal Legislative Decree 4/2015, of 23 October, Articles 144.3 and 144.4.
 - Collective Investment Schemes Act (Law 35/2003, of 4 November). Article 14.
 - Business Financing Act(Law 5/2015, of 27 April). Articles 28 and 48.

- Law 22/2014, of 12 November, regulating venture capital schemes, other closed-ended collective investment schemes and their asset management firms. Article 11.
5. Supervisory actions related with the audit committees of public interest entities are governed by:
 - Audit Act (Law 22/2015, of 20 July). Third additional provision.
 6. Guidelines and/or recommendations issued by the European Securities and Markets Authority (ESMA) under article 16 of Regulation (EU) No. 1095/2010 of the European Parliament and of the Council, of 24 November 2010, establishing a European Supervisory Authority, will be incorporated into this procedure, provided the CNMV confirms that it complies, or intends to comply, within the meaning of paragraph 3 of the aforementioned article 16.
 7. The following will also apply to this procedure:
 - Public Administration and Ordinary Administrative Procedures Act (Law 30/1992, of 26 November).¹
 - Resolution of the National Securities Market Commission Board of 11 March 2015 on the delegation of competences.
 - Decision of the National Securities Market Commission of 16 November 2016 creating and regulating the CNMV Electronic Registry.

3. SUPERVISING DEPARTMENTS

1. The Institutions General Division will be responsible for the supervision and inspection of the persons and firms mentioned in paragraphs a) to i) of section 1 above, as well as the management firms mentioned in paragraph o). The General Institutions Division will be responsible for those of the persons and entities mentioned in paragraph n) assigned to it under the Internal Regulations.

Supervision and inspection of credit institutions will be coordinated with the Bank of Spain.

2. The Markets General Division will be responsible for supervision and inspection of activities conducted by the persons and entities mentioned in paragraphs j) to r) of section 1 above. Said Division will likewise supervise and inspect activity in the securities markets. The General Markets Division will be responsible for those of the persons and entities mentioned in paragraph n) assigned to it under the Internal Regulations.

Supervision and inspection of Annotated Public Debt Market members will be coordinated with the Bank of Spain.

3. The Policy and International Affairs General Division will be responsible for supervising organizational, corporate, financial and institutional matters affecting the entities mentioned in paragraphs j) and k) of section 1.

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

4. The Legal Services General Division will be responsible for procedures relating to persons or entities in breach of reserved names and activities as mentioned in paragraph s), section 1 above.

4. SUPERVISION AND INSPECTION FUNCTIONS

1. The CNMV will be vested with all requisite supervisory and inspection powers for the discharge of its functions, whether directly or in collaboration with other Spanish or foreign authorities. The requisite powers of supervision and inspection are provided for in the Securities Market Act and will be applied in the manner and subject to the restrictions established by law.
2. Supervisory and inspection procedures will be undertaken subject to the following:
 - 2.1 Supervisory and inspection actions will be carried out in line with the terms of supervision and inspection plans, as amended where applicable.
 - 2.2 Any CNMV actions which are not subject to planning will be undertaken in line with the procedural criteria established by the General Division responsible for opening a CNMV supervisory process.
 - 2.3 Ongoing supervision of market activity will be undertaken in line with the parameters defined by the Markets General Division responsible.
3. Supervisory and inspection functions are discharged via on-site inspections and remote supervision.

CNMV supervisory staff may access all books, records, reports, data, ledgers and documents (on whatever support) belonging to the natural persons or legal entities inspected, in accordance with the provisions of prevailing legislation.

The CNMV may engage the services of auditors, consultants and other professional experts in order properly to discharge its supervisory functions, in accordance with prevailing legislation and subject to due justification. Specifically, the CNMV may request professional experts to issue any pertinent reports containing evaluations of subject entities' compliance with regulations and standards applicable to the securities markets, and in particular with the marketing practices applied to financial instruments. The experts designated for these purposes and their employees may operate without disclosing that they act on behalf of the CNMV.

4. On-site supervision and inspection procedures will be undertaken subject to the following criteria:
 - 4.1 Subject entities and/or persons will be notified in advance of on-site inspections and/or depositions. In cases requiring immediate action, such notices may be served upon commencing the procedure.
 - 4.2 On-site inspections will be made within the working hours of the entities or persons concerned, avoiding any disturbance in their normal activity. Nevertheless, it may be agreed with such entities or persons to hold inspections on other days and/or at other times.

5. Supervisory reviews concern the information reported to the CNMV on a regular or continuous basis by the market and by the persons and entities operating therein, as well as information sought in the course of supervisory activities.
6. In discharging its supervisory and inspection functions, the CNMV may adapt and extend the procedures described in its plans and agenda in view of its control findings and market circumstances.

5. SUPERVISION AND INSPECTION PLANS

1. In order to ensure due performance of supervisory and inspection functions, the General Institutions General Division and the Markets General Divisions will each draw up an annual procedures plan setting out the following criteria and objectives:
 - Planned remote supervision procedures, identifying periodic and specific actions and stipulating whether they are, in principle, general or specific in scope
 - Planned on-site inspections, specifying whether they constitute complete, partial or follow-up procedures, in principle.
 - Criteria for the selection of target companies, entities, institutions, persons and transactions for supervisory purposes.
 - Schedule of supervision procedures.
 - General summary of controls and verification procedures, objectives and purposes, and the human, material and technical resources to be used in view of the nature of the supervision planned.
2. Supervisory and inspection plans, as well as subsequent modifications thereof, will be approved by the CNMV Executive Committee at the proposal of the General Director concerned.
3. The Markets and the Institutions General Divisions will submit their Supervision and Inspection Plans to the CNMV Board for examination.
4. The General Director of Institutions and the General Director of Markets will report to the Executive Committee on the progress of the supervision and inspection plans implemented within their remit on a six-monthly basis. Said officers will likewise present an annual report on the supervision and inspection procedures actually carried out to the Executive Committee.
5. Supervision and inspection plans are subject to professional secrecy under article 248 of the Securities Market Act, and they may not be disclosed to the public in accordance with article 14 of the Transparency, Access to Public Information and Good Governance Act (Law 19/2013, of 9 December).

6. SUPERVISION AND INSPECTION REPORTS

1. Supervision and inspection reports will be reviewed and signed by the Director of the competent Department, by the officer in charge of the Market Oversight Unit, or by the relevant General Director.

2. Upon completion of an inspection and due consideration of any pleadings received, the General Director competent for the matter concerned will present a final report to the Executive Committee with the following contents:
 - a) Matters of fact observed.
 - b) Proposal for formal letters and cautions to be addressed to the persons or entities concerned.
 - c) Proposal for preventive, interim or corrective measures and/or sanctions considered appropriate.
3. The competent General Director will report any material or significant infringements to the Executive Committee over the course of the inspection procedure and before its completion, explaining the measures considered necessary in the circumstances. Any infringements reported will be previously verified and assessed by the competent General Director following examination of the pleadings filed by interested parties.
4. The General Director of Institutions and the General Director of Markets will report regularly to the Executive Committee on the findings obtained in remote supervision procedures carried out within their respective remits. Upon completion of a remote supervision procedure, however, the competent General Director will determine whether it is necessary to report findings separately to the Executive Committee in accordance with paragraph 2 above.
5. If any irregularity is observed in the course of ongoing supervision of market activity, a report will be issued with the content mentioned in paragraph 2 above.

7. DEMANDS AND REQUESTS FOR INFORMATION AND DATA

1. In discharging their supervisory and inspection functions, the General Institutions, Markets, Strategic Policy and International Affairs, and Legal Divisions may require any of the firms, institutions, entities or persons mentioned in section 1 above to provide all such information as they may consider necessary and appropriate for the application of their procedures, and if necessary they may likewise summon and take statements from any parties in order to obtain information.
2. Demands and requests for information will in general be made in accordance with the *Procedure for the issue of demands and requests for data or reports to companies, institutions and entities operating in the Securities Market*.

Demands and requests for information or data made in the course of supervisory and inspection procedures may establish reasonable deadlines in view of the nature, contents and market impact of the procedure and/or of the information requested, and in view of the difficulty or workload inherent in compliance.

8. DUTY OF SECRECY AND CONFIDENTIALITY

1. The CNMV and its staff will be subject to the duty of professional secrecy in the discharge of their supervisory and inspection functions.
2. Confidential or reserved information and data obtained as a consequence of the supervisory or inspection procedures carried out shall therefore not be disclosed,

reported or divulged to any other person or authority, in accordance with articles 248.1 and 248.3 of the Securities Market Act.

3. Any breach of the duty of professional secrecy will entail the criminal, civil and disciplinary liability established by law.
4. Article 248.4 of the Securities Market Act enumerates the only exceptions to the obligation to maintain professional secrecy.

9. PROCEDURE MANUALS

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

10. EFFECT

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