



## Procedure governing modification of the conditions in which Organisations operate (P10)

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## 1. SCOPE

This internal procedure has been developed in accordance with the contents of Article 39 of the Internal Regulations of the National Securities Market Commission (*Comisión Nacional del Mercado de Valores*, CNMV), and it shall apply to all actions taken in the exercise of the following powers:

1. Authorisation and registration of changes to articles of association and regulations.
2. Authorisation and registration of changes to business programmes.
3. Authorisation and registration of the appointment and dismissal of directors and managers.
4. Receipt of communications on shareholder structure and authorisation of significant shareholdings.
5. Authorisation and registration of company operations.
6. Registration of communications regarding the creation and closure of branches.
7. Registration of communications regarding the creation and dismissal of agents.

This procedure shall apply to the following organisations:

- Spanish and foreign Investment Services Firms.
- Spanish and foreign Collective Investment Scheme Asset Management Companies.
- Closed-End Collective Investment Scheme Management Companies.
- Open-ended Collective Investment Schemes.
- Securitisation Fund Asset Management Firms.
- Venture Capital Schemes (VCI).
- Closed-End Collective Investment Schemes.
- European Venture Capital Funds (EuVECA) and European Social Entrepreneurship Funds (EuSEF)
- Credit institutions that offer investment services.
- Investment Services Firms authorised in other EU Member States.
- Collective Investment Scheme Asset Management Companies authorised in other EU Member States.
- Participatory Financing Platforms (PFP).

## 2. APPLICABLE REGULATIONS

The regulations that apply to this procedure are set out, *inter alia*, in the following provisions:

- The consolidated text of Securities Market Act (*Ley del Mercado de Valores*, TRLMV), approved by Royal Legislative Decree 4 of 23 October 2015, Collective Investment Schemes Act 35 of 4 November 2003.
- Act 22 of 12 November 2014, which regulated venture capital schemes, other closed-ended collective investment schemes and closed-ended collective investment scheme asset management firms, and which amended Collective Investment Firms Act 35 of 4 November 2003.
- Royal Decree 1082 of 13 July 2012, which approved the Regulations for Collective Investment Firms Act 35 of 4 November 2003.
- Royal Decree 217 of 15 February 2008, on the Legal Regulations governing Investment Services Firms.
- Act 5 of 27 April 2015, on the promotion of corporate financing. Title III, Legal Regulation of Securitisations, and Title V, Legal Regulation of participatory financing platforms.
- Act 11 of 18 June 2015, on the recovery and winding-up of credit institutions and investment services firms.
- Royal Decree 1559 of 15 November 2012, which establishes the legal regulations governing asset management firms.
- National Securities Markets Commission Circular 1 of 30 January 2013, on the communication of information on Investment Services Firms and their parent companies, and Collective Investment Scheme Asset Management Companies.

This present procedure shall incorporate any directive or recommendation issued by the European Security and Markets Authority (ESMA), pursuant to Article 16 of Regulation (EU) No. 1095/2010 of the European Parliament and of the Council, of 24 November 2010, which established a European Supervisory Authority, provided that the CNMV has confirmed its compliance or its intention to comply under the terms of paragraph 3 of the aforementioned Article.

The following provisions also apply to this procedure:

- Act 30 of 26 November 1992, on the Legal Regulations Governing Public Authorities and Common Administrative Procedure<sup>1</sup>.
- The Agreement of 11 March 2015 by the Board of the National Securities Markets Commission, on the Delegation of Powers.
- The Resolution adopted on 16 November 2011 by the National Securities Markets Commission, creating and regulating the CNMV's Digital Register.

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<sup>1</sup> From 2 October 2016, Act 39 of 1 October 2015, on Common Administrative Procedure for Public Authorities, shall apply.

### **3. DEPARTMENT RESPONSIBLE FOR PROCESSING**

The processing of the files referred to in this internal procedure shall be the responsibility of the Department for the Authorisation and Registration of Institutions, belonging to the General Institutions Division.

### **4. PROCESSING**

#### **4.1 AUTHORISATION AND REGISTRATION OF CHANGES TO ARTICLES OF ASSOCIATION**

1. Any change to a company's articles of association shall be subject to the Procedure for the authorisation and registration of organisations.
2. Changes to articles of association that are required from time to time by the regulations shall not require prior authorisation, though they must be notified to the CNMV so that they can be recorded in the relevant register. Prior authorisation shall also not be required for any other changes when the CNMV decides in a general ruling, in reply to a prior written enquiry, that no authorisation procedure is necessary due to the minimal importance of such changes.

When it is concluded from an analysis of the intended change that a prior authorisation procedure is required, the CNMV shall inform the party in question of this circumstance within a maximum of 30 working days following receipt of the complete documentation, giving notice of the need to remedy any defects identified or, where applicable, giving notice of the initiation of an ordinary authorisation procedure.

Once received by the CNMV, any changes to articles of association that do not require prior authorisation shall be entered in the relevant Special Register kept by the CNMV.

#### **4.2 CHANGES TO CORPORATE BUSINESS PROGRAMMES**

1. Any change to a company's business programme shall be subject to the Procedure for the authorisation and registration of organisations.

However, ruling on such authorisation procedures shall be the responsibility of the CNMV's Executive Committee, at the proposal of the General Director of Institutions.

2. Authorisation shall not be required for changes to a business programme that are of little importance in terms of causing any alteration to or reduction of services and activities that have already been authorised, or when the CNMV rules that such authorisation is not required in a written reply to an enquiry previously submitted to this end by the business in question.

The changes to business programmes referred to in the preceding point must subsequently be notified to the CNMV so that they can be entered in the register.

Once received by the CNMV, any changes to business programmes that do not require prior authorisation shall be entered in the relevant Special Register.

### **4.3 APPOINTMENT AND DISMISSAL OF DIRECTORS AND MANAGERS**

1. The appointment of the directors of Investment Services Firms and their parent companies shall require a prior no objection ruling. To this end, rulings on appointments must be requested by submitting the standard forms provided by the CNMV, accompanied by the documentation required under the applicable regulations. Such changes shall be subject to the Procedure for the authorisation and registration of organisations.

No objection rulings shall be the responsibility of the CNMV's Chairman or Deputy Chairman, at the proposal of the General Director of Institutions.

2. The appointment of new directors and general managers or similar officers at Participatory Financing Platforms (PFP) shall be subject to the Procedure for the authorisation and registration of organisations.
3. Appointments at all the other organisations listed in section 1 of this Procedure shall not require a no objection ruling prior to registration. However, it shall be confirmed before registration that the necessary requirements for honourability and know-how have been met.
4. Given that the ending of a mandate does not require any no objection ruling, it shall be registered as soon as it is notified.

### **4.4 CHANGES TO SHAREHOLDER STRUCTURE**

1. Investment Services Firms and Collective Investment Scheme Asset Management Companies shall inform the CNMV of the transfer of any of the shares that represent their share capital, providing information on the resulting composition of their shareholder structure.
2. Any individual or company that, acting alone or in conjunction with others, decides directly or indirectly to acquire a significant shareholding in an Investment Services Firm or a Collective Investment Scheme Asset Management Company, or that may subsequently control the organisation in question as the result of such an acquisition, shall previously inform the CNMV, which shall assess the shareholder's suitability and may object to the acquisition of the shareholding or impose the conditions it deems appropriate pursuant to the regulations in force
3. The acquisition of a significant shareholding or control, as mentioned in the preceding point 2, and any changes to the list of shareholders with significant shareholdings in participatory financing platforms, shall be subject to the no objection process set out in the Procedure for the authorisation and registration of organisations, with the special conditions that the specific regulations establish for the said procedure.

### **4.5 COMPANY OPERATIONS**

Any transformation, merger, demerger or separation of a business line, or any other corporate modification process that is carried out by an Investment Services Firm or a Collective Investment Scheme Asset Management Company, or that leads to the creation of an Investment Services Firm or a Collective Investment Scheme Asset Management

Company, shall require authorisation pursuant to the authorisation process established in the Procedure for the authorisation and registration of organisations.

#### **4.6 BRANCHES OF INVESTMENT SERVICES FIRMS AND COLLECTIVE INVESTMENT SCHEME ASSET MANAGEMENT COMPANIES**

The CNMV must be notified, using the standard forms provided to this end, of the opening or closing within Spanish territory of any branches of Investment Services Firms or Collective Investment Scheme Asset Management Companies that are authorised in Spain.

Once it has been confirmed that the notification includes all the necessary information, such branches shall be entered in the relevant register.

#### **4.7 AGENTS OF INVESTMENT SERVICES FIRMS**

Any Investment Services Firms that engage agents must notify the CNMV of their engagement, after entering their powers of attorney at the Mercantile Registry and having confirmed that such agents meet the requirements for honourability, know-how and experience, and the CNMV shall then enter them in the register.

Entry in the CNMV register shall be a necessary requirement for agents to be able to commence their activities. Agents' details shall be notified to the CNMV in accordance with the procedure established to this end in the digital register, through the use of the CIFRADOCC/CNMV digital encoding and signature service.

### **5. ENTRY IN THE REGISTERS**

1. Any changes that are to be entered in the registers must be accompanied by the documentation required under the regulations.

When applications for registration are not accompanied by all the necessary documentation, or such documentation is defective or incomplete, the General Director of Institutions shall send the company, institution or organisation in question a written notice requiring it to remedy any defects identified or to submit the necessary documents by the deadlines established from time to time.

2. Registration shall be formalised in a ruling by the CNMV's Chairman or Deputy Chairman, at the proposal of the General Director of Institutions, following a report by the Legal Services Department, which must be issued within the specific terms established in the applicable regulations and, where no such term is specified, within three months of being requested.

### **6. SUSPENSION OF THE MAXIMUM TERMS FOR RESOLUTION**

The passage of the maximum terms for processing and resolving the administrative processes referred to in this Procedure may be suspended in the following cases:

- When an interested party is required to remedy defects and submit documents and other necessary items required in order for a ruling to be handed down, the term shall be

suspended between notification of the requirement and effective compliance therewith by the party in question.

- When necessary reports are required, the term shall be suspended between the date on which such reports are requested, which must be notified to the interested parties, and the date on which they are received, which must also be notified to the said parties.

## **7. PROCEDURAL MANUALS**

1. The General Director of Institutions shall approve the “Procedural Manuals” required for compliance with and the practical application of the provisions contained in this present Procedure.
2. The criteria or standards included in the “Procedural Manuals” shall provide basic guidelines and specific operational rules to ensure that duties are performed in the most appropriate and effective way.
3. The “Procedural Manuals” shall contain the controls deemed necessary under the terms of the CNMV’s Risk Management System, in order to ensure effective compliance with provisions set out in law and in this procedure.
4. The process for the preparation of the “Procedural Manuals” shall adhere to the criteria and standards issued by the ESMA in order to promote common supervisory practices, pursuant to the contents of Article 29.2 of Regulation (EU) no. 1095/2010, as well as to any guidelines that the CNMV may publish in relation to this procedure.
5. The “Procedural Manuals” shall be submitted to the CNMV’s Executive Committee.

## **8. EFFECT**

This present procedure shall apply from 21 September 2016, and it shall be revised every year or whenever there is a regulatory change that significantly affects its contents.