

## I. GENERAL PROVISIONS

### HEAD OF STATE

- 15837** *Royal Decree-Law 21/2017, of 29 December, on urgent measures for the adaptation of Spanish law in accordance with European Union regulations in relation to the securities market.*

### EXPLANATORY PROVISIONS

The regulatory framework formed by Directive 2014/65/EU, of the European Parliament and of the Council, of 15 May 2014, on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU, and by 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, represents one of the most important reforms of European regulations in relation to markets and financial instruments in all its history.

Regulation (EU) No. 600/2014, of 15 May 2014, shall enter into force on 3 January 2018, which is also the date set down for the effective incorporation of Directive 2014/65/EU, of 15 May 2014, into the domestic law of the Member States after the modification implemented by Directive (EU) 2016/1034, of the European Parliament and of the Council, of 23 June 2016, amending Directive 2014/65/EU on markets in financial instruments. The incorporation of said directive requires an in-depth adaptation of the current regime contained in Royal Legislative Decree 4/2015, of 23 October, that approved the recast text of the Securities Market Act. The foregoing adaptation is currently subject to the pertinent parliamentary debate procedures as the Securities Market and Financial Instruments Bill. Notwithstanding the foregoing, it is absolutely necessary to first incorporate into Spanish law certain aspects of the new regulations in order to provide the financial institutions and market operators, as well as the Spanish Securities and Exchange Commission, with the legal guarantees required for them to operate in accordance with the provisions of Regulation (EU) No. 600/2014, of 15 May 2014, and Directive 2014/65/EU, of 15 May 2014, subject to all of the legal consequences thereof, within a single market environment.

### II

This Royal Decree-Law is hereby enacted in light of the foregoing urgent and extraordinary need for the incorporation of said reforms, the main aspects of which refer to certain provisions that relate to the legal regime of the Spanish trading venues for financial instruments and are included in Directive 2014/65/EU, of 15 May 2014, modified by Directive (EU) 2016/1034, of 23 June 2016. In particular, said provisions refer to the organisational measures for managing algorithmic trading and measures regarding the authorisation and operating conditions of the trading venues (mainly contained in Chapter I of Title II and in Title III of the aforementioned directive). The necessary compliance by the Spanish trading venues with the foregoing guidelines and regulations constitutes a prerequisite for the certification of said markets for the purposes of complying with several obligations established in Regulation (EU) No. 600/2014, of 15 May 2014, and in particular the obligation established in said regulations for investment firms to execute share transactions in regulated markets, multilateral trading facilities or systematic internalisers.

In particular, the purpose thereof is to ensure that at Spanish trading venues it is possible to execute transactions regarding shares admitted to trading at said trading venues. In the absence of the foregoing measures, the European Union intermediaries could jeopardise their EU certification, in light of the fact that the requirements that are introduced by Directive 2014/65/EU, of 15 May 2014, have not yet been incorporated into Spanish law. If, on 3

January 2018, no such regulation exists, then the loss of depth and liquidity of the Spanish trading venues would be almost immediate, by reason that the different securities markets agents would choose, in order to satisfy their financial needs for investment and financing, other trading venues that comply with the new obligations imposed by the European regulations. The foregoing situation is completely undesirable in light of the serious consequences that would exist for the Spanish economy.

Furthermore, the concept of organised trading facilities is also included, which represent an inherent aspect of the regulated markets and of the multilateral trading facilities for the purposes of establishing the main trading modalities that are available within the European Union as from 3 January 2018 for public debt and derivatives.

Finally, and in order to fully comply with the obligations of Directive 2014/65/EU, of 15 May 2014 and of Regulation (EU) No. 600/2014, of 15 May 2014, it is necessary to establish the corresponding disciplinary and sanctions regime that exclusively establishes the breaches related to the new obligations imposed in this Royal Decree-Law. The inclusion of the foregoing regime is necessary in order to ensure the effective application of the regulatory transposition, as the absence of a response to any breaches thereof would seriously jeopardise the implementation and compliance therewith. The mere possibility that the certification of Spanish trading venues may be affected thereby means that it is absolutely necessary to include said disciplinary and sanctions regime within this regulatory framework. Accordingly, the Constitutional Court has upheld the possibility of using a Royal Decree-Law as a regulatory instrument for the establishment of administrative penalties and sanctions, by reason that a Royal Decree-Law constitutes legislative provisions that are incorporated into the legal system, thereby satisfying the requirements of the principle of legality provided for under Article 25.1 of the Spanish Constitution (Constitutional Court Judgments 29/1982, of 31 May and 3/1988, of 21 January) and, that, as a result thereof, does not breach the prohibition applicable to Royal Decree-Laws regarding the rights of citizens as provided for under Article 86.1 of the Spanish Constitution. Notwithstanding the foregoing, the Constitutional Court requires (Constitutional Court Judgment 27/2015, of 19 February) that the extraordinary and urgent needs, which require the establishment of penalties and sanctions by way of the ratification of Royal Decree-Laws, must be sufficiently justified, and said extraordinary and urgent needs have been sufficiently justified in the foregoing paragraphs, by reason that said measures are absolutely necessary in order to guarantee the correct functioning of Spanish trading venues and the adaptation thereof to the new obligations imposed by the European regulations subject to the regulatory transposition.

In relation to the modality adopted for the transposition of the foregoing legal precepts, it has been considered preferable, by reason of the clarify and legal certainty thereof, to select the specific precepts that govern said aspects in the Securities Market and Financial Instruments Bill, being the legislative text that shall be used for the definitive transposition of Directive 2014/65/EU, of 15 May 2014, instead of the incorporation of modifications to the recast text of the Securities Market Act, in force, that have only been introduced where strictly necessary. Accordingly, in light of the fact that this Royal Decree-Law shall substitute the respective precepts included in the Securities Market Act, in force, the new European regulations shall be simply and directly transposed when the complete legal regime provided for under the new regulations finally enters into force, and moreover the precepts constitute precepts that are already known to the market, by reason that they have recently been the subject of public discussion in relation to the procedures for the aforementioned Securities Market and Financial Instruments Bill.

III

The measures that are adopted in this Royal Decree-Law constitute measures adopted in light of extraordinary and urgent situations, and accordingly satisfy said requirements, as provided for under the provisions of Article 86 of the Spanish Constitution, that establishes the prerequisites for the adoption of said measures by way of the regulatory concept of the Royal

Decree-Law. In the context set out hereinabove, it is of vital importance to guarantee, without delay, due compliance by the Spanish trading venues with the obligations contained in Directive 2014/65/EU, of 15 May 2014.

In effect, the main purpose of this Royal Decree-Law is to implement the adaptations of the Spanish legal system that are required for the transposition of the new obligations provided for under Directive 2014/65/EU, of 15 May 2014, in relation to trading venues. Accordingly, this Royal Decree-Law includes the legal precepts regarding trading venues that are required to be immediately incorporated into Spanish law for the basic functioning of the financial institutions and the investment firms in relation to the trading venues and of the trading venues themselves, thereby avoiding potential disruptions that could generate serious difficulties within the Spanish financial system at a time in which important changes are being introduced throughout the European Union.

This Royal Decree-Law must formally enter into force on 3 January 2018 in order to comply with the transposition regime provided for under Article 93 of Directive 2014/65/EU, of 15 May 2014, modified, in relation thereto, by Directive (EU) 2016/1034, of 23 June 2016. Pursuant to paragraph 1 thereof, although the adoption and publication of the transposition regulations must be carried out no later than 3 July 2017, nonetheless the foregoing directive expressly states that the Member States shall apply their respective provisions as from 3 January 2018.

By virtue of the urgency that exists for the adoption of the measures, in order to provide for the immediate application thereof, pursuant to the authorisation provided for under Article 86 of the Spanish Constitution, at the proposal of the Minister for the Economy, Industry and Competitiveness, and after the prior deliberation thereof at the meeting of the Council of Ministers, held on 29 December 2017,

#### PRELIMINARY TITLE

##### Article 1. *Purpose.*

The purpose of this Royal Decree-Law is to establish and govern certain aspects of the legal regime of Spanish trading venues for financial instruments so as to ensure full compliance with and certification thereof, pursuant to the European standards provided for in Directive 2014/65/EU, of the European Parliament and of the Council, of 15 May 2014, on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU.

#### TITLE I

##### Regulated markets

#### CHAPTER I

##### Organisation and functioning

##### *Section 1. Authorisation and legal regime*

##### Article 2. *Requirement for authorisation.*

1. In order to commence their activities, the regulated markets must obtain the pertinent authorisation from the Spanish Securities and Exchange Commission (hereinafter, the "CNMV").

2. The CNMV shall only grant the pertinent authorisation when both the market operator and the systems of a regulated market comply with the requirements established under this title.

3. The period in which to conclude the authorisation procedure shall be that of six months. In the absence of any express resolution within said period, the application shall be deemed to be rejected.

### *Section 2. Market operators*

#### *Subsection 1. Status*

#### *Article 3. Market operator.*

1. The regulated markets shall be governed and managed by an entity that shall be legally designated as the market operator of the corresponding market.

2. In the case that the regulated market is a legal person and is governed or operated by a market operator other than by the market itself, the requirements and obligations provided for under this title shall be distributed between the regulated market and the market operator.

#### *Article 4. Functions and responsibilities of the market operators.*

1. The market operators of the regulated markets shall be responsible for ensuring that the regulated markets that they operate comply with all of the requirements established in this Royal Decree-Law and, as the case may be, in the corresponding implementing regulations thereof.

2. The market operators of the regulated markets must be authorised to exercise the rights that this Royal Decree-Law and the corresponding implementing regulations thereof establish in favour of the regulated market that they operate.

3. The market operators shall provide the CNMV with a description of any significant modification in relation to any information that had previously been presented thereto and that is pertinent for the assessment as to whether said market operator complies with the provisions of this Royal Decree-Law and other applicable provisions, such as Regulation (EU) No. 600/2014, of 15 May 2014 and 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 Directives 2003/124/EC, 2003/125/EC and 2004/72/EC.

#### *Article 5. Supervision by the CNMV.*

1. The market operators of the regulated markets shall carry out the functions related to the organisation and the functioning of the regulated market, under the supervision of the CNMV.

2. The CNMV must:

- a) Periodically verify that the regulated markets comply with the provisions of this title.
- b) Verify that the regulated markets comply, at all times, with the terms and conditions of the initial authorisation established in this title.

### *Subsection 2. Requirements regarding organisation and functioning*

#### *Article 6. Requirements regarding organisation.*

1. The regulated markets must comply with the following requirements regarding organisation:

- a) To adopt measures to clearly identify and manage the potential adverse consequences for the operation of the regulated market or for the members or participants thereof, of any conflict of interest between the interests of the regulated market, its owners or the market

operator of the market and the requirements for the proper functioning of the regulated market, and in particular where such conflicts of interest might prove prejudicial to the accomplishment of any functions delegated to the regulated market by the CNMV.

b) To be adequately equipped to manage the risks to which it is exposed, to implement appropriate mechanisms and systems to identify all significant risks to its operation, and to put in place effective measures to mitigate said risks.

c) To adopt mechanisms for the adequate management of the technical operations of the system, including the establishment of effective contingency procedures in order to manage any possible risks of system disruptions.

d) To establish transparent and non-discretionary rules and procedures that provide for fair and orderly trading and establish objective criteria for the efficient execution of orders.

e) To adopt effective mechanisms and arrangements to facilitate the efficient and timely finalisation of the transactions executed under its systems.

f) To have available, at the time of authorisation and on an ongoing basis, sufficient financial resources to facilitate its orderly functioning, having regard to the nature and extent of the transactions concluded on the market and the range and degree of the risks to which it is exposed.

g) To establish an appointments committee that is comprised of members of the governing body that do not exercise executive functions in respect of the market operator in question.

2. The market operators may not execute client orders against proprietary capital or engage in matched principal trading, with or without risk, on any of the regulated markets in which they operate.

#### Article 7. *Requirements regarding the functioning of the trading systems.*

The regulated markets shall implement effective systems, procedures and mechanisms to ensure that their trading systems:

a) Are resilient, pursuant to the European implementing regulations that are directly applicable thereto.

b) Have sufficient capacity to deal with peak order and message volumes.

c) Are able to ensure orderly trading under conditions of severe market stress.

d) Are fully tested to ensure that the foregoing conditions are satisfied.

e) Are subject to effective business continuity arrangements to ensure continuity of their services if there is any failure of their trading systems.

f) Reject orders that exceed pre-determined volume and price thresholds or that are clearly erroneous.

#### Article 8. *Market making agreements and schemes.*

1. The regulated markets must have the following instruments in place in order to ensure the adequate functioning of their systems:

a) written agreements with all investment firms pursuing a market making strategy on the regulated market, in accordance with the provisions of Commission Delegated Regulation (EU) No. 2017/578, of 13 June 2016, supplementing Directive 2014/65/EU, of the European Parliament and of the Council, on markets in financial instruments with regard to regulatory technical standards specifying the requirements on market making agreements and schemes.

b) schemes to ensure that a sufficient number of investment firms participate in such agreements that require them to post firm quotes at competitive prices with the result of providing liquidity to the market on a regular and predictable basis, where such a requirement is appropriate to the nature and scale of the trading on said regulated market. The regulated markets shall not be required to have market making schemes in the situations provided for under the European implementing regulations that are directly applicable thereto, and in

particular, in regulations regarding the requirements for market making agreements and schemes.

2. The market making agreements must include, at least, the following particulars:

a) The obligations of the investment firm in relation to the provision of liquidity and, as the case may be, any other obligation arising from participation in the scheme as referred to in subsection 1, paragraph b).

b) Any incentives in terms of rebates or of any other type, offered by the regulated market to an investment firm so as to provide liquidity to the market on a regular and foreseeable basis and, where applicable, any other rights that correspond to the investment firms as a result of their participation in the schemes referred to in subsection 1, paragraph b).

3. The regulated markets:

a) Shall monitor and enforce compliance by investment firms with the requirements of the market making agreements.

b) Shall inform the CNMV of the content of the market making agreements.

c) Shall, upon request, provide the CNMV with any additional information necessary to enable the CNMV to verify that the regulated market complies with the provisions of this article as well as with the rest of the regulations regarding market making agreements and market making schemes that are directly applicable thereto.

Article 9. *Prevention of anomalies in the trading conditions in algorithmic trading systems.*

1. The regulated markets must implement effective systems, procedures and mechanisms in order to ensure:

a) That algorithmic trading systems cannot create or contribute to disorderly trading conditions on the market.

b) That the regulated markets can manage any disorderly trading conditions which do, in fact, arise from such algorithmic trading systems.

2. The regulated markets shall supervise and ensure due compliance with the effective systems, procedures and mechanisms referred to in the foregoing paragraph, that shall include, *inter alia*, the following mechanisms:

a) Requests for the members or participants to carry out appropriate testing of algorithms and to provide environments to facilitate said testing, in accordance with the provisions of Commission Delegated Regulation (EU) No. 2017/584, of 14 July 2016, supplementing Directive 2014/65/EU, of the European Parliament and of the Council, with regard to regulatory technical standards specifying organisational requirements of trading venues.

b) The limitation of the ratio of unexecuted orders to transactions that may be entered into the system by a member or participant, calculated in accordance with the provisions of Commission Delegated Regulation (EU) No. 2017/566, of 18 May 2016, supplementing Directive 2014/65/EU, of the European Parliament and of the Council, on markets in financial instruments with regard to regulatory technical standards for the ratio of unexecuted orders to transactions in order to prevent disorderly trading conditions.

c) The slowing down of the flow of orders if there is a risk of its system capacity being reached.

d) The restriction of the minimum tick size that may be executed on the market.

Article 10. *Signalling of the orders generated by way of algorithmic trading.*

1. The regulated markets must be able to signal, by means of indicators of the members or participants:

- a) The orders generated by the algorithmic trading.
- b) The different algorithms used for the creation of the orders.
- c) The specific people that have initiated said orders.

2. Said information shall be provided to the CNMV upon request.

Article 11. *Direct electronic access.*

1. The regulated markets that permit direct electronic access must implement effective systems, procedures and mechanisms, in accordance with the provisions of the European implementing regulations that are directly applicable thereto, to ensure that:

a) Said direct electronic access services may only be provided to members and participants that are investment firms authorised pursuant to the provisions of Royal Legislative Decree 4/2015, of 23 October, that approved the recast text of the Securities Market Act or pursuant to the provisions of Act 10/2014, of 26 June, on the structure, supervision and solvency of credit institutions, or pursuant to the domestic provisions of other Member States that have transposed Directive 2013/36/EU, of the European Parliament and of the Council, of 26 June 2013, on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC, and Directive 2014/65/EU, of 15 May 2014.

b) Appropriate criteria are set and applied regarding the suitability of persons to whom such access may be provided and that the member or participant retains responsibility for orders and trades executed using that service in relation to the requirements of the recast text of the Securities Market Act.

2. The regulated markets must set appropriate standards regarding risk controls and thresholds on trading via direct electronic access and the regulated markets must be able to distinguish and, where necessary, stop orders or trading by a person using direct electronic access separately from other orders or trading by the member or participant.

3. The regulated markets shall have mechanisms in place in order to suspend or terminate the provision of direct electronic access by a member or participant to a client in the case of non-compliance with the terms of this article.

Article 12. *Rules regarding co-location services.*

The regulated markets must establish rules regarding co-location services that must be transparent, fair and non-discriminatory and must be included within the internal rules of the regulated markets.

Article 13. *Rules regarding fees.*

1. The regulated markets must establish fee structures, including execution fees for operations, fees for ancillary services and any rebates, that must be transparent, fair and non-discriminatory and that do not create incentives to place, modify or cancel orders or to execute transactions in a way that contributes to disorderly trading conditions or market abuse.

2. In particular, the regulated markets shall impose market making obligations in individual shares or a suitable basket of shares in exchange for any rebates that are granted.

3. The regulated markets may adjust their fees for cancelled orders according to the length of time for which the order was maintained and may also calibrate the fees to each financial instrument to which they apply.

4. The regulated markets may establish higher fees and prices that reflect the additional burden on system capacity in the following situations:

a) For the placement of an order that is subsequently cancelled in respect of the placement of an order that is finally executed.

b) *Vis-à-vis* participants that have a higher ratio of cancelled orders in respect of executed orders.

c) *Vis-à-vis* participants that operate a high-frequency algorithmic trading technique.

5. The regulated markets must establish the fee structures in their internal rules.

#### Article 14. *Tick sizes.*

1. The regulated markets must adopt tick size regimes in shares, deposit receipts, exchange-traded funds, certificates and other similar financial instruments and in any other financial instrument included in Commission Delegated Regulation (EU) No. 2017/588, of 14 July 2016, supplementing Directive 2014/65/EU, of the European Parliament and of the Council, with regard to regulatory technical standards on the tick size regime for shares, deposit receipts and exchange-traded funds; and in due compliance therewith.

2. The tick size regimes referred to in the foregoing paragraph:

a) Must be calibrated to reflect the liquidity profile of the financial instrument in different markets and the average bid-ask spread, taking into account the desirability of enabling reasonably stable prices without unduly constraining further narrowing of spreads.

b) Must adapt the tick size for each financial instrument, as required.

#### Article 15. *Synchronisation of business clocks.*

The regulated markets and their members or participants must synchronise the business clocks that they use to record the date and time of any reportable event, in accordance with the provisions of the European implementing regulations that are directly applicable thereto, in relation to the degree of accuracy of business clocks.

#### Article 16. *Circuit breakers.*

1. The regulated markets shall temporarily halt or restrict trading if there is a significant price movement in a financial instrument on that market or a related market during a short period and, in exceptional cases, may also cancel, vary or correct any transaction.

2. The regulated markets shall establish parameters in their internal rules for halting trading that comply with the following requirements:

a) Parameters that are appropriately calibrated in a way which takes into account the liquidity of different asset classes and sub-classes, the nature of the market model and types of users.

b) Parameters that are sufficient to avoid significant disruptions to the correct and orderly trading of instruments.

3. The regulated markets shall establish rules for the recommencement of trading after the halting thereof.

4. The regulated markets shall report the parameters for halting trading and any material changes to said parameters to the CNMV, in a consistent and comparable manner, and the

CNMV shall, in turn, report to the European Securities and Markets Authority (hereinafter, "ESMA") in respect thereof.

5. When a regulated market, which is material in terms of liquidity in that financial instrument, halts trading of a financial instrument, the trading venue shall immediately notify the CNMV of said halt, the details of the financial instrument and the reasons for said decision.

6. The regulated markets shall have the necessary systems and procedures in place in order to guarantee that they are able to comply with the obligation established in the preceding paragraph, so that the competent authorities, where necessary, may coordinate a response within the entire market and may determine whether it is necessary to halt trading at other trading venues in which the financial instruments are traded, until the trading in the original market is recommenced.

7. For the purposes of the provisions of paragraph 5 hereinabove, the regulated markets that are material in terms of liquidity in a financial instrument shall be determined in accordance with the European implementing regulations.

*Article 17. Requirements regarding the admission of financial instruments to trading.*

1. Without prejudice to the obligations set out in Article 76 of the recast text of the Securities Market Act, the regulated markets must establish clear and transparent rules in relation to the admission of financial instruments to trading, which ensure that said financial instruments may be traded in a fair, orderly and efficient manner and, in the case of transferable securities, that no restrictions exist in relation to the transferability thereof, pursuant to the criteria establish in Commission Delegated Regulation (EU) No. 2017/568, of 24 May 2016, supplementing Directive 2014/65/EU, of the European Parliament and of the Council, with regard to regulatory technical standards for the admission of financial instruments to trading on regulated markets. In the case of derivative financial instruments, the rules shall ensure, in particular, that the design of the derivative contract allows for its orderly pricing as well as for the existence of effective settlement conditions.

2. The markets must establish effective mechanisms adopted in accordance with European implementing regulations that are directly applicable thereto, in relation to the admission of financial instruments to trading on regulated markets to:

a) Verify that the issuers of transferable securities that are admitted to trading on the regulated market comply with all of their legal obligations in relation to the disclosure of information.

b) Facilitate to the members or participants of the regulated markets access to information that has been made public pursuant to the applicable securities market regulations.

c) Periodically verify that the financial instruments admitted to trading comply with the admission requirements.

3. A transferable security that has been admitted to trading on a regulated market of another Member State can subsequently be admitted to trading on a Spanish regulated market, even without the consent of the issuer.

The regulated market must notify the issuer of said situation. The issuer shall not be subject to any obligation to directly provide the information required under paragraph 2 to any regulated market that has admitted the issuer's securities to trading without its consent.

*Section 3. Trading of financial instruments on regulated markets*

*Article 18. Legal regime for the trading of financial instruments on regulated markets.*

1. Trading carried out within the framework of the systems of the regulated markets authorised in Spain shall be governed by the provisions of Spanish law.

2. The foregoing provision shall be applicable without prejudice to the provisions of Regulation (EU) No. 596/2014, of 16 April 2014, and Directive 2014/57/EU, of 16 April 2014.

Article 19. *Operations of a regulated market.*

The transactions concluded in accordance with the rules of a regulated market shall be considered to constitute transactions concluded within the framework of said regulated market.

Article 20. *Suspension and removal of financial instruments from trading by the market operators of regulated markets.*

1. The market operator of a regulated market may suspend or remove a financial instrument from trading that ceases to comply with the rules of the market, unless such suspension or removal would be likely to cause significant damage to the investors' interests or to the orderly functioning of the market.

2. The market operators of the market that suspends or removes from trading a financial instrument pursuant to the provisions of the preceding paragraph must also suspend or remove from trading the derivatives referred to in paragraphs 4 to 10 of Annex I of Section C of Directive 2014/65/EU, of 15 May 2014, that relate or are referenced to that financial instrument where necessary to support the objectives of the suspension or removal of the underlying financial instrument.

3. The market operators of the market must immediately notify the CNMV of their decision to suspend or remove the financial instrument from trading and, as the case may be, any related derivative, and, thereafter, shall make public its decision.

Article 21. *Suspension and removal of financial instruments from trading by the CNMV.*

1. The CNMV may decide to suspend from trading the financial instruments admitted to trading on regulated markets that are under its supervisory authority, when special circumstances exist that may distort the normal transactions in relation to said financial instruments or that require the adoption of said measures in order to protect investors.

2. The CNMV may decide to remove from trading the financial instruments admitted to trading on regulated markets that are under its supervisory authority, in the case that any of the following circumstances exist:

a) The trading of the aforementioned instruments does not comply with the requirements regarding dissemination, frequency or trading volume that are established.

b) The issuer thereof does not comply with the obligations that correspond thereto, in particular in terms of the provision and publication of information.

c) Where the issuer of financial instruments is a company that is subject to liquidation pursuant to the Insolvency Act 22/2003, of 9 July, or that is subject to corporate liquidation in accordance with the provisions of the recast text of the Capital Companies Act, approved by Royal Legislative Decree 1/2010, of 2 July.

Without prejudice to the temporary measures or injunctions that may be adopted and with the exception of the situation provided for under paragraph c) hereinabove, the removal thereof shall be decided after a prior hearing with the issuer entity.

3. The CNMV shall decide on the suspension or removal from trading of the derivatives provided for under paragraphs 4 to 10 of Annex I of Section C of Directive 2014/65/EU, of 15 May 2014, that relate or are referenced to that financial instrument where necessary to support the objectives of the suspension or removal of the underlying financial instrument.

Article 22. *Common rules applicable to removal or suspension by the market operators and the CNMV.*

1. After the suspension or removal has been adopted by a market operator of a regulated market pursuant to Article 20, or when the competent authority of another Member State has notified the CNMV of a decision to suspend or remove from trading any financial instrument, the CNMV shall require the rest of the trading venues and systematic internalisers under the supervisory authority thereof and that trade the same financial instrument or the derivatives that relate or are referenced to that financial instrument, to suspend or remove from trading said financial instrument or said derivatives, provided that the original suspension or removal has been adopted by reason of suspected market abuse, a take-over bid or the non-disclosure of inside information about the issuer or financial instrument in breach of Articles 7 and 17 of Regulation (EU) No. 596/2014, of the European Parliament and of the Council, of 16 April 2014.

In the case that the decision of the CNMV is adopted by reason of the notification received from another competent authority, said notification must provide a reasoned decision, as the case may be, regarding the decision of the CNMV not to suspend or remove from trading the financial instrument or the derivative financial instruments related or that are referenced to that financial instrument.

The CNMV shall immediately make public said decision for the suspension or removal from trading and communicate said decision to ESMA and to the competent authorities of the other Member States.

The provisions of this paragraph shall not be applicable when the suspension or removal may cause significant damage to the investors' interests or to the orderly functioning of the market.

2. The communication and publication regime established in Articles 20 and 21, as well as the provisions of paragraph 1 of this article, shall also be applicable when the suspension from trading is lifted in respect of a financial instrument or the derivatives provided for in paragraphs 2 to 8 of Annex I of Section C of Directive 2014/65/EU, of the European Parliament and of the Council, of 15 May 2014, that relate or are referenced to that financial instrument.

3. For the purposes of the provisions of Articles 20.2 and 21.3, the determination of the derivatives provided for in paragraphs 4 to 10 of Annex I of Section C of Directive 2014/65/EU, of 15 May 2014, that are related or that are referenced to a financial instrument, shall be carried out in accordance with the European implementing regulations that are directly applicable thereto, in relation to the suspension and removal from trading of financial instruments.

4. For the purposes of the provisions of Articles 20.1 and 21.2, the determination of the situations that may cause significant damage to the investors' interests or to the orderly functioning of the market shall also be carried out in accordance with the European implementing regulations that are directly applicable thereto.

#### *Section 4. Access to a regulated market*

Article 23. *Monitoring of compliance with the rules of the regulated market and with other legal obligations.*

1. The regulated markets shall establish and maintain effective mechanisms and procedures, including the necessary resources, for the regular monitoring of the orders sent, including cancellations and the transactions undertaken by the members of the market and compliance by their members or participants with the rules of their systems, in order to detect infringements of market rules, disorderly trading conditions and conduct that may indicate behaviour that is prohibited under Regulation (EU) No. 596/2014, of 16 April 2014, or system disruptions in relation to a financial instrument.

2. The market operators must immediately inform the CNMV of the infringements described in the preceding paragraph, in accordance with the provisions of Commission Delegated Regulation (EU) No. 2017/565, of 25 April 2016, supplementing Directive 2014/65/EU, of the European Parliament and of the Council, as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive.

3. The CNMV shall notify, as the case may be, ESMA and the competent authorities of the rest of the Member States, of the information set out in the preceding paragraph. In the case that the CNMV is informed of conduct that may indicate behaviour that is prohibited under Regulation (EU) No. 596/2014, the CNMV must be convinced that such behaviour is being or has been carried out before it notifies the competent authorities of the rest of the Member States and ESMA.

4. The market operators shall supply the relevant information without undue delay to the CNMV for the investigation and prosecution of market abuse on the regulated market and market operators shall provide full assistance to the CNMV in investigating and prosecuting market abuse occurring on or through the systems of the regulated market.

*Article 24. Election of the clearing and settlement system or the central counterparty.*

1. The regulated markets may formalise agreements with a central counterparty or clearing house and a settlement system of another Member State in order to carry out the clearing or settlement of some or all trades concluded by the members or participants under their systems.

2. The CNMV may challenge and oppose said agreements when the CNMV is able to demonstrate that it is necessary in order to maintain the orderly functioning of that regulated market and taking into account the conditions for settlement systems established in the following article.

3. This article shall be applicable without prejudice to the provisions of Titles III, IV and V of 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.

*Article 25. Right of the members to designate a settlement system.*

The regulated markets must offer all of their members the right to designate the settlement system for the transactions in financial instruments undertaken on said regulated market, provided that the following conditions are complied with:

a) That the technical and operational links and mechanisms necessary to ensure the efficient and economic settlement of the transaction in question are established between the settlement system designated by the market and the system or infrastructure designated by the member.

b) That the CNMV acknowledges that the technical conditions for the settlement of transactions concluded on the regulated market through a settlement system other than that designated by the regulated market are such as to allow the smooth and orderly functioning of financial markets, in light of, in particular, the method in which the relationships between the different registry systems of the transactions and the financial instruments are to be safeguarded. The assessment of the CNMV shall be deemed to be applicable without prejudice to the powers of the Bank of Spain, in its capacity as the supervisory authority of payment systems, as well as of other supervisory authorities of said systems. In order to avoid unnecessary repetitions of the controls, the CNMV shall take into account the supervisory activities of the clearing and settlement system that has already been exercised by the central banks in their capacity as supervisory bodies of the clearing and settlement systems or by other supervisory authorities with powers in relation to said systems.

TITLE II

**Multilateral trading facility and Organised trading facility**

CHAPTER I

**General provisions**

*Article 26. Creation.*

1. The creation of Multilateral Trading Facilities (hereinafter, "MTF") and of Organised Trading Facilities (hereinafter, "OTF") shall be subject to the prior authorisation regime and the supervision of the CNMV.

2. In particular, the CNMV shall verify that the market operator of the market or the investment firm that manages an MTF or OTF complies with the provisions of this title, with the provisions of the recast text of the Securities Market Act and with the corresponding European regulations that are directly applicable thereto.

3. The term for deciding upon the authorisation of an MTF or OTF shall be that of six months. In the absence of any express resolution within said period, the application shall be deemed to be rejected.

*Article 27. Minimum number of members or users.*

The MTFs and OTFs shall have at least three materially active members or users, each having the opportunity to interact with all the others in regard to price formation.

*Article 28. Legal regime for the trading of financial instruments in MTFs and OTFs.*

1. Trading concluded within the framework of MTFs and OTFs shall be governed by the provisions of Spanish law.

2. The foregoing provision shall be applicable without prejudice to the provisions of Regulation (EU) No. 596/2014, of 16 April 2014, or the provisions of the criminal regime regarding market abuse.

*Article 29. Transactions of MTFs and OTFs.*

The transactions concluded pursuant to the rules of an MTF or OTF shall be considered to constitute transactions concluded within the framework of the MTF or OTF in question.

CHAPTER II

**Organisation and functioning requirements**

*Article 30. Management of an MTF or OTF.*

1. All MTFs and OTFs shall be managed by a market operator that shall be responsible for the internal organisation and functioning thereof and must have the necessary resources for the management thereof.

2. The market operator of an MTF or an OTF may be:

- a) An entity authorised to provide the investment services provided for in Article 140. h) or i) of the recast text of the Securities Market Act.
- b) A market operator of a regulated market.

c) An entity incorporated for said purposes by one or several market operators of regulated markets, which must have, as its exclusive corporate activity, the management of the system and must be wholly-owned by one or several market operators.

3. Market operators that manage an MTF or an OTF, in addition to complying with the organisation requirements provided for under Article 16 of Directive 2014/65/EU, of 15 May 2014, must establish:

a) Transparent rules and procedures for fair and orderly trading and must establish objective criteria for the efficient execution of orders.

b) Mechanisms for the adequate management of the technical aspects of the system, including the establishment of effective contingency procedures to manage possible system disruptions.

c) Transparent rules regarding the criteria for determining the financial instruments that can be traded under their systems.

d) Internal functioning rules and guidelines specific to the management of the MTF or OTF, which must be provided to the CNMV for authorisation and must be subject to the publication regime that is established.

*Article 31. Rules that govern access to MTFs and OTFs.*

The market operators of MTFs and OTFs shall establish, publish, maintain and apply transparent and non-discriminatory rules, based on objective criteria, governing access to their facility.

*Article 32. Public information regarding the financial instruments.*

Where necessary, the market operators of an MTF and OTF must provide, or as the case may be, ensure, that public information is available that enables users to form an opinion regarding the instrument traded, taking into account both the classification of the users as well as the types of instruments traded on the MTF and OTF.

*Article 33. Conflicts of interest.*

MTFs and OTFs must adopt measures in order to clearly identify and manage potential adverse consequences for the operation of the MTF or OTF, or for the members or participants and users, of any conflict of interest between the interest of the MTF, the OTF, their owners or the investment firm or market operator operating the MTF or OTF and the sound functioning of the MTF or OTF.

*Article 34. Application of functioning requirements of the regulated markets.*

1. MTFs and OTFs must comply with the obligations regarding system resilience, circuit breakers and electronic trading provided for in Articles 7 to 13 and 16 and in the provisions that require that regulated markets adopt tick size regimes in certain financial instruments.

2. The provisions for regulated markets regarding the synchronisation of business clocks as provided for in Article 15 shall be applicable to MTFs and OTFs.

*Article 35. Registered advisor.*

MTFs and OTFs must establish the rights and obligations of issuers and of any other participants in the MTFs and OTFs, that may include the requirement for issuers to designate a registered advisor with the following functions:

a) Liaison between the issuer and the market operator of the market or the investment firm that manages the MTF or the OTF.

b) Necessary advice and support for issuers in relation to the incorporation of financial instruments within the respective markets.

c) Supervision of proper compliance by the issuers with their information reporting obligations as established in the applicable securities market regulations and in the internal rules applicable to the MTF or OTF. This function shall require the review of compliance by the issuer with the content and deadline requirements, as well as, generally speaking, the coherence of said information with the rest of the information already published in compliance with the foregoing rules and regulations.

*Article 36. Remote access to MTFs and OTFs.*

1. The market operators of a Spanish MTF or OTF may establish appropriate mechanisms in order to facilitate remote access and use of their systems by users or members established within other Member States. Accordingly, the entity must notify the CNMV of the Member State in which it intends to establish said mechanisms. The CNMV shall communicate said information to the Member State in which said mechanisms are to be established, within the period of one month as from the date of receipt of said information. The CNMV shall, at the request of the competent authority of the host Member State and within a reasonable period of time, communicate the identity of the remote members or participants of the MTF or OTF.

2. The market operators of an MTF or OTF of other Member States of the European Union may establish, within Spain, mechanisms in order to facilitate the remote access and use of their systems by users or members established within Spain. Accordingly, the CNMV must receive a communication from the competent authority of the home Member State which sets out the intention to establish said mechanisms within Spain. The CNMV may request said competent authority to notify the CNMV, within a reasonable period of time, of the identity of the members of the MTF and OTF.

*Article 37. Central counterparty and clearing and settlement agreements.*

1. The market operators that manage an MTF or an OTF shall adopt all of the necessary measures in order to facilitate the efficient settlement of the transactions concluded within the systems of said MTF or OTF.

2. The market operators of an MTF or OTF may formalise, subject to prior notification to the CNMV, appropriate agreements with central counterparties, clearing houses, settlement systems and with central securities depositories of another Member State, for the clearing or settlement of some or all of the transactions that have been concluded by members of the market under their systems. The CNMV may only challenge and oppose the formalisation of the foregoing agreements when it considers that said agreements may jeopardise the orderly functioning of the MTF or OTF and taking into account the technical conditions for settlement systems established in Article 25 of this Royal Decree-Law.

3. The MTFs and OTFs shall be subject to the provisions of Articles 94, 95, 96, 97, 113.1 and 2 and 116 of the recast text of the Securities Market Act applicable to regulated markets in respect of the settlement of transactions and economic rights or obligations associated with the financial instruments, the guarantees established to mitigate the risk of settlement and the rights and obligations related to the information system for the supervision of the trading, clearing, settlement and registry of financial instruments.

4. Without prejudice to the provisions of Article 4 of Regulation (EU) No. 648/2012, applicable regulations shall determine the financial instruments for which the transactions concluded in the multilateral trading segments of the MTFs and OTFs shall be subject to mechanisms that provide for the orderly settlement thereof by means of the involvement of a central counterparty.

5. The CNMV shall take into account the supervisory activities of the clearing and settlement system carried out by the competent authorities, for the purposes of avoiding any unnecessary repetition of the controls.

*Article 38. Suspension and removal of financial instruments from trading by market operators or companies that manage an MTF or an OTF.*

1. The provisions of Article 20 regarding the suspension and removal of financial instruments in respect of regulated markets shall also be applicable to market operators that manage an MTF or an OTF.

2. The market operators of an MTF or an OTF shall immediately comply with the instructions that are communicated thereto by the CNMV in accordance with the provisions of Article 234 of the recast text of the Securities Market Act, in relation to the removal or suspension of a financial instrument from trading.

*Article 39. Supervision of compliance with the rules of the MTFs and OTFs and other legal obligations.*

1. The market operators of MTFs or OTFs shall establish effective mechanisms and procedures that correspond to the needs of the MTF or OTF, in order to regularly supervise due compliance with the rules thereof by the users and shall also supervise the orders sent, including cancellations and transactions undertaken by the members or users under their systems, in order to detect infringements of said rules or disorderly trading conditions or conduct that may indicate behaviour that is prohibited under Regulation (EU) No. 596/2014, of 16 April 2014, or system disruptions in relation to a financial instrument. Furthermore, said market operators shall designate the necessary resources in order to ensure the efficacy of said supervision and shall establish a disciplinary and sanctions regime that the market operator shall apply in the case of any breach of the internal rules, in addition to the administrative sanctions or penalties that may be applicable in accordance with the provisions of this Royal Decree-Law.

2. The entities referred to in the preceding paragraph must immediately notify the CNMV of any serious infringement of their rules or any disorderly trading conditions or conduct that may indicate behaviour that is prohibited under Regulation (EU) No. 596/2014, of 16 April 2014 or system disruptions in relation to a financial instrument and said entities shall provide full assistance in investigating and prosecuting market abuse occurring on or through their systems.

The CNMV shall notify ESMA and the competent authorities of the rest of the Member States of said information. In relation to the conduct that may indicate behaviour that is prohibited under Regulation (EU) No. 596/2014, of the European Parliament and of the Council, of 16 April 2014, the CNMV must be convinced that such behaviour is being or has been carried out before it notifies the competent authorities of the rest of the Member States and ESMA.

Furthermore, the foregoing entities must notify the CNMV, in light of the information that they have obtained, of any possible breach of the recast text of the Securities Market Act or of the implementing regulations thereof or any infringement of the internal rules of the MTF or OTF applicable to issuers and members, in accordance with the procedure established for said purposes.

The foregoing notification obligation shall be applicable in the situations established in Articles 81 and 82 of Commission Delegated Regulation (EU) No. 2017/565, of 25 April 2016, supplementing Directive 2014/65/EU, of the European Parliament and of the Council, as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive.

3. The entities referred to in paragraph 1 must also, without any undue delay, provide the information that is referred to in paragraph 2 to the administrative authorities or competent

courts for the investigation and prosecution of market abuse and said entities must provide full assistance in investigating and prosecuting market abuse occurring on or through their systems.

*Article 40. Information regarding their functioning.*

1. The market operators of MTFs and OTFs shall provide the CNMV with a detailed description of the functioning of the MTFs and OTFs, including any connection with, or participation of, a regulated market, an MTF, an OTF or a systematic internaliser that belongs to the same investment firm or to the same market operator, as well as a list of the members, participants and/or users thereof.

2. The information provided for in the foregoing paragraph shall be submitted to the CNMV in accordance with the provisions of:

a) The European implementing regulations in respect of the content and format of the description of the functioning of the multilateral trading facilities, the organised trading facilities and together with the information provided for in said implementing regulations.

b) The European implementing regulations in respect of the pertinent information and the requirements necessary for the granting of authorisations to investment firms. In respect of an investment firm or a market operator that manages an MTF or OTF and that is already functioning, the market operator shall provide the information provided for in Article 4 of Commission Implementing Regulation (EU) No. 2016/824, of 25 May 2016.

3. The CNMV shall provide the foregoing information to ESMA, if requested thereby, and shall notify ESMA of all authorisations granted in favour of a market operator that manages an MTF or an OTF.

*Article 41. Obligations regarding the remittance of information.*

1. The market operators of MTFs or OTFs must forward to the CNMV, on a quarterly basis, information regarding the practices and activities that, in accordance with the provisions of the internal rules thereof, they implement in respect of the supervision of the MTFs and OTFs. Said information, that may be adapted in respect of the type of trading venue and of the instruments traded thereon, shall be forwarded within the period of one month as from the conclusion of the corresponding reference period thereof.

2. The CNMV may determine the exact content and specific format to be used by the market operators for due compliance with the foregoing obligation and may request from the market operators of MTFs or OTFs any other additional information that is necessary in order to ensure the correct functioning of the MTFs or OTFs.

*Article 42. Responsibility for the information.*

1. The responsibility for the drafting of the public information that is referred to in Article 32, in relation to the issuers of the traded instruments, shall correspond, at least, to the issuer and the members of the governing body thereof, that shall be responsible and accordingly held liable for all of the losses and damages that may be incurred by the holders of the financial instruments, in accordance with the commercial legislation applicable to each respective issuer, if the information fails to provide a true and accurate image of the issuer.

2. The legal action for claiming liability shall become time-barred after three years from the date on which the claimant had knowledge of the fact that the information did not provide a true and accurate image of the issuer.

*Article 43. Trading on an MTF or OTF without the consent of the issuer.*

Where a transferable security that has been admitted to trading on a regulated market is also traded on an MTF or on an OTF without the consent of the issuer, the issuer shall not be subject to any obligation relating to initial, ongoing or *ad hoc* financial disclosure with regard to that MTF or OTF.

### CHAPTER III.

#### Specific requirements for MTFs and OTFs

##### *Section 1: Specific requirements for MTFs*

##### Article 44. *Specific requirements for MTFs.*

1. The market operators that manage an MTF, in addition to complying with the requirements provided for under Chapters I and II hereinabove, shall establish and implement non-discretionary rules for the execution of orders in the system.

2. The market operators that manage an MTF shall establish rules that govern access to the MTF and that comply with the conditions established in Article 69 of the recast text of the Securities Market Act.

3. The market operators that manage an MTF shall adopt measures in order:

a) To be adequately equipped to manage the risks to which they are exposed, to implement mechanisms and systems to identify all significant risks to their operations, and to put in place effective measures to mitigate said risks.

b) To adopt effective mechanisms to facilitate the efficient and timely finalisation of the transactions executed under their systems.

c) To have available, at the time of authorisation and on an ongoing basis, sufficient financial resources to facilitate the orderly functioning thereof, taking into account the nature and extent of the transactions concluded on the market and the range and degree of the risks to which they are exposed.

4. Articles 24, 25, 27 paragraphs 1, 2 and 4 to 10 and 28 of Directive 2014/65/EU, of 15 May 2014, shall not be applicable to the transactions concluded in accordance with the rules that govern an MTF among the members or participants thereof or between the MTF and its members or participants in respect of the use of the MTF. Notwithstanding the foregoing, the members or participants of the MTF shall be subject to the obligations provided for under Articles 24, 25, 27 and 28 of Directive 2014/65/EU, of 15 May 2014, in relation to their clients when, by acting on behalf thereof, they execute their orders through the systems of an MTF.

5. The market operators that manage an MTF may not execute client orders against proprietary capital or engage in matched principal trading without risk.

##### Article 45. *SME growth market.*

1. The CNMV may register MTFs that comply with the requirements provided for in this article as an SME growth market, at the request of the market operators that manage said MTFs.

2. SME growth markets must include the following rules and provisions within their internal rules:

a) At least 50% of the issuers whose financial instruments are admitted to trading on the MTF are SMEs at the time when the MTF is registered as an SME growth market. Due compliance with this requirement must be assessed on an annual basis.

b) That appropriate criteria are set for initial and ongoing admission to trading of financial instruments of issuers on the market.

c) On the initial admission to trading of financial instruments on the market, sufficient information must have been published in order to enable investors to make an informed judgment about whether or not to invest in the financial instruments, either in an appropriate admission document or a prospectus if the requirements established in Royal Decree 1310/2005, of 4 November, that partially implemented the Securities Market Act 24/1988, of 28 July, in relation to the admission to trading of securities on regulated markets, initial public offerings or subscription and the prospectus required for said purposes, are applicable in respect of a public offer being made in conjunction with the initial admission to trading of the financial instrument on the MTF.

d) That the issuers forward to the market operator and publish ongoing periodic financial reporting, that shall include, at least:

1. the abridged annual accounts of the entity and, as the case may be, of its consolidated group; and
2. the audit report.

e) That the market issuers, as defined in Article 3, paragraph 1, subsection 21, of Regulation (EU) No. 596/2014, of the European Parliament and of the Council, of 16 April 2014, the persons discharging managerial responsibilities within the issuer, as defined in Article 3, paragraph 1, subsection 25, and the persons closely associated with them, as defined in Article 3, paragraph 1, subsection 26, comply with relevant requirements applicable to them under said Regulation.

f) That the information related to the issuers of this market is stored on the web page of the market operator and is disseminated to the public in accordance with the provisions of the European implementing regulations; and

g) That the MTF has effective systems and controls to prevent and detect market abuse on that market, as required pursuant to Regulation (EU) No. 596/2014, of 16 April 2014.

3. The SME growth markets must have effective procedures and systems that ensure, at all times, due compliance with the rules provided for in the foregoing paragraph.

4. The criteria set out in paragraph 2 shall be applicable, without prejudice to:

a) Compliance, by the market operator of the MTF, with the rest of the obligations of this Royal Decree-Law and of the implementing provisions thereof in relation to the management of MTFs.

b) The right of the market operator of the MTF to approve additional requirements over and above the requirements set out in said paragraph.

5. Without prejudice to the exercise of the rest of the powers and functions established in this Royal Decree-Law and in the implementing provisions thereof, the CNMV may cancel the registration of an MTF in the register as an SME growth market in any of the following situations:

a) When the market operator of the MTF requests the removal of the MTF from the register.

b) When the requirements provided for in paragraph 2, in respect of the MTF, are no longer complied with.

6. The CNMV shall notify ESMA, without delay, both of the registration in the corresponding register of the CNMV of an MTF as an «SME growth market», as well as the cancellation of said registration.

7. The financial instruments of an issuer admitted to trading in an SME growth market may only be traded in another SME growth market when the issuer has been informed thereof and provided that the issuer has not raised any objections thereto. Notwithstanding the foregoing, the issuer shall not be subject to any obligation in relation to corporate governance or in

relation to any initial, ongoing or *ad hoc* financial disclosure with regard to said SME growth market.

8. For the purposes of this article, the term SME shall be deemed to mean companies with an average market capitalisation of less than 200 million Euros on the basis of end-year quotes for the previous three financial years.

*Section 2: Specific requirements for OTFs*

*Article 46. Specific requirements for OTFs.*

1. The market operators that manage an OTF must implement measures in order to prevent the execution of client orders in an OTF against the proprietary capital of the market operator that manages the OTF or of any entity that is part of the same group or legal person as the investment firm or market operator of the market.

2. The market operators that manage an OTF may engage in matched principal trading without risk in bonds and debentures, securitisations, emission allowances and certain derivatives only where the client has consented to the process.

The market operator that manages an OTF shall not use matched principal trading without risk in order to execute client orders in an OTF in derivatives pertaining to a class of derivatives that has been declared subject to the clearing obligation in accordance with Article 5 of Regulation (EU) No. 648/2012, of 4 July 2012, on OTC derivatives, central counterparties and trade repositories.

The market operator that manages an OTF shall establish measures that ensure compliance with the definition of matched principal trading without risk, as provided for in Article 4, paragraph 31, subsection 38 of Directive 2014/65/EU, of 15 May 2014.

3. The market operators that manage an OTF may engage in dealing on own account other than matched principal trading only with regard to sovereign debt instruments for which there is not a liquid market.

4. A single legal person may not simultaneously manage an OTF and carry out the activities inherent to a systematic internaliser. An OTF shall not connect with a systematic internaliser in a way which enables orders in an OTF and orders or quotes in a systematic internaliser to interact. An OTF shall not connect with another OTF in a way that enables orders in different OTFs to interact.

5. The market operators that manage an OTF may contract with another investment firm to carry out the market making activities in said OTF on an independent basis.

For the purposes of this article, an investment firm shall not be deemed to be carrying out market making activities on an OTF on an independent basis if it has close links with the investment firm or market operator of the market that manages the OTF.

6. The execution of orders on an OTF shall be carried out on a discretionary basis.

A market operator that manages an OTF shall exercise discretion only and exclusively in either or both of the following circumstances:

a) When deciding to place or retract an order on the OTF they manage.

b) When deciding not to match a specific client order with other orders available in the systems at a given time, provided it is in compliance with specific instructions received from a client and with its obligations in accordance with Article 27 of Directive 2014/65/EU, of 15 May 2014.

For the system that crosses client orders, the market operator that manages an OTF may decide if, when and how much of two or more orders it wants to match within the system. In accordance with paragraphs 1, 2, 4 and 5 and without prejudice to the provisions of paragraph 3, with regard to a system that relates to transactions with financial instruments other than shares and similar instruments, the market operator that manages an OTF may facilitate

dealings between clients so as to bring together two or more potentially compatible trading interests in a transaction.

The foregoing obligation shall be applicable without prejudice to the provisions of Articles 30 to 43 of this Royal Decree-Law and Article 27 of Directive 2014/65/EU, of 15 May 2014.

7. The CNMV may require, either when a market operator requests to be authorised for the operation of an OTF or on *ad hoc* basis, a detailed explanation why the system does not correspond to and cannot operate as a regulated market, an MTF or a systematic internaliser, as well as a detailed description as to how discretion will be exercised, in particular when an order to the OTF may be retracted and when and how two or more client orders will be matched within the OTF. Moreover, the market operator of an OTF shall provide the CNMV with information explaining its use of matched principal trading without risk. The CNMV shall monitor the market operator's engagement in matched principal trading without risk to ensure that it continues to fall within the definition of such trading and that its engagement in matched principal trading does not give rise to conflicts of interest between the market operator and its clients.

8. Articles 24, 25, 27 and 28 of Directive 2014/65/EU, of 15 May 2014, shall also be applicable to the transactions concluded on an OTF.

### TITLE III

#### Other provisions that relate to trading venues

##### Article 47. *Precautionary measures.*

1. When Spain is the host Member State of a regulated market, an MTF or an OTF and the CNMV has clear and demonstrable grounds for believing that said regulated market, MTF or OTF infringes the obligations arising from the provisions adopted pursuant to MIFID II, the CNMV shall refer those findings to the competent authority of the home Member State of the regulated market or of the MTF or OTF.

If, despite the measures adopted by the competent authority of the home Member State, said regulated market, MTF or OTF persists in acting in a manner that is clearly prejudicial to the interests of investors in Spain or the orderly functioning of markets, the CNMV, after having informed the competent authority of the home Member State, shall adopt all of the pertinent measures for the protection thereof. The foregoing measures shall include the possibility of preventing that said regulated market, MTF or OTF provides the mechanisms thereof to remote members established in Spain. The CNMV shall notify, without undue delay, the European Commission and ESMA of the measures adopted. ESMA may act in accordance with the powers conferred on it under Article 19 of Regulation (EU) No. 1095/2010.

2. All measures adopted in application of the provisions of this article that imply the imposition of sanctions or restrictions on the activities of a regulated market or MTF or OTF must be duly explained and notified to the regulated market, MTF or OTF in question.

##### Article 48. *Requirements of the entities that carry out algorithmic trading.*

The investment firms that carry out algorithmic trading, including the use thereof for the application of market making strategies, or that provide for direct electronic access by their clients, must comply with the technical requirements established in Article 17 of Directive 2014/65/EU, of 15 May 2014.

##### Article 49. *Execution in trading venues.*

For financial instruments subject to the trading obligation provided for in Articles 23 and 28 of Regulation (EU) No. 600/2014, of 15 May 2014, each trading venue and each systematic internaliser, and for the rest of the financial instruments, each execution venue, shall provide the public, without charge and at least on an annual basis, with the pertinent information regarding the quality of execution of transactions on each venue, in accordance with applicable European implementing regulations.

#### TITLE IV

### Infringements and sanctions regime

#### CHAPTER I

### General provisions

Article 50. *Disciplinary and sanctions regime.*

The general provisions regarding infringements and sanctions as provided for in Chapters IV, VII and VIII of Title VIII of Royal Legislative Decree 4/2015, of 23 October, that approved the recast text of the Securities Market Act, shall also be applicable to this Royal Decree-Law.

#### CHAPTER II

### Very serious infringements

Article 51. *Infringements by reason of a breach of the activity limitation and the obligation to obtain the pertinent authorisations.*

The following acts and omissions shall constitute very serious infringements:

a) The establishment of a regulated market, multilateral trading facility or organised trading facility without having obtained all of the pertinent authorisations provided for in this Royal Decree-Law, or if said authorisations have been obtained pursuant to false declarations or through any other irregularity whatsoever.

b) The establishment by the market operators of a Spanish MTF or OTF or by the investment firms that manage said MTFs or OTFs, of remote mechanisms within other Member States without having previously notified the CNMV thereof, in the terms provided for in Article 36.

Article 52. *Infringements by reason of a breach of the pertinent obligations for the correct functioning of the primary securities market and the trading of financial instruments on the trading venues.*

The following acts and omissions shall constitute very serious infringements:

a) The breach or the failure by the regulated markets to apply, and not merely on an exceptional or isolated basis, the rules, procedures, mechanisms and instruments referred to under Articles 6 to 9, 11, 12, 17 and 23.1; the breach of the obligations established in Articles 8.2 and 13 to 16; as well as the breach, and not merely on an exceptional or isolated basis, of the obligations, limitations or prohibitions provided for under Articles 10 and 23 paragraphs 2, 3 and 4.

b) The breach or the failure by the market operators of an MTF or an OTF to apply, and not merely on an exceptional or isolated basis, the rules, measures and procedures provided for under Articles 30.3, 31, 32, 34, 38.1 and 40.1; the breach of the obligations established in

Articles 27, 32 and 36; as well as the breach, and not merely on an exceptional or isolated basis, of the obligations provided for under Articles 33, 35, 39.2, 40.2 y 3, 41.1 and 42.1.

c) The failure to adopt or the breach by the market operators of an MTF or an OTF, and not merely on an exceptional or isolated basis, of the specific measures established for each one of them pursuant to Articles 45 and 47.

*Article 53. Infringements regarding clearing and settlement systems and securities registries.*

The following acts and omissions shall constitute very serious infringements, when they do not constitute merely exceptional or isolated acts or omissions:

a) The breach by the regulated markets of the obligation to offer to all of their members the right to designate the settlement system for the transactions in financial instruments that are carried out on said market in the terms provided for under Article 25.

b) The formalisation by investment firms, market operators or members of a regulated market of indirect clearing agreements in relation to exchange-traded derivatives on a regulated market that breach the requirements provided for in Article 30.1 of Regulation (EU) No. 600/2014, of 15 May 2014.

c) The breach of the obligations provided for under Articles 35.1 to 3, 36.1 to 3 and 37.1 and 3 of Regulation (EU) No. 600/2014, of 15 May 2014, in relation to the non-discriminatory access of a central counterparty to a trading venue and to the reference indices and the obligation regarding the granting of a licence.

*Article 54. Infringements by reason of the breach of the obligations regarding the transparency and integrity of the market.*

The following acts and omissions shall constitute very serious infringements:

a) The breach of the obligations established in the following Articles of Regulation (EU) No. 600/2014, of 15 May 2014, when said breaches have seriously jeopardised the transparency and integrity of the market:

1. The obligations regarding pre-trading and post-trading transparency established in Article 3 paragraphs 1 and 3, Article 6 and Article 8 paragraphs 1, 3 and 4 and Article 10; and the obligation to provide the pre-trading and post-trading information, as provided for in Articles 12.1 and 13.1.

2. The obligations regarding the transparency of the systematic internalisers and of the investment firms that satisfy the definition of a systematic internaliser, as provided for in Article 14 paragraphs 1 to 3; Article 15 paragraphs 1, 2 and 4, and Article 18, paragraphs 1, 2, 5, 6, 8 and 9; the failure to adopt clear rules that govern access to market prices, in accordance with the provisions of Article 17.1; the obligations regarding the requirements of post-trading information, as provided for in paragraphs 1 and 2 of Article 20, and in paragraphs 1 to 3 of Article 21; as well as the obligation regarding the storage of information for the purposes of transparency and other calculations by the market operators that manage a trading venue, as provided for in Article 22.2.

3. The obligations regarding communication, publication and the provision of information as established in Articles 26, paragraphs 1 to 7, Article 27.1, Article 31.2 and 3 and regarding deferred publication by a market operator that manages a trading venue, pursuant to the provisions of Articles 7.1 and 11.1 and 3 of Regulation (EU) No. 600/2014, of 15 May 2014.

4. The trading obligations applicable to investment firms on certain trading venues as provided for in Article 23 paragraphs 1 and 2; Article 28, paragraphs 1 and 2 regarding the trading obligation in certain derivatives on regulated markets, MTF or OTF; regarding the requirements provided for in Article 4.3 of Regulation (EU) No. 600/2014, of 15 May 2014; the breach of the clearing obligation provided for in Article 29.1 and the failure of the central

counterparties, the trading venues and the investment firms that act as clearing members to adopt effective systems, procedures and mechanisms in accordance with the terms of Article 29.2 of Regulation (EU) No. 600/2014, of 15 May 2014.

*Article 55. Infringements by reason of a breach of the internal organisation measures and of prudential requirements.*

Any breach by the investment firms or by the managers of a trading venue, of the obligation to keep registers with the pertinent information in relation to all of the orders and all of the transactions with financial instruments that have been carried out or that have been received by their systems, as provided for in Article 25.1 and 2 of Regulation (EU) No. 600/2014, of 15 May 2014, as well as any breach of the obligation to keep complete and accurate registers of all of the portfolio compressions that they organise or in which they participate, as provided for in Article 31.3 of the foregoing Regulations, shall also constitute a very serious infringement.

*Article 56. Infringements by reason of a breach of the obligation regarding information disclosure, investor protection and preservation of the integrity of the market.*

Any breach by investment firms, and not merely on an exceptional or isolated basis, of the obligation to act in accordance with the principles of honesty, impartiality and professionalism, to enhance the integrity of the market, as provided for under Articles 24 and 27.2 of Regulation (EU) No. 600/2014, of 15 May 2014, shall also constitute a very serious infringement.

*Article 57. Infringements by reason of a breach of the measures adopted by the CNMV in the exercise of its supervisory, inspectorate and control powers and functions and by reason of the reiteration of serious breaches.*

The marketing, distribution or sale of a certain financial instrument or the carrying out of any type of practice or financial activity when said practices or activities have been prohibited or restricted by ESMA, the EBA or the CNMV, by virtue of the powers of intervention established pursuant to Articles 40 to 42 of Regulation (EU) No. 600/2014, of 15 May 2014, shall also constitute a very serious infringement, when said conduct is not merely exceptional or isolated conduct.

### CHAPTER III

#### **Serious infringements**

*Article 58. Infringements by reason of a breach of the pertinent obligations for the correct functioning of the primary securities market and the trading of financial instruments on the trading venues.*

The following acts and omissions shall constitute serious infringements:

1. The exceptional or isolated failure to apply or the deficient application, by the regulated markets, of the rules, procedures, mechanisms and instruments referred to under Articles 6 to 9, 11, 12, 17 and 23.1; and the merely exceptional or isolated breach or the delayed application of the obligations, limitations or prohibitions provided for under Articles 10 y 23 (paragraphs 2, 3 and 4).

2. The exceptional or isolated failure to apply or the deficient application, by the market operators of an MTF or an OTF, of the rules, measures and procedures provided for under Articles 30.3, 31, 32, 34, 38.1 and 40.1; and the merely exceptional or isolated breach or the

delayed application of the obligations provided for under Articles 33, 35, 39.2, 40.2 and 3, 41.1 and 42.1.

3. The deficient adoption or the merely exceptional or isolated breach, by the market operators of an MTF or an OTF, of the specific measures established for each one of them pursuant to Articles 45 and 47.

*Article 59. Infringements regarding clearing and settlement systems and securities registries.*

The following acts and omissions shall constitute serious infringements:

1. The breach by the regulated markets of the obligation to offer to all of their members the right to designate the settlement system for the transactions in financial instruments that are carried out on said market in the terms provided for under Article 25, when said breach does not constitute a very serious infringement.

2. The breach of the obligations provided for under Articles 35 paragraphs 1 to 3, 36 paragraphs 1 to 3 and 37 paragraphs 1 and 3 of Regulation (EU) No. 600/2014, of 15 May 2014, in relation to non-discriminatory access to a central counterparty, non-discriminatory access to a trading venue and non-discriminatory access to the reference indices and the obligation regarding the granting of a licence; when said breaches do not constitute a very serious infringement.

3. The formalisation by the market operators or members of a market of indirect clearing agreements in relation to exchange-traded derivatives on a regulated market that breach the requirements provided for in Article 30.1 of Regulation (EU) No. 600/2014, of 15 May 2014, when said breaches do not constitute a very serious infringement.

*Article 60. Infringements by reason of the breach of the obligations regarding the transparency and integrity of the market.*

The following acts and omissions shall constitute serious infringements:

The breach of the obligations established in the following Articles of Regulation (EU) No. 600/2014, of 15 May 2014, when said breaches do not constitute a very serious infringement:

a. The obligations regarding pre-trading and post-trading transparency established in Article 3 paragraphs 1 and 3, Article 6 and Article 8 paragraphs 1, 3 and 4 and Article 10; and the obligation to provide pre-trading and post-trading information, as provided for in Articles 12.1 and 13.1.

b. The obligations regarding the transparency of the systematic internalisers and of the investment firms that satisfy the definition of a systematic internaliser, as provided for in Article 14 paragraphs 1 to 3; Article 15 paragraphs 1, 2 and 4, and Article 18, paragraphs 1, 2, 5, 6, 8 and 9; the failure to adopt clear rules that govern the access to market prices, in accordance with the provisions of Article 17.1; the obligations regarding the requirements of post-trading information, as provided for in paragraphs 1 and 2 of Article 20, and in paragraphs 1 to 3 of Article 21; as well as the obligation regarding the storage of information in respect of transparency and other calculations by the market operators that manage a trading venue, as provided for in Article 22.2.

c. The obligations regarding communication, publication and the provision of information as established in Articles 26, paragraphs 1 to 7, Article 27.1, Article 31.2 and 3 and regarding deferred publication by a market operator that manages a trading venue, pursuant to the provisions of Articles 7.1 and 11.1 and 3 of Regulation (EU) No. 600/2014, of 15 May 2014.

d. The trading obligations applicable to the investment firms in certain trading venues as provided for in Article 23 paragraphs 1 and 2; Article 28, paragraphs 1 and 2 regarding the trading obligation in certain derivatives on regulated markets, an MTF or OTF; regarding the requirements provided for in Article 4.3 of Regulation (EU) No. 600/2014, of 15 May 2014; the

breach of the clearing obligation provided for in Article 29.1 and the failure of the central counterparties, trading venues and investment firms that act as clearing members to adopt effective systems, procedures and mechanisms in accordance with the terms of Article 29.2 of Regulation (EU) No. 600/2014, of 15 May 2014.

Article 61. *Infringements by reason of a breach of the measures adopted by the CNMV in the exercise of its supervisory, inspectorate and control powers and functions and by reason of the reiteration of serious breaches.*

The marketing, distribution or sale of a certain financial instrument or the carrying out of any type of practice or financial activity when said practices or activities have been prohibited or restricted by ESMA, the EBA or the CNMV, by virtue of the powers of intervention established pursuant to Articles 40 to 42 of Regulation (EU) No. 600/2014, of 15 May 2014, shall constitute a serious infringement, when said conduct does not constitute a very serious breach.

#### CHAPTER IV

##### Penalties and sanctions

Article 62. *Penalties and sanctions for very serious infringements.*

For the commission of very serious infringements, one or more of the penalties and sanctions provided for in Article 302 of the recast text of the Securities Market Act, approved by Royal Legislative Decree 4/2015, of 23 October, shall be imposed upon the offending parties, although the fine that is referred to in the first part of paragraph 1 of the foregoing Article shall be the higher of the following sums:

a) 5,000,000 EUR.

b) 10 per cent of the total annual turnover of the offending party, pursuant to the most recent annual accounts approved by the governing body; and if the offending party is a parent company or a subsidiary of the parent company that is required to draft consolidated annual accounts and financial statements, then the total annual turnover that shall be taken into account shall be the total annual turnover or the corresponding type of revenue, in accordance with the pertinent legislative provisions regarding accounting practices, that are included in the most recent consolidated annual accounts approved by the governing body of the ultimate parent company.

Article 63. *Penalties and sanctions for serious infringements.*

For the commission of serious infringements, one or more of the penalties and sanctions provided for in Article 303 of the recast text of the Securities Market Act, approved by Royal Legislative Decree 4/2015, of 23 October, shall be imposed upon the offending parties, although the fine that is referred to in the first part of paragraph 1 of the foregoing Article shall be the higher of the following sums:

a) 2,500,000 EUR.

b) 5 per cent of the total annual turnover of the offending party, pursuant to the most recent annual accounts approved by the governing body; and if the offending party is a parent company or a subsidiary of the parent company that is required to draft consolidated annual accounts and financial statements, then the total annual turnover that shall be taken into account shall be the total annual turnover or the corresponding type of revenue, in accordance with the pertinent legislative provisions regarding accounting practices, that are included in the

most recent consolidated annual accounts approved by the governing body of the ultimate parent company.

First additional provision. *Definitions.*

In order to determine the scope of the concepts included in this Royal Decree-Law, the definitions included in Directive 2014/65/EU and in the implementing regulations thereof shall be applicable.

Second additional provision. *Competent authorities.*

1. The Spanish Securities and Exchange Commission is the competent authority for the purposes of the powers of authorisation, supervision and inspection as well as the powers to impose sanctions as provided for in Regulation 600/2014, of the European Parliament and of the Council, of 15 May 2014, on markets in financial instruments and amending Regulation 648/2012/EU, and for the purposes of the provisions of Directive 2014/65/EU, of the European Parliament and of the Council, of 15 May 2014, on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU.

2. The foregoing provision shall be applicable without prejudice to the powers of the Autonomous Regions in relation to the securities markets of an exclusively regional scope.

Third additional provision. *Regarding the existing regulated markets.*

The Stock Markets of Madrid, Barcelona, Bilbao and Valencia, including the Integrated Stock Exchange System, as well as the rest of the regulated markets that exist as at the date of entry into force of this Royal Decree-Law shall be deemed to be automatically authorised for the purposes of the provisions of Article 2 of this Royal Decree-Law, without prejudice to the fact that all of the terms of this Royal Decree-Law for regulated markets shall be applicable thereto as well as the provisions of said recast text. The CNMV shall ensure, in particular, that said markets comply with all of the requirements that are applicable for the authorisation of regulated markets.

Fourth additional provision. *Application of the Securities Market Act.*

Without prejudice to the provisions of the sole repealing provision, the legal regime of the trading venues of Spanish securities and systems that are referred to in this Royal Decree-Law shall be, in respect of all aspects not provided for in this Royal Decree-Law, that which is provided for under the recast text of the Securities Market Act, approved by Royal Legislative Decree 4/2015, of 23 October.

Sole repealing provision. *Regulatory repeal.*

All of the provisions of the recast text of the Securities Market Act, approved by Royal Legislative Decree 4/2015, of 23 October, that are in contrary to the terms of this Royal Decree-Law, are hereby repealed and in particular the following Articles thereof: 44, 78, 79, 80, 81, 83, 85, 86, 87, 88, 89, 90, 91, 92, 111, 112, 317, 318, 319, 321, 322, 323, 324, 325, 326, 327, 328, 329 and 330.

First final provision. *Modification of the recast text of the Securities Market Act, approved by Royal Legislative Decree 4/2015, of 23 October.*

One. A new subsection 1 *bis* is included in Article 69 thereof, that now reads as follows:

«The rules of access that are established by each market shall contain, at least, internal rules regarding the functioning of said markets that include the applicable rules in relation to the following aspects:

- a) The establishment and management of the regulated market.
- b) The provisions regarding transactions that are concluded in said market.
- c) The professional rules applicable to the staff of the investment firms or credit institutions that operate within said market.
- d) The conditions established, pursuant to the provisions of this Act, for the members or participants other than investment firms and credit institutions.
- e) The rules and procedures for the clearing and settlement of the transactions concluded on the regulated market.»

Two. A new subsection i) is included in Article 140 thereof, that now reads as follows:

«i) the management of organised trading facilities»

Three. A new paragraph is included in Article 152.1.d) thereof, that now reads as follows:

«In respect of the securities agencies that include within their activity programmes any of the investment services provided for under subsections h) or i) of Article 140 of this Act, the minimum share capital requirements provided for under applicable regulations, in respect of securities companies, shall also be applicable thereto.»

Four. Article 233.1.a) 1), shall, hereinafter, read as follows:

«1. The market operators of official secondary markets, the market operators of multilateral trading facilities and of organised trading facilities, the central counterparties and central securities depositories. Notwithstanding the foregoing, the Bank of Spain is excluded from the foregoing.»

Second final provision. *Enabling provisions.*

This Royal Decree-Law is enacted in accordance with the provisions of Article 149.1.6, 11 and 13 of the Spanish Constitution, that attribute to the State the exclusive powers over commercial legislation, and credit, banking and insurance legislation, as well as the rules and coordination of the general planning of economic activities, respectively.

Third final provision. *Incorporation of European Union law.*

By means of this Royal Decree-Law, the provisions of Directive 2014/65/EU of the European Parliament and of the Council, of 15 May 2014, on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU, and Directive (EU) 2016/1034, of the European Parliament and of the Council, of 23 June 2016, amending Directive 2014/65/EU on markets in financial instruments are partially incorporated into Spanish law.

Fourth final provision. *Regulatory provisions.*

The Government may issue the necessary regulatory provisions for the implementation of the provisions of this Royal Decree-Law.

Fifth final provision. *Entry into force.*

This Royal Decree-Law shall enter into force and effect on 3 January 2018.

Issued in Madrid, Spain, on 29 December 2017.

FELIPE (REX).

The President of the Government,  
MARIANO RAJOY BREY