# Launch of the book "La regulación del mercado de valores y las Instituciones de Inversión Colectiva" ("Regulation of the securities market and Collective Investment Schemes").

RODRIGO BUENAVENTURA, THE CNMV CHAIRMAN
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Good afternoon.

First of all, I would like to thank Wolters Kluwer for inviting me to present this book on the regulation of the securities market. It is a subject that we are passionate about, not only for those who have participated in its preparation, but for all of us who are part, in one way or another, of the activity of the markets and have been present in them for many years. Secondly, I would like to congratulate all the authors of the different chapters that make up the publication for the magnificent work they have done. And last but not least, congratulations to Paco Uría, who has done an admirable job coordinating us all - more than 30 authors - and surely, at times, in their creative process, some have been more disciplined than others.

A quick glance through the book's table of contents and the chapters that make up its two blocks gives a clear idea of the challenge we were facing and shows that this publication is not a mere revision of its predecessor dated 2007. A lot has happened since then, not only in terms of securities market regulation, but also in terms of how markets and supervisors have been transformed. The financial crisis we faced in 2008 was called "the great recession" by some. I suppose they did not imagine that an even more intense one could come. Then began a path of no return in terms of regulation, both in our market and in that of our European counterparts. It allowed for the creation of new European supervisory authorities with the aim of promoting supervisory convergence and financial stability. It can be said that a good many of the objectives have been achieved, insofar as the current crisis has highlighted the soundness of our securities markets and their infrastructures.

Allow me, in my speech today, not to focus on what has already been written On the other hand, I will try to answer the following question: if, hypothetically, the authors were to receive another call from the coordinator tomorrow to update the edition, what would they write about? Probably the same things we wrote about a few months ago, but with special emphasis on three topics: Digitalisation, Corporate Governance and Sustainability.

## *1.- Digitalisation*

On the digital front, we would all agree on the transformative power that technology has on the economy and the stock market. This development, with DLT-based technologies at the forefront, is enabling not only greater levels of efficiency but also new business and service models.

The CNMV is no stranger to these new developments and paradigms as a result of our daily interaction with the stakeholders that make up the securities market - companies, issuers and investors. Therefore, in our activity plan 2021-2022 we have set ourselves the objective of promoting technological advances applied to the securities markets, preventing their risks.

Crypto-assets present a set of risks that are not minor, generating increasing supervisory and regulatory attention. In February of this year, the CNMV and the Bank of Spain issued a joint public statement warning of the risk of investing in these assets as they are unregulated products (at least for the time being and pending the publication of the MICA and DORA regulations). Among other risks, we are concerned that their price formation process is not transparent and involves a highly speculative component, which has been reflected in the strong price fluctuations they have experienced in recent years.

As a result of the increase in mass advertising of these products that we have witnessed in recent months, and in which concepts more typical of financial products such as investment or profitability were incorporated, at the beginning of March a provision was added to the Securities Market Act granting the CNMV the power to develop by means of a Circular the rules governing the advertising of this type of asset. It should be noted that the aim is to subject the advertising of crypto-assets as an investment, not the instruments or service providers related to them or the transactions carried out on these assets.

The main element that requires regulatory action lies in the possibility that crypto-asset advertising when offered as an investment does not incorporate objective information about the product and its risks. It has been observed that their advertising to retail clients in recent months has been carried out through an increasingly wide variety of media and with increasing intensity. Those acquiring such products need to be aware of the risks involved and that such an investment could in some cases result in significant losses due to price fluctuations, in situations of supervening liquidity or even in total loss due to cyber-attacks or custodial failures.

The purpose of the future Circular will be to develop the rules, principles and criteria to which advertising activity on crypto-assets must be subject, to specify which cases must be subject to prior administrative authorisation and to establish the tools and procedures that will be used to make the supervision of this activity effective.

We have just finished the pre-consultation period, in which we have received 18 contributions from all kinds of entities and our next step will be the full consultation of an articulated text of the Circular in the coming weeks.

But this issue is part of a wider concern, linked to complex and diverse factors such as negative interest rates, declining corporate profits and employment, reduced social mobility and the use of social networks as a single source of information. We are witnessing an intensification of investment offers in regulated and especially unregulated products (from currencies to precious metals, including of course crypto-assets) appealing to a profitability that traditional financial instruments do not offer. And this, in the hands of unscrupulous people, using unreliable sources of information, can lead to fraud that generates not only losses, but also distrust among a certain investment community. Although many of these behaviours go beyond the supervisory scope of the CNMV and enter the criminal scope, they are a concern that we as a **society** must address. In the long run, only financial education can empower investors to detect and reject fraudulent offers or dubious investments. For this reason, the CNMV will continue to devote resources and efforts to promote it, from primary education to the adult population.

*2.- Corporate Governance*

Secondly, in imagining this hypothetical addendum to the book, I will refer to the field of corporate governance and specifically to two regulatory changes.

On the one hand, the **amendment of the Non-Financial Reporting Directive** that the European Commission has drawn up, the proposal for which was published yesterday and which forms part of the European strategy to strengthen the foundations for sustainable investment. With it, the content of the non-financial information will be more detailed and of a more prospective nature, including information on the sustainability objectives that have been established in each entity, as well as the progress made in their fulfilment. This Directive means that almost 50,000 EU companies will have to follow detailed EU rules on sustainability reporting, compared with the 11,000 currently subject to these requirements. Similarly, the Commission proposes the development of standards for large companies and separate and proportionate standards for SMEs, which unlisted SMEs can use on a voluntary basis.

At this point it is only fair to recall a wise maxim advocated by my predecessor: the fewer differences there are in the rules of this type that a large company has to comply with and those that apply to a listed company, the less vertigo there will be in listing, which is a value in itself.

The second regulation I wanted to mention is the **Long-Term Shareholder Involvement Act**.

As you are all aware, Spanish Law 5/2021 has recently been published, which amends the recast text of the Spanish Corporate Enterprises Act and other financial regulations, with regard to the promotion of long-term shareholder involvement in listed companies.

Without detracting from other issues, three relevant developments stand out:

- The **regime of related-party transactions** has been modified, introducing new rules for their approval either by the General Shareholders' Meeting or by the managing body, which may delegate some of them. Likewise, the transparency regime has been reinforced, and related-party transactions that reach or exceed a certain threshold must be publicly announced at the time they are entered into.
- The right of listed companies to know the **identity of** the ultimate **shareholders** is regulated and the exercise of their rights is facilitated. This right is also extended to shareholder associations representing at least 1% of the share capital, as well as shareholders holding individually or jointly 3% or more. This element will undoubtedly transform the way in which listed companies relate to their shareholders and will improve the actual quality of corporate governance.
- In addition, listed companies that wish to do so are allowed to introduce **loyalty shares in their articles of association**. Loyalty shares, which are a novelty in our law, grant double voting rights to those shareholders of a listed company who can prove that they have been shareholders for two uninterrupted years, or a longer period established in the corporate statutes. Anything that departs from the basic principle of "one share-one vote" must be carefully explained and justified. It is very positive that we have this possibility in the options for the statutory configuration of a listed company, for example, in family companies that are going public for the first time, but it would be worrying if listed companies were to adopt this possibility en masse. I am sure, for example, that foreign institutional investors and corporate governance observatories would be surprised if that were to happen. Equality in political rights is a value in itself and the principle, in my opinion, that should govern in the vast majority of cases.
- Finally, the reform takes the opportunity to adjust other issues, such as board members who are legal persons in listed companies, the figure of the proxy adviser, the elimination of the obligation to publish quarterly financial information or the requirement of 75% of the share capital of a company affected by a takeover bid in order to exclude it without a delisting takeover bid.

*3.- Sustainability*

As far as sustainability is concerned, the progress made in sustainable finance by the European authorities has been remarkable, but it must be maintained over time. A first step has been the development of a taxonomy, still incomplete, which has made it possible to classify sustainable economic activities across the EU. The taxonomy classifies activities as green or environmental investment, depending on their contribution to at least one of the six climate and environmental objectives it defines, which initially provides a benchmark for determining the degree of sustainability of an economic activity. In fact, just yesterday, the European Commission published the delegated act on climate taxonomy, which will enter into force at the end of May, and which determines which economic activities contribute most to achieving the EU's environmental objectives.

Insofar as a complete regulatory framework does not yet exist, the private sector has taken the initiative in response to society's demand and has developed various standards and principles of action. However, this lack of unification has generated a multiple methodologies and makes it more difficult to compare the information published by companies in this area, which can even generate different environmental ratings for the same issuer depending on the agency that grants them.

On 10 March 2021, as a result of the direct application of the European Disclosure Regulation, new transparency obligations on sustainability in the financial services sector came into force. With regard to the CNMV's supervisory work, these new obligations affect investment firms, as well as certain financial products and investment funds, requiring information in two complementary areas:

- From the entity's perspective, on its sustainability risks, and how these are integrated into its remuneration policies, as well as on the main adverse effects that its investment decisions may have on ESG factors.
- And from the perspective of the investment products and funds that they market, where they must offer detailed information to clients about the funds, distinguishing those that promote environmental or social characteristics (also known as "light green"), from investment funds that aim for sustainable investment ("dark green").

Given the lack of definitions and detailed regulation of the new rules, the CNMV is applying a two-pronged approach.

On the one hand, we are developing flexible and proportionate monitoring of compliance with the new obligations. In this context, we seek to apply harmonised and flexible criteria at European level, following the guidelines determined by ESMA, and we will disseminate criteria, in the form of questions and answers, to clarify the queries received. In addition, we have established a simplified procedure for updating investment prospectuses, to which a large number of fund managers have already subscribed.

On the other hand, we have to make sure that this flexibility we grant is done with investor protection in mind, through the publication of minimum reporting and

transparency requirements, pending the regulatory developments that will establish the final criteria.

Thus, investment funds that are classified as funds promoting sustainability (Art. 8) must explain the environmental or social characteristics they promote, describe the type of strategy and indicate, among other things, the minimum percentage of investments used to achieve the promoted environmental or social characteristics.

In the case of funds classified as sustainable (Art. 9), they must also indicate the sustainable investment objective they pursue, their strategy, the percentage of the portfolio allocated to sustainable investment or the sustainability indicators they use to measure the achievement of the sustainable investment objective.

To avoid risks of greenwashing, the use of sustainable terms (or ESG factors) in the name of the fund should be restricted to those that meet minimum requirements, which means that those that allocate less than 50% of their investments to promoting sustainability should not use ESG terms in their name.

At international level, it is worth noting the direction set by IOSCO, on whose sustainability committee I have the honour to serve. IOSCO has called for the creation of a single global sustainability disclosure standard, which would apply to listed issuers and would focus on the impact of climate risks on their market value. This would be addressed by a new regulatory board under the auspices of the IFRS Foundation. While this initiative does not solve all the problems of the absence of standards, it does provide a baseline on which jurisdictions can build their sustainability transparency regimes. Ideally, we should have a pretty good idea of that standard this year.

In short, we regulators are always moving in a difficult balance: on the one hand, we like the value of regulatory stability, which allows companies and investors to focus on what is really important. But, on the other hand, we are not reluctant to improve or tinker with regulations or to address new risks with new rules. In this pendulum dilemma we are moving as our markets mutate and evolve. I hope that when this work is updated, in a few years' time, we will be able to say that we have got the appropriate degree of regulation and the right direction and that we have contributed to making them better.

Thank you very much.