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Client briefing

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Draft of the new Securities Markets and Investment Services Law

On 28 June 2022, the Council of Ministers approved the draft of the new Securities Markets and Investment Services Law (the "Draft Law"), the full text of which was published on 12 September 2022. The new regulation, which –once approved by the Spanish Parliament, will replace the Consolidated Text of the Securities Market Law approved by Royal Legislative Decree 4/2015 of 23 October (the "Securities Market Law")– introduces crucial amendments to the current regulations for issuers, intermediaries and other participants in the securities markets. A team of specialists at Uría Menéndez has prepared this document highlighting the key aspects of the Draft Law.

Key aspects:

- **Various primary market and issuer reforms are introduced**, most notably to simplify the supervision of issues and admissions to trading on regulated securities markets, to extend the rules on takeover bids to companies issuing shares admitted to trading on BME Growth and to include a new chapter in title XIV of the Spanish Companies Law to regulate specific features applicable to listed special purpose acquisition companies (SPAC) in order to facilitate the development of this type of company on the Spanish securities markets.
- **The current prudential requirements regime for investment services companies,** to which the equivalent regime for financial institutions generally no longer applies, **is amended** along with **the rules of conduct of entities providing investment services in the market,** whose application is made more flexible in specific scenarios when the clients are eligible or professional counterparties. In addition, **national financial advice companies** are created.
- The **use of distributed ledger technology is envisaged for the registration, clearing and settlement of transferable securities and financial instruments**, and the necessary provisions are being set out for **Spanish legislation to adopt the imminent EU crypto-assets regulations.**
- **At an institutional level changes are made to the regulation of the *Comisión Nacional del Mercado de Valores* ("CNMV") and to supervisory aspects of infringements and sanctions**.
- Finally, various **other developments are included in other matters and issues** regulated by the Draft Law.

The Draft Law was published on 12 September 2022 in the Official Gazette of the Spanish Parliament as a preliminary step to its parliamentary processing in the next session that will begin in September 2022.

You can read the Draft Law at this link. You can also review the amendments that the Draft Law introduces to the current Consolidated Text of the Securities Market Law in the document with highlighted changes available at this link.

1. KEY AMENDMENTS FOR ISSUERS

The Draft Law makes changes in relation to issuers of securities, with those on the procedures to admit securities to trading and those concerning companies whose shares are admitted to trading on a multilateral trading facility ("**MTF**") being particularly significant, as is the new regulation of companies listed for the purpose of acquiring another company.

1.1 DEVELOPMENTS IN THE PROCEDURE FOR ADMITTING SECURITIES TO TRADING ON A REGULATED MARKET

1.1.1 Simplification of the procedure to issue and admit non-equity securities to trading

The Draft Law establishes that **the governing body of the regulated market where non-equity securities are to be admitted to trading** (i.e. the AIAF) will be responsible for verifying the requirements for admission, instead of the CNMV, as has been the case until now. For its part, the CNMV will continue to be the body responsible for admitting equity securities to trading on regulated markets.

Under the Draft Law, regulated markets must establish clear and transparent rules in relation to the admission to trading of financial instruments.

In addition, securities issued by the Instituto de Crédito Oficial, EPE must have state backing to be admitted to trading on regulated markets.

1.1.2 Admission to trading of securities on regulated markets at the request of third parties

In line with EU regulations, the Draft Law establishes that a transferable security admitted to trading on a regulated market in another Member State **may subsequently be admitted to trading on a Spanish regulated market without the issuer's consent**. In this case, the issuer will not be obliged to provide the Spanish regulated market with the information required to admit securities to trading.

1.2 EXTENSION OF THE TAKEOVER BID REGULATIONS TO COMPANIES LISTED ON AN MTF AND OTHER TAKEOVER BID DEVELOPMENTS

1.2.1 Extension of the rules on takeover bids to companies listed on an MTF

The **takeover bid regime is extended to companies whose shares are admitted to trading on an MTF and are domiciled in Spain**. The following MTFs that admit shares of Spanish issuers currently operate in Spain: BME MTF Equity (which includes the BME Growth segment) and Portfolio Stock Exchange, which was recently authorised by the CNMV.

This amendment represents a **new regulation for takeovers of issuers of shares traded on MTFs**, which until now have been governed by their own articles of association in compliance with BME Growth's regulations. The key changes include

(a) subjecting takeover bids for issuers of shares traded on MTF to prior authorisation and supervision by the CNMV, including in relation to equitable pricing;

(b) requiring the bidder to draw up an explanatory prospectus and to provide bank or cash guarantees to ensure payment of the consideration;

(c) requiring the directors of the target company to issue a report on the takeover bid; and

(d) applying the rules on takeover bids to the delisting of an issuer's shares from an MTF.

This is all in accordance with the regulations currently applicable to takeover bids for shares admitted to trading on regulated markets.

This regulation of takeover bids will not be applicable to companies whose shares are admitted to trading on an MTF **before the implementing regulations are issued**.

1.2.2 Other developments in takeover bids

The situations in which a mandatory takeover bid must be made when shareholders representing more than 30% of the voting rights are in agreement are extended to include **all types of agreement,** not just shareholders' agreements in a listed company, provided that they would result in a change of control by a **concerted action of the parties**.

Furthermore, **the declaration of a pandemic is added as an event that may trigger the application of the special rules on mandatory and voluntary takeover bids** during the two years following an event that disturbs market prices, in general, or the share price of the offeree company in particular. This has recently been the case with the pandemic resulting from COVID-19.

Finally, **the CNMV may exempt an issuer from the obligation to launch a takeover bid due to the delisting of its shares** from a regulated market, MTF or OTF when **the issuer's shares are admitted to trading on an equivalent trading venue in the European Union**. This measure may facilitate the movement of issuers between different domestic and foreign regulated markets, MTF or OTF.

1.3 REGULATION OF LISTED SPECIAL PURPOSE ACQUISITION COMPANIES

For the first time in Spain, special purpose companies listed to acquire a shareholding in another company (known as "SPAC") will be regulated. Their only prior activity is an initial public offering of securities, applying for their shares to be admitted to trading and taking steps to get the general shareholders' meeting to approve an acquisition. The acquisition may be direct or indirect, of all or part of the capital of another listed or unlisted company or companies, and by way of sale or purchase, merger, spin-off, non-monetary contribution, general assignment of assets and liabilities or other similar transactions.

The regulation of SPAC is included in a new chapter VIII *bis* within Title XIV (relating to listed companies) of the revised text of the Spanish Companies Law (the "**SCL**") approved by Royal Legislative Decree 1/2010 of 2 July. It will therefore **be applicable to SPAC that are public limited companies whose shares are admitted to trading on a Spanish regulated market or**, subject to article 495.3 SCL, **on a regulated market of another member state of the European Economic Area or of a comparable**

third country. These provisions will also apply to SPAC whose securities are admitted to trading **on an MTF**.

1.3.1 Redemption mechanism

SPAC **must have a mechanism for shareholder redemption** when the company's general shareholders' meeting approves an acquisition. The SPAC can choose between (a) regulating its shareholders' right of separation in its articles of association, (b) issuing redeemable shares, without applying the limitations set out in articles 500 and 501 of the SCL, or (c) committing to reducing its share capital by repurchasing shares for their redemption. In all cases, **all the shareholders will have the redemption right**, irrespective of how they voted at the general shareholders' meeting at which the proposed acquisition was approved.

The **redemption value must be (at least) equivalent to** the corresponding share of the cash amount tied up in the temporary account into which **the proceeds of the initial public offering were deposited**. Of course, there is nothing to prevent a higher redemption value being set, either to include the interest generated by the tied-up funds or a guaranteed minimum return, as some SPAC have done recently.

This right of separation specific to SPAC will be **incompatible with the statutory right of separation** provided for in article 346.1.a) of the SCL **when the SPAC's corporate object is completely or partially changed** as a result of it acquiring another company.

When the redemption is carried out by means of a capital reduction with repurchase of own shares, the SPAC **may deliver the acquired shares to its own shareholders** as full or partial consideration for the acquisition and **creditors will not have a right to object**, provided that the SPAC has limited its activities to offering shares and taking the necessary steps to carry out the acquisition or merger.

1.3.2 Specifics of takeover bids

A **shareholder who acquires a direct or indirect controlling interest** as a result of an approved acquisition or as a consequence of the redemption mechanism **is exempt from the obligation to formulate a takeover bid**.

If the SPAC **reduces its capital as a redemption mechanism** prior to –or as part of an acquisition or merger– the **price of the takeover bid will be equivalent** to the portion of the cash amount tied up in the temporary account in which **the proceeds of the bid** were deposited at the time the redemption right was exercised.

1.3.3 Other aspects of SPAC

The new text of the SCL sets out exclusive features of SPAC. These include the fact that a SPAC's articles of association must provide for a **maximum period of 36 months to execute an acquisition agreement,** which may be extended by an additional 18 months by the shareholders' meeting. These deadlines are significantly longer than those set out in the proposed SPAC regulation that the US Securities & Exchange Commission submitted for public consultation in March 2022, which refers to a period of 18 months that may be extended by a further six.

Likewise, **the maximum limit on treasury shares applicable to listed companies will not apply to SPAC**, provided that **the SPAC only acquires treasury shares** as a **mechanism for shareholder redemption** once the company to be acquired has been determined.

Finally, **the CNMV may require a SPAC to publish a prospectus for the mergers between it and the target company or companies** considering the nature and complexity of the transaction, **although the exceptions in the Prospectus Regulation may apply** to issues and admissions of SPAC shares to trading in the context of the merger. It should be noted that, per Regulation (EU) 1129/2017 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, this exception will not apply when the merger constitutes a reverse acquisition transaction for the purposes of International Financial Reporting Standard 3 (Business Combinations), which is essentially when the acquired company is larger than the SPAC.

1.3.4 Other new developments involving issuers

The deadline for obliged issuers of securities (basically, issuers of shares and debt securities with a nominal value of less than EUR 100,000) to send the **half-yearly financial report for the second half of the financial year to the CNMV has been extended from two to three months**. This corrects the anomaly in the current regulations (not created by Directive 2004/109/EC of 15 December on transparency of issuers of securities) according to which the deadline for issuers of securities to publish the half-yearly financial report for the second half of the year is two months, as opposed to the three months they have to prepare the half-yearly financial report for the first half of the year.

Also, **further requirements** are added to those already in place **for the marketing to retailers of additional Tier 1 and Tier 2 capital instruments and other debt instruments that are eligible liabilities or eligible for bail-in by financial institutions** under resolution rules. These requirements would apply only to instruments issued after the Draft Law enters into force and are also extended to the marketing of contributions to the share capital of credit cooperatives.

2. KEY AMENDMENTS FOR INVESTMENT FIRMS AND OTHER INTERMEDIARIES

2.1 INVESTMENT FIRMS

The most notable development with regard to investment firms concerns financial advisory firms, in respect of which:

(A) The concept of a **national financial advisory firm (EAFN according to its Spanish initials)** is created with the following characteristics, pending regulatory development:

  (i) They can be **natural or legal persons**.

  (ii) They may provide the **investment services typical** of this type of firm (investment advice, financial advice on capital structure, industrial strategy and related matters, as well as in relation to mergers and acquisitions and preparing financial analysis reports).

(iii) They **do not have the status of investment services firms, but are subject to the same rules, albeit with lower initial share capital requirements** and without the capacity to provide services outside Spain.

(B) Foreign financial advisory firms (but only legal persons) will have the status of investment firms.

The other changes **adapt Spanish legislation to the new EU regime for investment firms** set out in Regulation (EU) 2019/2033 of the European Parliament and of the Council, of 27 November, **on prudential requirements for investment firms**. As in many other areas of the Draft Law, various substantive issues introduced by the EU regulation are awaiting regulatory development.

2.2 SECURITIES CLEARING, SETTLEMENT AND REGISTRY SYSTEMS AND POST-TRADING INFRASTRUCTURE

The following developments are noteworthy:

(A) As regards **central clearing counterparties (CCPs):**

(i) **provision is made for** transactions to be settled **using distributed ledger technology;**

(ii) **the recovery and resolution of CCPs is regulated** by reference to Regulation (EU) 2021/23 of 16 December;

(iii) CCPs are required to include in their internal rules a **recovery plan detailing the measures to be taken** if their financial situation deteriorates or there is a risk that they will not comply with the requirements of Regulation (EU) 648/2021.

(B) As regards **central securities depositories (CSDs), the percentage** shareholding in a CSD **which is subject to the non-opposition regime for** the acquisition of qualifying holdings applicable to investment firms **is raised from one to ten per cent**.

2.3 DATA REPORTING SERVICES

Responsibility for authorising **Authorised Publication Agents (APAs), Consolidated Information Providers (CIPs) and Authorised Information Services (AIS)**, which until now has been under the remit of the CNMV, is passed to **ESMA. However, the CNMV may still authorise APAs and AIS if they are of little relevance** to the internal market and the exemption in Article 2.3 of Regulation (EU) 600/2014 applies.

Part of the current regulation of data provision services has been removed from the Draft Law and is awaiting regulatory development.

2.4 RULES OF CONDUCT

The new features introduced originate from the transposition of Directive (EU) 2021/338 amending the MiFID II Directive (known as "Quick Fix") and are as follows:

(a) The new article 198(3) gives an exemption from product governance requirements (i) where financial instruments are marketed or distributed exclusively between eligible counterparties and (ii) where the

investment service relates to unstructured bonds or with no embedded derivatives other than a clawback clause.

(b) The new article 199(4) states that the information to be provided to clients in accordance with the Securities Market Law must be in electronic form, except where the client or potential client is a retail client who has asked to receive the information in paper form, in which case it must be provided in this format free of charge.

(c) The new article 201(2) creates an exemption from specific reporting obligations for professional clients, unless they inform the investment firm to the contrary.

(d) The new article 203(3) states that, in the case of investment advice or portfolio management services involving the switching of a financial instrument (i.e. the simultaneous sale and purchase of a financial instrument or the right to switch), the necessary information on the client's investments must be obtained and the costs and benefits of switching must be analysed.

With regard to article 223, the content of the engagement policy that institutions providing discretionary and individualised portfolio management services must have in place and that describes how their role as shareholders or shareholders' asset managers is reflected in their investment policy, is significantly reduced with the intention that it be developed in other regulations, and the conflicts of interest regime under article 120 will now also apply to engagement activities.

3. AMENDMENTS REGARDING CRYPTO-ASSETS AND DISTRIBUTED LEDGER TECHNOLOGIES

The Draft Law transposes the Directive of the European Parliament and of the Council amending Directives 2006/43/EC, 2009/65/EC, 2009/138/EU, 2011/61/EU, 2013/36/EU, 2014/65/EU (EU) 2015/2366 and (EU) 2016/2341, and accompanying proposals for EU Regulations concerning crypto-asset markets and the temporary regime for market infrastructures based on distributed ledger technology ("**DLT**"). These Regulations govern (i) the issuance, offer and admission to trading of crypto-assets, (ii) crypto-asset service providers, (iii) the conditions of the pilot regime for DLT-based market infrastructures, and (iv) ICT risk management, incident reporting, testing and monitoring.

In this regard, the Draft Law makes the necessary adaptations to implement Regulation (EU) 2022/858 on a pilot regime for market infrastructures based on distributed ledger technology and amending Regulations (EU) No 600/2014 and (EU) No 909/2014 and Directive 2014/65/EU ("**Pilot DLT Regulation**"), as well as the Regulation on crypto-asset markets and amending Directive (EU) 2019/1937 ("**Crypto-Assets Regulation**").

3.1 AMENDMENTS TO IMPLEMENT THE PILOT DLT REGULATION

The Draft Law incorporates the rules necessary to ensure DLT-based securities are protected by law, enabling the Pilot DLT Regulation to be applied in Spain and fulfilling the mandate given to Member States in Article 10(b) of that Regulation.

3.1.1 Definition of financial instrument

In order to clarify the legal treatment of crypto-assets that may be considered as financial instruments, an additional provision is added to the definition of "**financial instrument**" to include **those issued through the use of DLT** or similar technologies, whose characteristics, specific categories and legal regime will be determined by regulation.

This provision reflects the fact that the **use of DLT does not alter the legal nature of the financial instrument**, such that those issued via DLT continue to be subject to the regulatory framework applicable to financial instruments. It maintains a **neutral position on the various technologies underlying the provision of financial services**, omitting any explicit reference to the technologies used to issue, register, transfer and manage financial instruments.

3.1.2 Representation and recording of transferable securities using DLT-based systems

The provisions contained in chapter II (*Book-entry securities*) **will apply to transferable securities registered or represented by means of DLT-based systems** whose terms and conditions of issue allow new rules on registration, transfer and the way securities are represented to be applied, provided that said agreement is valid in accordance with the laws applicable to the issuer and the terms and conditions of the issue.

In the absence of an express mention in the issue document, the provisions of chapter II will also apply when the issuer (i) has its registered office in Spain or (ii) designates a single entity with registered office in Spain to administer the registration and representation of the securities in the system.

For **representation by DLT-based systems**, the issuer must ensure that such systems (i) ensure the **integrity and immutability of the issue** in the records produced, and (ii) allow **the holders** of the rights to the transferable securities to be identified directly and indirectly, as well as the **nature, characteristics and number** of the securities. The issuer must also have a **business continuity plan** and a **contingency plan** describing the data backup systems that are triggered if the DLT-based representation system fails. In any case, the holders of rights to the transferable securities represented by the DLT-based systems will have access to the information relating to those securities and their related transactions.

As for book-entry form securities, **the issuer** of transferable securities represented by DLT-based systems must (i) **prepare a document identifying the transferable securities** in the issue and **the systems in which the securities are recorded**, and (ii) **deposit** a copy of that document and any amendments thereto **with the entity(ies) responsible for administering the registration and recording** of the transferable securities in the DLT-based systems.

The **entity responsible for registering** transferable securities represented by DLT-based systems **is the issuer itself or the entity designated by the issuer in the issuing document**, either by assigning these functions to a specific entity or entities or by describing the requirements to qualify for such status.

Changes to the way transferable securities are represented in DLT-based systems will be made (i) as provided for **in the continuity plan or contingency plan** and, **if not provided for, with the CNMV's prior authorisation**, in the event of a change from representation by DLT-based systems to book-entry

form or title-form; and (ii) provided that the **holders give their consent** to the transformation, in the event of a change from representation by title or book-entry form to any DLT-based system.

The CNMV-authorised market infrastructures will be responsible for monitoring compliance with the aforementioned requirements relating to representation and registration in accordance with the applicable EU regulations.

3.1.3 Creating and transferring DLT-based transferable securities

Transferable DLT-based securities will be created **by their first registration in the DLT system** in favour of the issuer or the subscribers of the securities. Where the securities are incorporated by means of their registration in the issuer's name, they will be placed into circulation through their registration in the relevant system in favour of the subscribers to those securities.

Transfers will take place when recorded in the distributed register, and registration in favour of the acquirer will have the same effects as delivering the securities. Enforceability, subscription and transfer, constitution of rights *in rem* and legitimisation are regulated in the Draft Law in the same terms as in the current Securities Market Law for transferable securities represented in book-entry form.

However, the Draft Law states that **entitlement** to transfer and exercise the rights deriving from DLT-based transferable securities is accredited through system features whereby the ownership of the rights in question is unquestionably proven. The issuance document will detail the mechanisms implemented by the relevant DLT-based system to evidence the ownership of the rights to the transferable securities represented.

3.1.4 Supervision, inspection and sanction regime

The entities responsible for administering the registration and recording of transferable securities represented by DLT-based systems are subject to the supervisory, inspection and sanction regime established in the Draft Law for the CNMV.

The following will be considered **serious infringements** under the sanction regime:

1. **Representation of transferable securities**: (i) failure by the entities responsible for administering the registration and recording of transferable securities represented by means of DLT-based systems to get authorisation from the CNMV to reverse the representation of securities; (ii) the issuer delegating responsibility for administering the registration and recording of securities in DLT-based systems to an entity other than an investment services firm or credit institution authorised to carry out this activity or a central securities depository; and (iii) mismanagement of issues by the entities responsible.

   These infringements will be considered **very serious** when they cause damage to the assets of a number of investors or when the conduct is not occasional or isolated.

2. **Securities clearing, settlement and registration systems**: failure to comply with the rules on securities registration by the entities responsible for administering the registration and recording of transferable securities represented by systems based on DLT.

This infringement will be considered a **very serious** offence when it causes damage to the assets of a number of investors.

3.2 AMENDMENTS TO IMPLEMENT THE CRYPTO-ASSETS REGULATION

3.2.1 Authority of the CNMV

The CNMV is designated as the authority authorised to **supervise compliance** with the Crypto-Assets Regulation and, where appropriate, **to coordinate and exchange information** under the Crypto-Assets Regulation. Thus, the CNMV will be responsible for supervising the issue, offer and admission to trading of specific crypto-assets that are not financial instruments.

3.2.2 Infringement and sanction regime

In order to enable the CNMV to exercise its powers under the Crypto-Assets Regulation, the Draft Law also introduces the following penalty regime.

The infringement regime classifies as **serious infringements** breaches of obligations relating to: (i) the issuance and public offering of crypto-assets other than asset-referenced tokens or e-money tokens that are not financial instruments, (ii) asset-referenced tokens, (iii) the actions of crypto-asset service providers, (iv) market abuse in relation to crypto-assets and (v) failure to cooperate or comply with an investigation, inspection or request by central clearing counterparties.

Such **infringements** will be considered **very serious** when the following conditions are met: (a) the proper functioning of the primary securities market has been seriously jeopardised, (b) the crypto-asset issues are placed without adhering to the basic conditions advertised, or omitting important data or including inaccuracies or misleading data in the advertising, (c) crypto-asset service providers engage, other than on an occasional or isolated basis, in activities that are unauthorised or, in general, outside their corporate object; and (d) the obligation to establish and maintain mechanisms, systems and procedures to prevent, detect and report orders or transactions suspected of constituting market abuse is not complied with.

The **penalty** for these infringements will vary according to the type of infringement and the status of the infringing party (i.e. natural or legal person), and will be determined on the basis of the profits obtained or losses avoided as a result of the infringement, the total turnover during the preceding financial year or the fixed amounts set out in the Draft Law.

4. KEY INSTITUTIONAL MATTERS AND CHANGES TO THE SUPERVISION, INSPECTION AND SANCTION REGIME

4.1 CNMV INSTITUTIONAL REGIME

The main new features introduced by the Draft Law relate to the **organisational and functional autonomy of the CNMV,** and establish expressly that it has a duty to act entirely independently of state institutions and of any other person or public or private entity. In the same vein, state institutions and other

public or private entities are prohibited from attempting to put pressure on or give instructions to the CNMV's board or its staff, or for them to seek or accept instructions from them.

To reinforce the CNMV's independence, the Draft Law **abolishes the right to appeal its decisions on sanctions and the intervention and replacement of directors to the Ministry of Economic Affairs and Digital Transformation**.

With regard to staff, and also linked to the CNMV's independence, the Draft Law allows it to fill its vacancies without resorting to the official channels for civil servant appointments.

With regard to the CNMV's regulatory powers, the Draft Law maintains the CNMV's power to approve circulars and clarifies that they are subject to prior public hearing and consultation, as well as to the opinion of the Council of State. Its power to publish technical guides on supervisory matters is also maintained.

The composition of the CNMV's board remains the same, i.e. a chairperson, vice-chairperson and three board members (the first two appointed by the Government and the last three by the Ministry of Economic Affairs and Digital Transformation), as well as the two current *ex officio* board members, the secretary general of the treasury and international finance and the deputy governor of the Bank of Spain.

The main development in this area, in addition to establishing that **men and women must have a balanced presence on the board**, "except for well-founded and objective reasons that are duly justified", is that the Draft Law **extends the term of office of the chairperson, vice-chairperson and non-*ex officio* directors from four to six years, without the possibility of re-election**. The board will be **renewed partially every two years**. The transitional provisions allow **the current chairperson's and vice-chairperson's mandates to be renewed** at the end of their current term of office **for a maximum two-year period**. The principle of a **balanced presence of women and men,** except for reasons that are duly justified, also applies to the **CNMV's Advisory Committee**, whose composition (in terms of industry representatives) is not altered by the Draft Law.

4.2 SUPERVISION, INSPECTION AND SANCTION REGIME

The main new developments in this area result from the transposition of Directive (EU) 2019/2034 of the European Parliament and of the Council of 27 November 2019 on the prudential supervision of investment firms, as well as the implementation of Regulation (EU) 1286/2014 of the European Parliament and of the Council, of 26 November 2014, on key information documents for packaged retail and insurance-based investment products, and, where applicable, the EU Regulation (still in the process of being approved) on crypto-asset markets and on the digital operational resilience of the financial sector. The Draft Law introduces infringements and sanctions in these areas, as well as specific aspects of supervisory powers (already mentioned in section 4, in relation to crypto-assets). However, many of the supervisory, inspection and sanctioning aspects relating to the prudential supervision of ESIs are already regulated in the Securities Market Law, albeit by reference to the previous regime, which ESIs shared with credit institutions (i.e. Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms).

The Draft Law –as with many other matters that have already been mentioned– indicates that **many aspects of supervision, inspection and sanctioning** will now be regulated in the draft royal decree on the CNMV's administrative powers and duties ("**PRDP**").

Thus, **the supervisory and inspection regime and its general provisions on the essential aspects of the relations between the CNMV and other authorities** (national, EU and third-country), **as well as the general regime relating to prudential supervision, are reserved for the Draft Law**. The Draft Law also maintains the general provisions of the **sanction regime**, the classification of infringements and the regulation and quantification of penalties.

The **PRDP will regulate the CNMV's official registers and its dealings with other authorities**, as well as the specific provisions on supervision, such as **the subjective and objective scope of the supervisory function** (including specifics of the prudential supervision of investment firms), **cooperation with other supervisory authorities and the reporting and publication obligations of the CNMV and on the solvency of investment firms**.

The CNMV's supervision, inspection and sanctioning powers in the area of advertising are maintained under the Draft Law for the regulated activities, crypto-assets (as mentioned above) and other assets and instruments presented as investment objects that are not regulated. A significant new feature is introduced in the form of an **obligation on internet search engines, social networks and the media to collect information on the authorisation** (or lack thereof) **of advertisers who intend to advertise financial instruments or investment services** to the general public through them, and to check that advertisers are not on a CNMV or other foreign supervisor block-list. It also allows the CNMV to make the necessary information available to carry out these verifications and classifies non-compliance as a very serious infringement.

As regards the legislation applicable to the sanction procedure, it should be noted that the Draft Law expressly cites Royal Decree 2119/1993 of 3 December on the sanction procedure for parties acting in the financial markets. The CNMV had been applying this royal decree insofar as it did not contradict Law 39/2015 of 1 October on the Common Administrative Procedure for Public Administrations, however other financial supervisors consider it to have been repealed by the latter.

The rest of the **regulation of infringements and penalties** in the Draft Law, although the types and penalties hardly change, is **much improved in terms of the systematisation and classification of infringements, categorising them in different articles depending on the substantive regulation that is breached or the offending party, and distinguishing in each article between very serious and serious infringements**. That said, the Draft Law still uses excessively generic terms or expressions to distinguish between serious and very serious offences, such as "not merely occasional or isolated", "significant", "repeated", or "significant number of investors affected".

The Draft Law continues to refer to other legislation, generally EU regulations, to define offences (short selling, market abuse, etc.) as the "failure to comply with the obligation provided for in the relevant regulation".

As regards minor infringements, the current structure and the type of residual "*infringements of mandatory rules which do not constitute a serious or very serious infringement*" are maintained.

The **statutory limitation period for serious infringements is set at four years, as opposed to the five years established in the Securities Market Law currently** for serious and very serious infringements. The **statutory limitation period for minor and very serious infringements is kept at three and five years** respectively in the Draft Law.

The Draft Law maintains the possibility that one or more of the sanctions provided for in the regulation itself be imposed for serious and very serious infringements, mainly fines (depending on profit, equity, funds used, turnover or at a flat rate), suspension or limitation of the volume of operations or activities, suspension of the status of market member or MTF, exclusion from trading, revocation or suspension of authorisation or prohibition to commence activities in Spain, suspension from the post of administrator and disqualification, restitution of profits or losses avoided, prohibition to trade on its own behalf, public or private reprimand, etc. Like the Securities Market Law before it, the Draft Law does not clarify when and how these powers may be exercised, despite the great variety and range of possible sanctions.

The range of sanctions that can be imposed on institutions or those holding management or directorship positions for serious and very serious infringements remains broadly the same, with differences like those in the current rules for sanctions regarding the periodic disclosure of issuers, significant holdings and treasury shares, credit rating agencies, benchmarks, prudential requirements for investment firms, market abuse, enhanced securities settlement and CSDs, key information documents, transparency of securities financing transactions and prospectuses. Serious and very serious sanctions are introduced for new offences relating to crypto-assets and digital operational resilience in the financial sector, already mentioned under section 3.

The Draft Law **extends to any type of minor infringement, the exceptional possibility to limit the punishment of a minor infringement to an injunction on the alleged offender,** and not only to breaches of rules of conduct in the framework of an investment firm customer relationship.

The possibility of publishing serious and very serious sanctions in the Official State Gazette is also maintained although it is not classed as a sanction (and is, therefore, different to the sanction of a public reprimand).

5. OTHER DEVELOPMENTS

(A) **Investment firm complaint channels**: a new feature is introduced whereby the "social partners" (i.e., trade unions) may "facilitate" the notification of alleged infringements, provided that they offer the same protection as that provided under the current regulations on complaint channels.

(B) **CNMV complaint services**: The CNMV will still be seen as an alternative dispute resolution entity in the securities market field until the sole authority competent to resolve consumer disputes in the financial sector is created. The Bank of Spain is also added.

(C) **Removal of the obligation for financial intermediaries to report to the CSD** for the supervision of trading, clearing, settlement and registration of securities (the so-called "PTI", established in 2017). The Draft Law establishes a period of two years for CSDs, market infrastructures and participant entities to adapt to the removal of the obligation to have a PTI

established in articles 114 to 116 of the Securities Market Law. The Draft Law takes into account, in addition to the burdens it entails, that the PTI may have been a barrier to entry for EU and third-country investors, and was superseded by subsequent EU regulations which allow the traceability of transactions. An adaptation period of two years is established in view of the costs of modifying the systems and the difficulties in keeping detailed records.

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