

## Banking and Finance News

### **CNV introduces important changes in Paraguay's securities market regulation**

On February 9, 2023, the new Paraguayan General Securities Market Regulation (the New Regulation) was issued, which brought with it important modifications and incorporations that reflect the advances in the area during the last few years. In addition to the New Regulation, the competent authority, the National Securities Commission (Comisión Nacional de Valores - CNV. by its Spanish acronym), has issued, through subsequent circulars, clarifications, extensions of deadlines and model contracts to be used by regulated entities.

Below, a summary of the key modifications and additions made by the New Regulation and the circulars :

#### **1. Stock exchange**

Significant modifications can be found in the chapter referring to stock exchanges; namely, (a) market makers, and (b) direct market access (DMA).

##### *(a) What is a market maker?*

A market maker is an intermediary company that assists in maintaining liquidity in the financial market. These entities are in charge of buying and selling financial assets (i.e., stocks, bonds, etc.) in a given market, and establishing the selling and buying prices for these assets. Their main objective is to ensure that there are always buyers and sellers for the financial assets that are traded, in order to maintain liquidity in the market.

The New Regulation establishes that, in order to act as market makers, brokerage firms must have the corresponding authorization. Likewise, the New Regulation establishes the minimum standards that the stock exchange must follow to regulate the operation of the market makers through the Electronic Trading System (Sistema Electrónico de Negociación -SEN, by its Spanish acronym).

##### *(b) What is the Direct Market Access?*

The DMA is a way for investors to send buy or sell orders directly to the trading systems of the stock exchanges, without the need to use intermediaries such as brokers or brokerage houses. This allows investors to have greater control and speed in the execution of their orders, in addition to reducing costs and improving transparency in operations.

While clients will be able to send their orders directly with the DMA, brokerage firms will still be responsible for ensuring that the necessary requirements are met in order to execute trades and must make their best efforts to protect and look after the interests of their clients. In addition, only securities that are registered with, and authorized by, the CNV and the stock exchange can be traded through the DMA.



As for implementation deadlines, when the stock exchange (the Bolsa de Valores de Asunción - BVA, by its Spanish acronym) enables the DMA, brokerage firms will have 120 days to start offering it to their clients. To this date, such authorization by the BVA has not yet occurred.

## 2. Brokerage firms

The section of the New Regulation referring to brokerage firms incorporates several changes and inclusions, the most relevant of which refer to (a) shareholding and new payments of corporate capital, (b) disqualification to be a shareholder and (c) appointment and removal of operators, as summarized below:

**(a) Shareholding and new payments of corporate capital:** Brokerage firms must submit an affidavit certifying that they have performed their due diligence under the expanded regime with respect to those shareholders who own a percentage equal to or greater than 10% of the shares, both at the time of registration and periodically, each time there is any change that presents a share ownership equal to or greater than 10%. In addition, capital payments must be made through authorized accounts in banks and financial institutions regulated by the Central Bank of Paraguay (Banco Central del Paraguay - BCP, by its Spanish acronym). These payments may not be made with securities issued by related entities and must be made with securities rated A, similar or higher.

**(b) Disqualification to be a shareholder:** The New Regulation establishes that the bylaws of brokerage firms must contemplate that those who are included in the lists of financial sanctions related to terrorism and the proliferation of weapons of mass destruction indicated in the regulations of the Secretariat for the Prevention of Money or Asset Laundering (Secretaría de Prevención de Lavado de Dinero o Bienes - SEPRELAD, by its Spanish acronym) may not be shareholders or have voting rights, nor hold positions on the board of directors. This measure is in line with what has been established by SEPRELAD and seeks to prevent the participation of persons linked to illegal activities in the ownership and management of brokerage firms. In addition, the New Regulation establishes that brokerage firms have a period of 6 months from the date of its enforcement to amend their bylaws to expressly include this disqualification.

**(c) Appointment and removal of stock exchange operator:** The mechanism to appoint and remove operators was modified as regards to the need to have powers of attorney or revocation of powers of attorney registered before the public registries. From now on, it will be sufficient to submit to the CNV the minutes of the board of directors' meeting, notarized before a public notary, evidencing the decision of the board of directors to appoint or remove the operators. This means that the term for the appointment or removal of operators will be significantly reduced.

## 3. Model of single agreement for stock exchange services

The New Regulation establishes a single service agreement to be used both by brokerage firms in process of registration, as well as by those already authorized and registered prior to the issuance of the New Regulation. The single service agreement may be signed in a handwritten or electronic form. Finally, the New Regulation establishes that any additional or complementary form agreements that brokerage firms enter into with their clients must be sent to the CNV for prior approval.

The form of the single service agreement was released through a circular issued by the CNV and establishes the terms and conditions of services between a brokerage house and a client, detailing the services that the brokerage house will offer to the client. The services include securities brokerage, advice on securities and stock exchange operations, administration and custody of securities, credit or margin, subscription of mutual fund quotas, direct market access and account opening for financial derivative operations, among other provisions.

Regarding the implementation term, the CNV informed that the brokerage firms already authorized and registered have until June 30, 2023, to adopt this single service agreement form.



#### 4. Issuer companies

Regarding the issuer companies (Sociedades Anónimas Emisoras or SAE, by its Spanish acronym, and Sociedades Anónimas Emisoras de Capital Abierto or SAECA, by its Spanish acronym), the New Regulation makes innovative inclusions and modifications for the market, of which the most important are regarding (a) the special regime for small and medium-sized companies (Pequeñas y medianas empresas - PYMES, by its Spanish acronym), (b) the reform of the bylaws of issuer companies, and (c) the automatic suspension of trading, as summarized below:

**(a) Small and medium-sized enterprises (PYMES) special regime:** Pursuant to the provisions of the New Regulation, companies that do not have the corporate type of a Corporation that comply with the requirements established by the Ministry of Industry and Commerce (Ministerio de Industria y Comercio -MIC, by its Spanish acronym) to be classified as PYMES, and have the respective categorization certificate issued by the MIC, will be eligible for the special regime for small and medium-sized companies.

**(b) Requirement of bylaw amendments:** The New Regulation establishes the text to be included in the bylaws regarding the securities that may be traded depending on whether the company is a SAE or a SAECA.

**(c) Automatic suspension:** Trading of shares and bonds issued by issuer companies that do not comply with the regular filing of information established in the New Regulation will be automatically suspended in the primary market, unless such companies have obtained an extension of time granted by the CNV. It should be noted that this suspension is not considered a sanction, but a preventive measure.

#### 5. Debt securities

The most significant amendments regarding debt securities are those related to (a) the need to file an affidavit by issuers that do not engage in financial intermediation, (b) issuances secured by security trusts, (c) redemption and call option mechanisms to be included in the prospectus, and (d) elimination of restrictions regarding short-term bonds, as indicated below:

**(a) Affidavit of resources to be collected:** In the case of issuers that are not authorized by the BCP to carry out financial intermediation activities, in accordance with the provisions of the New Regulation, they must submit a sworn statement in which they undertake not to use the proceeds of the issuance to carry out financial intermediation activities.

**(b) Issuances secured by guaranty trusts:** The New Regulation establishes that in the event that an issuance is backed by a guaranty trust, the guaranty will be considered to be total if the value of the issuance is equal to the quick sale value of the asset used as security. If the value of the issuance is greater than the quick sale value of the asset, the security shall be deemed to be partial.

**(c) Redemption and call option mechanisms to be included in the prospectus:** In the event that an issuer allows early redemption or call option by the investor, as established by the New Regulation, all relevant information, including the redemption price and details of the applicable conditions, must be clearly specified in the issuance prospectus.

**(d) Elimination of restrictions:** Under the New Regulation, restrictions on the amount of short-term bonds that may be issued, and the level of indebtedness allowed are eliminated.

#### 6. Shares

The section dealing with regulations related to shares has undergone minor changes, which are specified below:



**(a) Adjustments to the application documents:** the New Regulation indicates that in the event that preferred shares are issued that are subject to redemption, the redemption value must be previously specified in the issuance instrument.

**(b) Inclusion of requirements for share registries:** according to the New Regulation, in order to register the issued and integrated shares and those released from payment with the CNV, it will be necessary to file a general prospectus including a facsimile copy of the shares, a copy of the document authorizing the issuance, and a description of the security measures to be applied in the production of the certificates in question.

## 7. Investment fund management companies

The section corresponding to the investment fund management companies (Administradoras de Fondos patrimoniales de Inversión -AFPISA, by its Spanish acronym) has been subject to several modifications and additions in the New Regulation, especially those related to (a) corporate capital, bylaw changes and form of agreements, (b) investments of committed equity, (c) investment funds, and (d) mutual funds.

**(a)** Regarding corporate capital, changes in the bylaws and the single agreement, the New Regulation sets forth the same provisions made in said document for brokerage firms. If the company wishes to enter into other agreements with its clients, in addition to the single agreement, it must have prior approval from the CNV. On the other hand, the AFPISAs have (i) a term of six months since February 11, 2023 to carry out the corresponding bylaw amendments and (ii) until June 30, 2023 to implement the forms of the single mutual fund subscription agreement and the form mutual fund installment placement and redemption agreement.

**(b)** The New Regulation establishes the conditions under which the AFPISAs may invest within the minimum committed equity, based on the minimum proportion set by the CNV. They are limited to invest in movable and immovable assets that are not destined to the company and in securities that are not traded on the stock exchange, unless permitted by the New Regulation. As for securities eligible for investment, they include term securities issued by institutions authorized by the BCP, as well as bonds, debt securities or securities issued under securitization processes that have a local risk rating of "BBB" or higher and whose issuance is registered in the Securities Registry of the CNV. In addition, notwithstanding the foregoing, the AFPISAs may invest the surplus of their committed equity in real estate, securities and investment assets included in Title 19, Chapter 6, Article 1 of the New Regulation.

**(c)** The investment funds section includes the terms for (i) the placement and (ii) the subscription of the fund quotas:

**(i)** For the first term referred, it cannot be greater than twelve (12) months, unless it is extended by the CNV in accordance with the Law on Equity Investment Funds. In the event that the term expires without extension, the number of installments will be reduced to the number of installments actually paid without the need to convene a quota holders' meeting.

**(ii)** For the second term, the New Regulation indicates the time in which the fund must reach the minimum amount of assets indicated in the internal rules of procedures and the minimum number of participants established. This period is of six (6) months from the first subscription. If these conditions are not met, the fund managing company must notify the CNV and has up to one hundred and eighty (180) days to rectify the deficit (this extension may be requested up to two times). If the situation is not resolved, the fund is liquidated. It is also established that until these conditions are met, the fund can only invest in securities issued by the Public Treasury or guaranteed by the fund itself, all of which must be included in the internal rules of procedures, or in securities issued by the BCP, or others determined by the CNV. Likewise, before implementing any change in the internal rules of procedures of a fund, the prior approval of the CNV will be required. Once the approval is obtained, an extraordinary quota holders' meeting will be convened so that they also approve the proposed changes. Finally, the New Regulation establishes the obligation to have specific internal rules of procedures for these funds, which must be previously approved by the CNV.



(d) Regarding mutual funds, the implementation of an account statement was included so that the client can view the types of movements (subscriptions or redemptions), identification number of the requests, number of installments, amount settled, etc.

The inclusions and modifications made by the CNV will be reflected in the Paraguayan market during the next few months, and there may be new modifications through circulars or resolutions of the authority. To date, the authorization of the DMA by the BVA is pending.

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