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The Securities Market and Regulation of Mexico

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INTRODUCTION

Mexico has an emerging economy, a rapidly developing securities market, and a comprehensive system of securities regulation firmly in place. The economy was beset by crisis in the early 1980's due to the collapse of the international oil market and other factors, but toward the end of the decade the economy began an impressive recovery. The securities market includes a primary market and a growing secondary market based at a new, automated stock exchange facility in Mexico City. The securities market has changed considerably in recent years, with, for example, mutual funds becoming much more active participants.¹ Foreign investment restrictions applicable to financial services (as well as other sectors) have also changed markedly. The system of securities regulation also has changed significantly in recent years, the early 1990 amendments being viewed as "the most radical since 1975."² Securities regulation in...
Mexico is comprehensive and includes regulation of public offerings, periodic disclosure, broker-dealers, investment companies, and insider trading. The securities law is administered by a federal securities commission vested with ample enforcement power.³ Mexico joined GATT in 1985, re-entered international capital markets in 1989, and signed securities-related agreements with the United States in 1990.

Mexico is a representative, federal republic consisting of thirty-one states and a federal district. Its Constitution vests legislative power in a bicameral Congress, executive power in the President, and judicial authority in a court system comprising of the Supreme Court of Justice, circuit courts, courts of appeal, district courts, and state courts. The federal government dominates the state governments, and within the federal system the executive branch is the most powerful of the three branches. Mexico is a civil-law jurisdiction with codes constituting the primary source of law, although a significant body of legislation, including financial law, is not in code form. A large part of the law of business organi-
zations, for example, is statutory but not part of the Commercial Code.11 Though essentially part of the capitalist group of nations,12 Mexico has considerable state participation in business and finance.13 Since World War II, the Mexican economy has grown rapidly and has become much more diversified and industrialized,14 and its rate of economic growth in the postwar era has been unsurpassed by any other developing country.15 Today the financial system is one of the most advanced in Latin America.16 Nevertheless, the country did experience an extended period of financial turmoil beginning in 1982.17

The government nationalized a number of industries and indirectly owns many enterprises.18 The banking system was nationalized on September 1, 1982, by President López Portillo in the final days of his administration and during the height of the financial crisis.19 On December

11. Id.
14. Y. Maroni, Mexico's Economic and Financial Record 23 (1966) (Study by the Board of Governors of the Federal Reserve System); Post-Effective Amendment No. 9 to Registration Statement under the Securities Act of 1933 of the United Mexican States, No. 2-70553 (Nov. 16, 1983) [hereinafter Mexican Registration Statement].
19. See generally supra note 17 and accompanying text.
1, 1982, Miguel de la Madrid was sworn into the office of the presidency and began the implementation of his own economic plan which included the reduction of the government's participation in the economy. Since 1982, Mexico has sold, merged, or liquidated over 800 state-owned companies. In 1990 the government moved to privatize most of the banking industry. Numerous other industries or companies in Mexico have been privatized or slated for privatization. For example, the large Mexican mining company, Cananea, was auctioned to private investors in October 1990, and at the same time preparations were being made for the sale of Telmex, the national telephone company.

§2 Regulatory Authorities

[a] Securities Commission

La Comision Nacional de Valores (hereinafter, the “Mexican Securities Commission” or the “Commission”) is the principal governmental authority responsible for regulating the Mexican securities market. Its history dates back to the 1930’s. In 1939 the Mexican Congress enacted legislation governing the sale of securities and authorizing the establishment of an agency to regulate the securities market. The 1939 Act required federal approval of the public offering of securities, except for securities quoted on an exchange, fixed-rate securities, and certain other securities. An agency within the executive branch was to administer the Act. The 1939 Act empowered the agency “to grant authorization for public offerings and to intervene somewhat in the supervision of the companies whose shares are offered for public sale.” In 1946, the Mexican Congress formally established the National Securities Commission.

23. Ley que Establece los Requisitos para la Venta al Publico de Acciones de Sociedades Anonimas, D.O., Feb. 1, 1940.
25. Id. at 7-8; Corte & Ritch, The Public Sale of Shares in Mexico, 2 STUD. IN L. & ECON. DEV. 25-26 (1967) [hereinafter Corte].
26. P. Hermosillo, DEVELOPMENT, supra note 24, at 12.
28. Decreto que Crea la Comision Nacional de Valores (Decree Creating the National Securities Commission), D.O., Apr. 16, 1946; Corte, supra note 25, at 26. See generally
National Securities Commission included representatives from a number of organizations, including the Bank of Mexico, Nacional Financiera, and the Mexican Stock Exchange. Although the 1939 Act contemplated regulation by an agency within the executive branch, the National Securities Commission was an independent Commission. The 1946 legislation gave the National Securities Commission the authority, among other things, to approve the sale of both equity and debt securities, establish a range of interest rates on certain debt securities, and regulate investment companies. Regulations under the 1946 Act authorized the establishment of the National Securities Register for the registration of various classes of securities.

Reform legislation in 1953 expanded the powers of the National Securities Commission. Under the new law, the Commission could, among other things, regulate stock exchanges, authorize securities for institutional investment, and approve Mexican securities offered abroad or foreign securities offered in Mexico. The 1953 Act consolidated a number of laws, rules, and regulations into one compilation. Legislation in 1954 and 1955 granted the National Securities Commission additional powers over investment companies.

The 1975 Securities Market Law abolished the National Securities Commission and established in its place La Comision Nacional de Valores (as above, “Mexican Securities Commission” or “Commission”). The Commission is an independent agency under the general supervision of the Ministry of Finance and Public Credit which is responsible for

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Hermosillo, Characteristics of the Securities Market in Mexico, 31 PROC. NAT. ASSN. SEC. ADMIN. 89 (1948) [hereinafter Characteristics]; Hermosillo, Comparison of the SEC and the Comision Nacional de Valores, 32 PROC. NAT. ASSN. SEC. ADMIN. 47 (1949) [hereinafter Comparison].

29. P. Hermosillo, Development, supra note 24, at 18.
36. P. Hermosillo, Development, supra note 24, at 43.
39. Id. (citing A. Romero, Derecho Bancario 42-44 (1978)); Gomez Gordoa, Marco Juridico y Estructura Institucional del Mercado de Valores, Revista de Investigaciones Juridicas de la Escuela Libre de Derecho, No. 5 (1981); J. La Cascia, Capital Formation
the overall formulation and coordination of Mexican financial policies. The Commission has primary responsibility for regulating the securities market and overseeing compliance with the Securities Market Law. The Ministry of Finance, however, has final administrative authority to interpret the Securities Law. The Commission's powers include, registration authority over securities and brokers, inspection and oversight responsibilities with regard to brokers, and rule-making power. When circumstances so require, the Commission may intervene administratively in the market or may take a variety of other enforcement measures.

The Commission is composed of the Governing Board (the supreme authority of the Commission), the President, and the Consulting Committee. The Governing Board consists of eleven members, five of whom are designated by the Ministry of Finance. One of these five designees will be appointed President of the Commission. Two members are designated by the Bank of Mexico, and one each by the Secretary of Commerce and Industrial Development, the National Banking Commission, the National Commission on Insurance and Bonding, and Nacional Financiera (the government development bank). For each regular member an alternate is appointed. The President of the Commission represents the Commission, executes resolutions of the Governing Board, and generally administers the affairs of the Commission. Within the Commission are various staff bureaus under the general supervision of the President.

The National Registry of Securities and Securities Brokers (the "Registry"), is a public registry under the authority of the Commission. The Registry is divided into three sections: the Securities Section, the Securities Brokers Section, and a "Special Section." Only documents registered in the Securities Section may be publicly offered. The public

AND ECONOMIC DEVELOPMENT IN MEXICO 46 (1969).
40. Mexican Registration Statement, supra note 14, at 29.
41. Creel, supra note 38, at 308.
42. Securities Market Law, supra note 2, art. 8.
43. Creel, supra note 38, at 308 n.18 (citing A. ROMERO, supra note 38, at 59).
44. The Securities Market Law grants rule-making authority to the Commission to be exercised for the purpose of promoting certainty and clarity with regard to obligations created by the law. Securities Market Law, supra note 2, arts. 3, 41. The rule-making power set forth in these provisions is quite broad. For example, the Commission has the authority to set capital and record-keeping requirements applicable to brokers and specialists and to make general regulations to promote "healthy" market practices. Id.
45. Id.
47. Securities Market Law, supra note 2, art. 43.
48. Id.
49. Id.
50. Creel, supra note 38, at 309.
51. Memoria de Labores, supra note 46, at 35.
52. Securities Market Law, supra note 2, art. 10.
53. Id. art. 11.
offering abroad of securities issued in Mexico or by Mexican companies is subject to registration in the Special Section of the Registry. The Brokers Section records registration of all brokers by categories of either natural persons or corporations. Detailed rules regarding registration are set forth in the Regulation of the National Registry of Securities and Brokers. It is the Commission's responsibility to organize the Registry to carry out the functions of the Securities Market Law.

[b] Ministry of Finance and Public Credit

Overall authority for the regulation of Mexico's financial system is vested in the Ministry of Finance and Public Credit which operates under the Organic Law of the Federal Public Administration. The Ministry of Finance has final authority over the administration of the securities market and the interpretation of the Securities Market Law. In addition, the Ministry of Finance supervises other governmental institutions that have a more direct role in regulating the market, such as the Mexican Securities Commission and the National Registry of Securities and Securities Brokers. The Ministry of Finance has primary responsibility in Mexico for the financial system, including the formulation of policies regarding public debt and fiscal policy.

[c] Other Financial Institutions

The government established the Institute for the Deposit of Securities ("Indeval" or "Securities Depository") in 1978, although it did not commence operations until 1980. Indeval, a clearinghouse and depository for securities traded in Mexico, eliminates the need for physical transfer of securities. Re-organized in 1987 as a private corporation, Indeval provides for the "safekeeping, administration, compensation, liquidation and transfer of securities." It uses a fully automated securities clearance system.

54. Id.
56. Id.
57. Id.
58. The Ministry of Finance and Public Credit also has authority over the Bank of Mexico and the National Banking Commission and the National Insurance and Bonding Commission. See F. LEES & M. ENG, supra note 16, at 359-64; J. LA CASCIA, supra note 39, at 46.
60. Prospectus of the Mexico Fund, Inc. 18 (Nov. 17, 1983) [hereinafter 1983 Prospectus].
61. Id.
62. Prospectus EMF, supra note 59, at 37.
63. Creel, supra note 38, at 310.
64. Prospectus EMF, supra note 59, at 29.
Several other institutions involved in various aspects of Mexico's financial system include the Mexican Securities Exchange, the Bureau of Foreign Investment and Transfer of Technology, the National Foreign Investment Registry, the Ministry of Commerce and Industrial Development, and the Ministry of Communications and Transportation. The National Banking Commission inspects and supervises banks (credit institutions) and generally oversees compliance with the federal banking statute. Similarly, the National Insurance and Bonding Commission regulates insurance companies and administers federal insurance legislation. Nacional Financiera, the government development bank, acts as an investor and intermediary in the Mexican market. Banco de Mexico, the central bank, formulates and implements monetary policy. The Mexican Association of Brokerage Firms, a self-regulatory organization, is involved in the regulation of Mexican broker-dealers; the Mexican Institute of Public Accountants oversees the accounting profession; and the Bank Disincorporation Committee is supervising the privatization of the banking industry.

§3 Securities Laws and Related Laws

The principal securities law in effect is the Securities Market Law. The Securities Market Law regulates the public offering of securities, the operations of brokers in selling securities, and the activities of those responsible for regulating the market. This law, which became effective as of January 3, 1975, and has been amended numerous times, is an advanced, comprehensive statement of securities regulation.

The law on Investment Societies provides for the organization and functioning of various types of investment companies. This law repealed the Law on Investment Corporations that was published in 1955. The Law on Investment Societies was amended in January 1990 to facilitate

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66. Prospectus EMF, supra note 59, at 36.

67. Id.

68. Id. at 37.


70. Securities Market Law, supra note 2, art. 1.


73. Library of Congress, Hispanic Law Division, Index to Latin American Legislation (Sept. 18, 1990) (abstract, hereinafter referred to as "Latin American Index").
the formation of investment companies and encourage foreign investment in this area.74

The Law to Regulate Financial Groups75 permits the formation of "financial groups" comprising at least three different types of financial entities, including brokerage firms, banks, insurance companies, and investment companies, among others.

Under the Organic Law of the Federal Public Administration, the Ministry of Finance is responsible for the coordination, supervision, and formulation of policy for Mexico's financial system.76

There is also a body of administrative law that is pertinent to the securities market of Mexico. For example, the Commission has internal regulations,77 circulares,78 rules,79 and instructions80 that supplement the Securities Market Law. The Regulation of the National Registry of Securities and Brokers elaborates upon the duties of the National Registry.81 For example, the Regulation contains a detailed explanation of the registration process.

Foreign investment in Mexico is governed principally by the Law to Promote Mexican Investment and Regulate Foreign Investment82 and the Regulations of the Law to Promote Mexican Investment and Regulate Foreign Investment.83 In some cases foreign investment in specialized industries is also governed by provisions in the laws specifically pertaining to that industry.84 In terms of foreign investment in financial services, the foreign investment law has been superseded, in part, by provisions in the laws governing specialized industries.85

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76. Prospectus EMF, supra note 59, at I-23.
78. See Creel, supra note 38, at 338, explaining that "[c]irculars are the legal instrument used by the Mexican Securities Commission to interpret the Securities Market Law and other related legislation, as well as to establish the criteria applicable to all companies that wish to have their stock traded in the stock exchange." Id. n. 195.
79. See, e.g., Reglas a las que habran de ajustarse las Casas de Bolsa en sus Operaciones con Certificados de la Tesoreria de la Federacion, in Comision Nacional de Valores, Leyes y Disposiciones del Mercado de Valores (1980).
80. See, e.g., Instructions for Applying for Registration of Stocks in the Securities Section of the National Registry of Securities and Securities Brokers, discussed in Creel, supra note 38, at 320 n. 71.
84. See generally infra § 6(g). The foreign investment law was enacted in 1973.
85. Id.
Financial laws include the General Law of Credit Institutions;²⁶ the Organic Law of the Bank of Mexico; the Law on Guaranty Institutions; and the Organic Law of Nacional Financiera. Negotiable instruments are governed primarily by the General Law of Credit Instruments and Operations. Currency is governed primarily by the Monetary Law. Corporations are subject to, inter alia, the General Law of Commercial Companies and the Commercial Code. Insurance companies are governed by the General Law of Insurance Companies.

§4 Securities

As explained further below,³⁷ the Securities Market Law regulates public offerings and brokerage in the securities market in addition to other activities. Clearly, the regulation extends to “securities” as defined in article 3. However, rather than adopting the approach taken by the United States and developing the scope of regulation through the definition of “security,” Mexico extended its regulation statutorily in keeping with the civil law tradition: “the system that the current law establishes for securities and the activities undertaken with them shall also be applicable to credit instruments and other documents that may be the object of [a] public offering or of intermediation in the securities market, that grant to their title holders rights of credit, property, or participation in the capital of corporations.”³⁸

Securities are defined to include shares, obligations (bonds, debentures), and other credit instruments that are issued in series or in mass.³⁹ This definition would include common and preferred stock, debt instruments including cetes (see below) or convertible debt, irrespective of whether it is senior or subordinated, or secured or unsecured, and other “credit instruments” such as promissory notes that are issued “in mass” or “in series.” Thus, the definition of “security” is very broad. As noted, however, the law is not limited to “securities,” but also includes other credit instruments and “documents” that may be the objects of a public offering or intermediation and that grant to their title holders rights of credit, property, or participation in the capital of corporations. Taken together, these two provisions are so broad as to forestall the type of litigation common in the United States concerning whether an instrument is a “security.” Most financial instruments in Mexico that are publicly offered or sold through brokers in the securities market would be covered.

In practical terms, the Mexican securities market consists of debt and equity sectors, but debt completely dominates the market.⁴⁰ In 1966

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²⁷. See infra § 7.
²⁸. Securities Market Law, supra note 2, art. 3.
²⁹. Id.
³⁰. The debt market may be further divided into the fixed-income sector and the money market. The principal distinction between these two markets is the maturity of the
approximately ninety-five percent of all trading on the Mexico City Stock Exchange was in fixed-income securities. In 1984 this figure was almost ninety-eight percent and was ninety-seven percent in 1989. Certificados de la federacion (colloquially, "cetes"), which are similar to United States treasury bills, dominate the Mexican debt market. In 1977 the Mexican Congress authorized the issuance of treasury bills to improve the federal government's access to internal financial resources. The government issued cetes as an instrument for short-term finance and control of the money supply. Cetes are issued through Banco de Mexico, have a maximum maturity of one year, and are liquid investments which brokers sell at a discount from face value at maturity. Cetes are auctioned weekly by Banco de Mexico and traded on the Mexican Stock Exchange.

In 1980 the Commission approved commercial paper and bankers' acceptances for issuance by Mexican companies, expanding the types of money market instruments available. "Commercial paper consists of promissory notes issued by a corporation, obligating it to pay principal plus interest to the holders within a specified period." It is unsecured, short-term indebtedness sold primarily to institutional investors at a discount from face value. Petrobonds, government-issued debt securities which began trading on the Stock Exchange in 1977, are three-year obligations collateralized by Mexican oil. Other fixed-income instruments include notes, corporate bonds and debentures, bank indemnity bonds, mortgage bonds, time deposits, bills of exchange, certificates of deposit and pledge bonds, real estate certificates, and urban renovation bonds.

In 1989 the Mexican government announced the approval of a variety instrument.

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91. J. La Cascia, supra note 39, at 50. See also A. Basch & M. Kybal, Capital Markets in Latin America 68 (1970). During the 1940's, the major financial instruments in Mexico were deposit and savings accounts. D. Brothers & L. Solis, Mexican Financial Development 32 (1966).
92. Memoria de Labores, supra note 182, at 17.
94. The contribution of the cetes to total financing in Mexico was 18% in June 1984 and 27% in June 1985. See The Economist Intelligence Unit, 4 Q. Econ. Rev. Mex., infra note 106, at 13.
95. Mexican Registration Statement, supra note 14, at 31.
96. 1983 Prospectus, supra note 60, at 14.
100. Mexican Registration Statement, supra note 14, at 31.
101. Creel, supra note 38, at 306.
102. Baird, supra note 98, at 47.
103. Id. at 50.
104. See Ross, Mexican Securities are Making Progress, 55 Banking 48 (1963) [hereinafter Ross, Progress].
of new financial instruments, the most popular of which were the so-called "adjustable bonds." These instruments are three-year, adjustable-rate bonds issued by the government. Treasury bonds are government issued fixed-interest instruments denominated in free-rate dollars. Treasury promissory notes are similar to Treasury bonds, except the notes are pegged to the controlled-dollar rate. Bank industrial development bonds are government-issued ten-year bonds designed to finance specific industrial development projects. Equity securities are issued in Mexico, and a number of classes of them trade on the stock exchange. Foreign investors are permitted to purchase debt securities in Mexico, except for cetes which may only be purchased by Mexican nationals. Foreign investment in equity securities is, however, subject to numerous restrictions under the Foreign Investment Law.

§5 Securities Markets

The principal securities market in Mexico is the stock exchange, La Bolsa Mexicana de Valores, S.A. de C.V., which has a long legacy. At present, there is no over-the-counter market for unlisted securities in Mexico. The first physical stock market in Mexico was established in 1880, when people met in the offices of the Mexican Gas Company to trade mining stocks. Meetings of this type became customary in other places, including "the back of a shop run by the widow of one Genin." Mexico's first formal, though unofficial, stock exchange, La Bolsa de Valores de Mexico, was organized in 1894 but it dissolved in the early

106. Id.
107. Id. at 18 (tesobonos).
109. Id. at 19 (bondis).
110. See Prospectus EMF, supra note 59, at 28.
111. Id.
112. See infra § 6(g).
113. Prospectus EMF, supra note 59, at 29; Price Waterhouse, Doing Business in Mexico 82 (1989). The Securities Market Law prohibits stock exchange members from trading listed securities other than on the exchange. See Securities Market Law, supra note 2, art. 31, § VIII(f). Historically, prior to securities legislation prohibiting it, Mexico had an over-the-counter market that was active in comparison to the stock exchange. See Wolff, supra note 7, at 415-416. See also Ross, The Changing Mexican Market, Fin. ANALYSTS J. 149-150 (1964) [hereinafter Ross, Changing].
115. Corte, supra note 25, at 24, (citing La Bolsa de Valores de Mexico, S.A. de C. V., Que Es La Bolsa de Valores (What is the Securities Exchange?)).
The second formal market, La Bolsa Privada de Mexico, was organized in 1907 and changed its name in 1910 to Bolsa de Valores de Mexico, S.C.L.117 Mexico extended official recognition to the stock exchange in 1932118 when the legislature dissolved Bolsa de Valores de Mexico, S.C.L., and created the present stock exchange, La Bolsa Mexicana de Valores, S.A. de C.V., located in Mexico City.119 The government established a second stock exchange in 1950 in Monterrey, La Bolsa de Valores de Monterrey, S.A. de C.V.120 In 1960 the Secretary of the Treasury and the National Banking Commission authorized the establishment of a third exchange, La Bolsa de Valores de Occidente, S.A. de C.V., in Guadalajara.121 The three exchanges existed in Mexico until 1976122 at which time the authorities decided it would be more advantageous to have only one stock exchange in Mexico.123 At the end of 1975 the Mexican Securities Commission ordered the Guadalajara and Monterrey exchanges to cease operations as of the beginning of the following year,124 at which time the two regional exchanges merged with the Mexico City Stock Exchange.125 Many of the securities formerly traded on the two regional exchanges have since been traded on the Mexico City exchange.126 The Securities Market Law generally prohibits members of stock exchanges from trading listed securities off the exchange.127

Trading on the exchanges has primarily been in fixed-income securities.128 In 1960 only three percent of all transactions on the Mexico City Stock Exchange were trades in equity shares.129 This percentage has remained relatively constant: the proportion of equity securities to all securities traded on the Mexico City Stock Exchange was 4.9 percent in

116. Id.; See generally Molina, El Mercado de Valores en Mexico, 14 El Trimestre Economico (1947).
118. Id.
119. Id.
120. F. Lees & M. Eng, supra note 16, at 378.
122. Id.
123. Creel, supra note 38, at 333.
124. Id. at 333.
126. Id.
127. Securities Market Law, supra note 2, art. 31(f). See generally infra note 389 and accompanying text.
1966;130 2.1 percent in 1970,131 2.5 percent in 1971;132 3.2 percent in 1975;133 4.4 percent in 1976; and 4.4 percent in 1985.134 For several years in the late 1970s, trading in equities increased to 18 percent in 1978, 26 percent in 1979, and 16 percent in 1980.135 Beginning in 1981, however, investment in cetes increased dramatically and trading in equities fell to 1.9 percent in 1982,136 2.5 percent in 1984,137 and 4.4 percent, in 1985. For the first eight months of 1989, stock trading represented less than 1 percent of the value of the entire securities market.138

The overall volume of trading on the Exchange, however, has increased steadily. In 1971 transactions on the Mexico City Stock Exchange were 38 billion pesos compared to 5 billion pesos in 1960139 and 54 million pesos in 1950.140 Transactions totalled 113 billion pesos in 1975;141 308 trillion in 1987;142 966 trillion in 1988;143 and 1,170 trillion in 1989.144 Trading volume in U.S. dollars is set forth below for the periods indicated:

TABLE 1
Trading Volume
Year Ending December 31,

<table>
<thead>
<tr>
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<th></th>
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</thead>
<tbody>
<tr>
<td>Total Volume</td>
<td>81,987</td>
<td>118,642</td>
<td>219,081</td>
<td>421,775</td>
<td>471,234</td>
</tr>
</tbody>
</table>

130. J. La Cascia, supra note 39, at 50.
133. Nacional Financiera, supra note 125, at 321.
136. Id.
137. Memoria de Labores, supra note 46, at 17.
138. Equity Financing, supra at 1.
140. Nacional Financiera, supra note 125, at 317.
141. Market data from 1940-1975 are set forth in Nacional Financiera, supra at 125. Data from 1978-1981 are contained in Prospectus of the Mexico Fund, Inc. (June 3, 1981). Data from 1985-1989 are from Prospectus EMF, supra at 59. See also reports of the Comision Nacional de Valores or from various issues of Nacional Financiera, El Mercado de Valores. For early market data and characteristics, see Comision Nacional de Valores, Memoria Anual; Id., Boletin; Id., Informe de Actividades de la Comision Nacional de Valores 1975 (1976); Id., Los Bancos y el Mercado de Valores. See also Boletin Estadistico (quarterly); Cuaderno de Information Bursatil (monthly); Memoria de Labores (annually).
142. Prospectus EMF, supra note 59, at 31.
143. Id. See generally El Comportamiento del Mercado de Valores en 1989, El Mercado de Valores 32 (June 1, 1990).
144. Prospectus EMF, supra note 59, at 31.
The Mexico City Stock Exchange began publishing a price index for equity securities in 1959, with the 1959 base year set at 100.\textsuperscript{146} From 1959 through 1967, the price index fluctuated from a low of 90 (1962) to a high of 116 (1965).\textsuperscript{146} The stock index was 128 in October 1971\textsuperscript{147} and 199.5 in February 1973.\textsuperscript{148} In 1978 the Exchange began compiling a new index\textsuperscript{149} consisting of 40 actively traded stocks issued by companies in various economic sectors.\textsuperscript{150} Following are high and low index values respectively, as of the dates specified:\textsuperscript{151}

<table>
<thead>
<tr>
<th>Year</th>
<th>High</th>
<th>Low</th>
</tr>
</thead>
<tbody>
<tr>
<td>1981</td>
<td>1,490</td>
<td>765</td>
</tr>
<tr>
<td>1985</td>
<td>11,445</td>
<td>3,493</td>
</tr>
<tr>
<td>1986</td>
<td>47,103</td>
<td>10,826</td>
</tr>
</tbody>
</table>

Along with other world markets, Mexico’s stock market crashed in October 1987.\textsuperscript{152} The market plummeted from a high of 373,216\textsuperscript{153} on October 6, 1987 to 95,484\textsuperscript{154} on November 17, 1987. The drop of over sixty percent brought total market capitalization from $35 billion to $15 billion.\textsuperscript{155} The high and low index values for 1988 were 230,094 - 86,607.\textsuperscript{156} The values for 1989 were 443,029 - 203,715.\textsuperscript{157} These data have not been adjusted for inflation which was rampant in Mexico in the 1980’s. The total capitalization of the Mexican market as of July 1990 was approximately 42.2 billion U.S. dollars.\textsuperscript{158}

A primary market in Mexico exists, obviously, but is relatively small compared to that of developed countries. Primary offerings dropped from 117 in 1987 to about half that number in 1988.\textsuperscript{159} One source reports that

\textsuperscript{145} See A. Basch & M. Kybal, supra note 91, at 79.
\textsuperscript{146} Id.
\textsuperscript{147} F. Lee & M. Eng, supra note 16, at 377.
\textsuperscript{148} Id. at 378.
\textsuperscript{149} 1983 Prospectus, supra note 60, at 15.
\textsuperscript{150} Prospectus of Tubos de Acero de Mexico, S.A. (May 24, 1985).
\textsuperscript{151} Data are derived from Tubos de Acero de Mexico, S.A., Prospectus, supra note 150; various issues of Nacional Financiera, El Mercado de Valores; Nacional Financiera, Indicadores del Mercado de Valores (Apr. 1989); The Economist Intelligence Unit, Country Report — Mexico.
\textsuperscript{153} National Financiera, El Comportamiento del Mercado de Valores en 1987, El Mercado de Valores 52 (Feb. 1988).
\textsuperscript{154} Wild Week, supra note 152, at 72.
\textsuperscript{155} Mexico Moves, supra note 152, at 66; See also The Economist Intelligence Unit, Country Report — Mexico No. 1, Feb. 12, 1988, at 13 (the fall in Bolsa was accelerated by U.S. market events).
\textsuperscript{156} Prospectus EMF, supra note 59, at 30.
\textsuperscript{157} Id.
\textsuperscript{158} Acciones y Valores de Mexico, S.A. de C.V., El Mercado 28 (Sept. 1990).
during the six-month period which ended June 30, 1990, only two new issues had been brought to market. Another source, without distinguishing between primary and secondary public offerings, reports eight public offerings of equity, aggregating 799 million U.S. dollars, as of September 1990. Also recorded for the same period are 23 public offerings of bonds and debentures aggregating 369 million U.S. dollars; six public offerings of banking bonds aggregating 104 million U.S. dollars; and public offerings by mutual funds, of both debt and equity securities, of 2.5 billion U.S. dollars. A futures market was authorized in 1983 but trading remains minimal or non-existent.

As of 1990 there were 25 brokerage firms that were members of the stock exchange and authorized to trade on the floor. Trading on the exchange takes place from 10:00 a.m. to 1:30 p.m. each weekday and is effected by open outcry. Recent legislation recognized the position of securities specialists, but as of 1990 there were none. Traditionally, the market has operated without specialists or other formal market-makers; instead, brokers execute transactions directly with other brokers. The stock exchange operates an automatic suspension system to regulate price volatility.

Listing requirements, which are coordinated between the Commission and the Exchange, include the preparation of a prospectus, five-year financial statements and a one-year forecast, to be included with supporting material in a listing application. Majority foreign-owned corporations are not allowed to list. A prerequisite to listing is registration of the subject shares with the Commission. Listing applications are passed on by the Governing Board of the Mexican Stock Exchange. Listed companies must release annual audited financial statements and unaudited quarterly financial statements.

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160. Prospectus EMF, supra 59, at 29.
161. Acciones y Valores de Mexico, supra note 158, at 68 (These amounts do not reflect common stock offerings of mutual funds).
162. Id. at 69.
163. See Equity Financing, supra at 1.
164. Prospectus EMF, supra note 59, at 28.
165. Id. at 28, 29.
166. Id. at 36, 29.
167. Id.
168. Id. at 36.
169. Id. at 28.
170. Id. at 37.
171. Creel, supra note 38, at 333.
173. Creel, supra note 38, at 335.
§6 Intermediaries

[a] Banks

Historically, the most important intermediaries in the Mexican financial arena were commercial banks. From the inception of the Mexican banking system in the mid-1800's until its unexpected nationalization in 1982, the Mexican banking system developed gradually and in a relatively stable manner. Mexican banks began to form in the mid-1800's when silver banks and working capital loan companies were established to finance mining ventures and operations. The first private bank, the Bank of London, Mexico and South America, was founded in 1864. The government established the National Banking Commission in 1924, and the Bank of Mexico in 1925. It promulgated banking regulations in 1897, 1915, 1924, and 1932. The most important laws regulating banks since that time, prior to the enactment of new banking legislation in 1985, were the Organic Law of the Bank of Mexico and the General Law of Credit Institutions and Auxiliary Organizations.

At the end of August 1982, Mexico's banking system consisted of public and private sector banks. The principal public sector banks included the Bank of Mexico, Nacional Financiera, and Banco Nacional de Obras y Servicios Publicos (a national foreign trade bank). The Central Bank is Banco de Mexico, chartered in 1925. The Bank of Mexico, as the central reserve bank, controls credit, provides funds for programs, purchases securities, issues and regulates currency, regulates interest rates, establishes reserve requirements, and provides discount facilities. Through these means, Banco de Mexico regulates loan operations and investments of banks and is instrumental in channelling financial resources into selected areas of the economy.

Nacional Financiera, or "Nafinsa," established in 1934, is a national credit institution chartered to promote economic development. Nafinsa is one of the largest sources of financing in Mexico. One of its principal objectives is to channel credits into economic sectors not having ready

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176. Saldaña, supra note 175, at 307.

177. Id. at 308.

178. Saldaña, supra note 175, at 307-08. See A. Romero, supra at 39.


182. Id. See J. La Cascia, supra note 39, at 133; Beteta, The Central Bank, Instrument of Economic Development in Mexico, in Mexico’s Recent Economic Growth 75 (Lopez ed. 1967).


184. See generally R. Aubey, supra note 128, at 1.
access to private financing. 185 Toward this end, Nafinsa makes loans to companies and utilities, guarantees debts, invests capital by purchasing securities (subsequently selling shares when the enterprise becomes profitable), rediscounts commercial paper, and furnishes other discounting facilities to banks. 186 Nafinsa represents probably the most original contribution by Mexico to the types of institutions promoting growth and development in Latin America. 187

As of August 31, 1982, Mexico's then private banking system included twelve depository banks, thirty-five multi-service banks, seven financial banks, one credit mortgage institution, and five long-term credit banks. 188 Other banks that have existed from time to time in Mexico include private development banks, capitalization banks, savings and loan institutions, and trust companies. 189 Over the years, Mexican banks "developed their commercial capabilities to a very substantial degree and [became] increasingly active in industrial, housing, tourism, transport and export financing and recently, in agricultural development financing." 190 Then, on September 1, 1982, in his state of the union message, lame-duck President Jose Lopez Portillo announced the nationalization of the private Mexican banking institutions, and several days later declared them National Credit Societies owned entirely by Mexico. 191

In 1986 and 1987 the government began a privatization program, selling many non-bank subsidiaries of banks and a large portion of bank stock itself back to the private sector. 192 The privatization of the banking sector continued and has accelerated under the initiatives of the Salinas administration. 193 As of 1990, there were 20 commercial banks operating in Mexico. 194 These were, in addition to the other principal types of banks operating in Mexico, development banks. 195

At present, banks are not allowed to operate as brokers in the Securi-
ties Market, and may not, directly or indirectly, have a share in their capital stock, except as trustees for qualified persons. In fact, a bank's own transactions (and those of its clients) must be effected through brokers. Thus, banks do not, at present, have a direct role in the securities market inasmuch as they have no access to it. Indirectly, however, they do have an impact due to the size of their portfolios and the effect of their trading on market prices. Just as banks may not own brokerage firms, brokerage firms are not allowed to own banks in Mexico.

[b] Brokerage Firms

The stock market departments of several commercial banks played important roles as intermediaries in the Mexican stock market, but the Securities Market Law provided for independent brokerage firms to operate in the market. Under present law, "intermediation" may be performed only, with certain limited exceptions, by corporations registered in the Brokers Section of the National Registry of Securities and Brokers. "Intermediation" includes: (i) brokerage, agency, and any other transaction or activity undertaken for the purpose of connecting the supply and demand for securities; (ii) transactions for the account of a person with securities issued or guaranteed by third parties that have been the object of a public offer; and (iii) the management of portfolios of securities owned by third parties. The general rule is that banks may not engage in the business of brokerage, and brokerage firms may not engage in the business of banking. Brokers, among other things, may buy and sell securities, hold funds, render investment advice, and provide safekeeping facilities. Recent legislation in Mexico allows Mexican brokers to open subsidiaries abroad and to act as intermediaries on behalf of investment companies. In 1980 twenty-four corporate brokerage firms were registered with the Commission. This number remained relatively constant throughout the decade. The rules and regulations governing bro-

196. Securities Market Law, supra note 2, art. 17.
197. A. Hoagland, Formation, supra note 65, at J-32; Ross, Changing, supra note 113, at 149, 150. See also Wise, Buoyant Bolsa: Investors Shrug Off Political Uncertainties, Barron's, Mar. 10, 1975, at 9 (Banco Nacional de Mexico and Banco de Comercio had significant role in stock market).
198. Securities Market Law, supra note 2, art. 12. The 1985 amendments require registered brokers to be corporations, although the law contains a grandfather clause for individuals.
199. Securities Market Law, supra note 2, arts. 22, 23 (Previously, Mexican brokers were able to extend margin, a practice halted in 1987 but said to be under re-consideration by the Commission); Equity Financing, supra at 1.
200. See infra at 38.
203. Prospectus EMF, supra note 59, at 28.
kers in Mexico are discussed further below.\textsuperscript{204}

[c] Investment Companies

The Mexican Congress enacted legislation in 1951,\textsuperscript{205} subsequently amended,\textsuperscript{206} providing for the establishment of investment companies in Mexico. The Mexican Investment Company Law authorized the Commission to approve the formation and regulation of investment companies.\textsuperscript{207} The law was amended in 1965 to incorporate “the general reforms designed to preserve control of financial institutions in Mexican nationals; foreign governments or groups or persons . . . were accordingly forbidden to acquire shares of regulated investment companies.”\textsuperscript{208} Numerous investment companies subsequently were formed under this law.\textsuperscript{209} A 1970 study summarizes the record of Mexican investment companies:

[Investment companies] have had a successful record of operations, as shown by substantial increases in their investment portfolios, which has been reflected in growing net operating earnings. With a continuation of successful management and the expanding securities market in Mexico, mutual funds thus promise to become an increasingly important vehicle for funneling savings into the capital market.\textsuperscript{210}

In 1985 the Mexican Congress enacted a new Investment Companies Act which was subsequently amended in 1990. The amendments facilitate formation of investment companies as well as foreign investment in them.\textsuperscript{211} Since that time, the government has continued to support the mutual fund industry.\textsuperscript{212} The number of mutual funds increased from 117 in 1988 to 174 in 1989.\textsuperscript{213} In 1990 there was substantial activity by mutual funds in the Mexican primary market.\textsuperscript{214} In order to operate in Mexico, investment companies must receive approval from the Ministry of Finance.\textsuperscript{215} They may be operated by brokerage firms or banks.\textsuperscript{216}

\begin{footnotesize}
\begin{enumerate}
\item \textsuperscript{204} See infra §15.
\item \textsuperscript{205} Ley que Establece el Regimen de las Sociedades de Inversion (Act Establishing Rules for Investment Companies), D.O., Jan. 4, 1951.
\item \textsuperscript{207} L. Loss, Securities Regulation 166 (1961). See generally Batiza, New Law on Investment Companies, 5 Am. J. Comp. L. 625 (1956); Batiza, Las Sociedades de Inversion, 8-10 El Foro 105 (1955); Hermosillo, Les Societes, supra note 37, at 109; S. Martinez, Las Sociedades de Inversion en Mexico, 8 Rev. de la Facultad de Derecho de Mexico 233 (1958).
\item \textsuperscript{208} L. Loss, Securities Regulation IV 2290. (2d ed. Supp., 1969).
\item \textsuperscript{209} See A. Basch & M. Kybal, supra note 91, at 133; J. La Cascia, supra note 39, at 52; Comision Nacional de Valores, Leyes y Disposiciones del Mercado de Valores 268-269 (1982).
\item \textsuperscript{210} A. Basch & M. Kybal, supra note 91, at 133.
\item \textsuperscript{211} Mitchell, supra note 74, at 28.
\item \textsuperscript{212} Prospectus EMF, supra note 59, at 35.
\item \textsuperscript{213} Id.
\item \textsuperscript{214} Acciones Y Valores de Mexico, S.A. de C.V., El Mercado (Sept. 1990). See also Equity Financing, supra at 1.
\item \textsuperscript{215} Price Waterhouse, supra note 113, at 81.
\item \textsuperscript{216} Id.
\end{enumerate}
\end{footnotesize}
The Mexico Fund, Inc. is a diversified, close-ended investment company registered under the United States Investment Company Act of 1940. Incorporated under Maryland law in 1981, the Mexico Fund invests primarily in equity securities listed on the Mexican Stock Exchange. A Mexican corporation, registered as an investment adviser under the United States Investment Advisers Act of 1940, advises the Fund. The Fund makes investments through a trust, organized under Mexican law, of which Nafinsa is the trustee. The Mexico Fund was structured to comply with Mexico's foreign investment laws. Because Nafinsa holds and votes securities acquired by the Fund, the Mexican Foreign Investment Commission ruled that "record ownership of equity securities by the Trust is deemed to be ownership by a Mexican investor, even though the Fund, which is the sole beneficiary of the Trust, is a United States corporation." In addition to regulation of the Mexico Fund under the United States Investment Company Act and the adviser to the Fund under the United States Investment Advisers Act, the activities of these entities are also regulated by the Mexican Securities Commission. Prior to beginning operations, the Mexican Securities Commission approved (1) investment of brokerage houses in the investment adviser; (2) the companies in which the Fund could invest; (3) the naming of the fund as the sole beneficiary of the Trust; and (4) general investment rules applicable to the Trust. The Mexico Fund or its affiliates also obtained various approvals of confirmations from, among others, the Bureau of Foreign Investment and Transfer of Technology, the Ministry of Finance and Public Credit, the Ministry of Foreign Affairs, the Ministry of Commerce and Industrial Development, the Ministry of Communications and Transportation, and the National Banking Commission. Several similar funds have been or are currently being organized.

[d] Auxiliary Credit Institutions

The Mexican financial system includes other types of institutions involved in various financial activities. Auxiliary Credit Organizations, governed by the General Law of Credit Institutions and Auxiliary Credit Organizations, are warehouse corporations, financial leasing companies,
credit unions, factoring companies, and entities involved in foreign exchange activities. These institutions play a significant role in the financial system generally, though less of an important role in the securities market. Recent legislation permits these companies to be part of "financial groups" with other financial institutions in Mexico.

[e] Specialists

Specialists are financial intermediaries recognized by the January 1990 Amendments to the Securities Market Law. Securities Specialists may effect transactions with broker-dealer corporations, other specialists, and the general public, although in the latter case only when authorized by rules of the Commission. Specialists may only trade for their own account and not for the account of others. Detailed rules governing specialists were set forth in the January 1990 amendments and are analyzed further below; however, as of 1990 there were no specialists operating in the Mexican market.

[f] Financial Groups

The January 1990 amendments to the Securities Law provided for the organization of "financial groups," which may include broker-dealers, financial warehouse corporations (secured lenders), leasing corporations, foreign exchange houses, factors, bonding institutions, insurance companies, and investment fund operating companies. New legislation regulating financial groups was enacted in July 1990. The "Law to Regulate Financial Groups" was part of the reform package of the summer of 1990 that continued the dramatic liberalization of Mexico's financial system. Under the Law to Regulate Financial Groups, the entities that may become members of a financial group are deposit warehouses, leasing companies, brokerage firms, exchange firms, factors, multiple bank institutions, bonding companies, insurance companies, and operating companies of investment companies. Each group must have at least three of these entities not counting operating companies of investment companies. Two or more entities of the same class may not participate in the same group, except for operating companies of investment companies and, in certain cases, insurance companies.

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226. Id.
227. Id. at 28. See Securities Market Law, supra note 2, art. 22(B).
228. Id. at 28 n. 17.
229. Id. at 28.
230. See generally supra at 38.
231. See supra at 16.
234. Id.
235. Id. art. 7.
236. Id.
237. Id.
through rules of a general character, will authorize other firms that are able to form part of these groups.

The financial entities that form a group may act jointly toward the public and offer complementary services; 238 may use the same name or phrases that identify it to the public as a group, but should use the words "Financial Group" in the title; 239 and may operate through the offices of other group members in conformity with general rules to be dictated by the Ministry of Finance. 240 In no case, however, may group members operate through the offices of the controlling company. 241

The incorporation of a new firm and constituent group, as well as the merger of two or more groups, require approval of the Ministry of Finance, after considering the opinion of the Bank of Mexico, the National Banking Commission, the Securities Commission, and the Insurance and Bonding Commission. 242 The control of shareholders' meetings and the administration of each group must be in a controlling or holding company. 243 This company must at all times hold at least 51 percent of the capital of each group member. 244 The holding company shares must be maintained in a securities depository regulated by the Securities Market Law. 245

The shares of the holding company must be divided into three series: Series A, to represent 51 percent; Series B, to represent 49 percent; and Series C, that may represent up to 30 percent of the capital of the company, which may be issued only with the approval of the Ministry of Finance. 246 Series A shares may be acquired only by Mexican persons and the Banking Fund for Protection of Savings. 247 Series B shares may only be acquired by Mexican legal entities whose articles contain clauses excluding directly and indirectly foreigners and by certain institutional investors. 248 Series C shares may be issued to foreign persons, natural or legal, if proper approvals are obtained as specified above. 249 Foreign governments and officials however, are ineligible to participate. 250

[g] Foreign Investment in Financial Services

Mexico's post-Revolutionary backlash against foreign ownership culminated with the enactment of extremely protectionist legislation in

238. Id. art. 8.
239. Id.
240. Id.
241. Id.
242. Id. art. 10.
243. Id. art. 15.
244. Id.
245. Id. art. 18.
246. Id.
247. Id.
248. Id.
249. Id.
250. Id.
1973.\textsuperscript{251} Even before the banks were nationalized in 1982, foreigners could not own stock in them and could not operate branches in Mexico.\textsuperscript{252} In the mid-1980's Mexico began to relax its restrictions on foreign investment.\textsuperscript{253} This policy of liberalization was reflected in new foreign investment regulations promulgated in 1989.\textsuperscript{254} As a general proposition, under the foreign investment rules companies may issue Series A shares, which may be held only by Mexican nationals, and Series B shares which may be held by anyone.\textsuperscript{255} Broadly speaking, B shares may represent up to 49 percent of capital.\textsuperscript{256} Pursuant to regulations adopted in May 1989, foreign investment in listed companies may also be made through the purchase of ordinary certificates of participation issued by trust institutions in trusts the corpus of which consists of shares of listed companies denominated as Series N shares.\textsuperscript{257} The relaxation of foreign investment restrictions has continued to ac-

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252. Darling, \textit{Mexico to Allow Foreigners to Buy Into Banks}, L.A. Times, June 29, 1990, at D2, col. 2. An exception to this rule is Citibank, which was established in Mexico prior to the enactment of the Banking Law in the 1930's; \textit{Price Waterhouse}, supra note 113, at 83.


255. Prospectus EMF, supra note 59, at 27.

256. \textit{Id}.

257. \textit{Id}.
\end{footnotesize}
celerate under Salinas, who became President of Mexico in December 1988. In January 1990, Mexico enacted new legislation permitting foreign investment in financial services. Under this legislation banks are permitted to issue "Series C" shares which may be held by foreigners. These shares, which do not carry voting rights, may be issued to foreign investors in amounts aggregating up to 34 percent of the total amount of the equity which may be held by the private sector. Foreign investors also may hold a 49 percent position in auxiliary credit institutions including financial warehousing companies, bonding companies, foreign exchange houses, insurance, leasing, and factoring companies.

In the summer of 1990 a bill was proposed that would allow the Ministry of Finance to authorize foreign investment in brokerage firms up to a 30 percent limit, not to exceed 10 percent per person. The bill also allowed foreign investment in financial groups (this bill preceded the legislation on financial groups discussed above) up to the same limits, as well as foreign investment in the commercial banks being privatized. This legislation was also enacted in July 1990. Article 17 of the Securities Market Law specifies the requirements for capital stock limited liability companies to be registered as brokers in the National Registry. As amended in July 1990, foreign government or foreign governmental branches may not be registered, but the Ministry of Finance may authorize foreign investment in brokerage firms, up to a limit of 30 percent of capital. With one exception, the foreign investment in question may not exceed 10 percent of the shares of the brokerage firm. A foreign brokerage firm may not, itself, register as a broker in Mexico. Foreigners making these investments are considered, for these purposes only, as a

259. Id.
261. Id.; The Economist Intelligence Unit, Mexico — Country Report No. 1 — 1980, at 11.
262. Darling, supra at 252.
263. Banking Bill Sent to Senate, supra note 21, at 8, col. 6; Mexico Picks First Banks for Privatization, supra note 21, at 26; Evans & Krans, Mexico's Privatization Plan Wins Praise, AM. BANKER, May 7, 1990, at 14; Darling, supra at 252; Tricks, Mexican Government Unveils Bank Privatization Bill, supra at 21. The privatization of the banks is being implemented by a "Bank Disincorporation Committee" formed in 1990. See Banks Ready for Privatization, Finance Liberalization Seen, supra at 69.

In 1987, private investment in the commercial banks that had been nationalized in 1982 was permitted up to 34% of capital. At the time foreign investors were excluded from participating in this equity. Prospectus EMF, supra note 59, at I-24. As mentioned in the text above, the law was changed in 1989 to permit some foreign investment in the equity that had been made available, in 1987, for private sector investment. Id. The 1990 legislation to which the text accompanying this footnote refers to the portion of bank stock being privatized that had been, heretofore, owned by the Mexican government.
264. Mexico Picks First Banks for Privatization, supra at 21.
265. Securities Market Law, supra note 2, art. 17, § II(b).
266. Id.
267. Banks ready for Privatization, Finance Liberalization Seen, supra at 69.
Mexican citizen. The statute purports to prevent appeals by the foreign investor to his own government for assistance, upon penalty of forfeiting the shares in question to the Mexican nation. These restrictions generally mirror those applicable to multiple service banks under the July 1990 Law of Credit Institutions and the corresponding law governing financial groups mentioned above. The July legislation applicable to credit institutions also loosened but did not eliminate the restrictions on branch banking.

Another vehicle for foreign investment in Mexico is a temporary trust. Subject to the Commission's resolution and in special circumstances, the Ministry of Commerce and Industrial Development, may authorize foreign investors to acquire beneficiary rights through a temporary trust which will not be in existence for more than twenty years, in any proportion of shares of companies that carry out specific economic activities.

§7 APPLICABILITY OF SECURITIES LAW

The Securities Market Law regulates the public offering of securities, the operations of brokers in selling securities, the activities of those responsible for regulating the market, the National Registry of Securities and Brokers, and the rendering of services generally in the securities market. The policy that the Securities Market Law establishes for securities and the activities relating to them is also applicable to credit instruments and other documents that may be the object of public offerings or of intermediation in the securities market, and that grant to their holders rights of credit, property, or participation in the capital of corporations. The Securities Market Law defines "securities" as shares of stock, bonds, and other credit instruments that are mass issued or serialized. The Securities Market Law charges the regulatory authorities with promoting a balanced and competitive securities market. Mexico's commercial laws, commercial and stock exchange practices, and Civil Code for the

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268. Id.
269. Id.
270. Ley de Instituciones de Crédito, D.O., July 18, 1990 (Multiple service banks may perform a variety of services and may have foreign ownership up to 30% if approved by the Ministry of Finance. In contrast, development banks may not have any foreign ownership).
271. See Tricks, supra at 263.
273. Securities Market Law, supra note 2, art. 1.
274. Id. art. 3.
275. Id. ("Securities are the shares of stock, bonds and other credit instruments that are mass issued or serialized.")
276. Id. art. 1 ("In the application of the present law, said authorities should endeavor to obtain the balanced development of the securities market and a healthy competition in the same.")
Federal District and Federal Civil procedure are supplemental to the Securities Market Law in the order cited.277

The Securities Market Law is applicable to a wide range of activities and persons performing them. Most importantly it applies to public offerings of securities,278 generally prohibiting them absent prior approval by the Commission, and to brokerage activities.279 Firms engaging in brokerage or intermediation activities are subject to the law and are classified either as brokers or stock exchange specialists. The trading of securities by credit institutions, auxiliary credit institutions, insurance companies, and investment companies is governed by both the Securities Market Law and by specialized provisions that are applicable to them.280 The Securities Market Law also regulates advertising relating to securities or brokers, securities and broker registration, insider trading, stock exchanges, securities regulators, depositories, and clearing houses.

§8 Public Offering of Securities

A "public offering" of securities is made through some means of mass communications or to "unspecified persons" in order to subscribe, sell, or acquire securities or documents defined in article 3 of the law.281 The registration provisions are found in articles 2 and 11. Article 2 provides that "[t]he public offering of securities and documents to which this law refers are required to be previously approved by the National Securities Commission."282 Article 11 provides that only documents registered in the Securities Section can be subject to public offering.283 These provisions form the core of Mexican securities regulation by giving the Commission the power to review securities offerings and determine when and under what circumstances securities may be offered to the public. Article 11 provides further that the public offering in foreign countries of securities issued in Mexico or by Mexican corporations is subject to registration in a special section of the National Registry of Securities and Brokers.284 Advertising and other information directed to the public about securities, and about the services and operations of brokers, also are regulated by the Commission.285 Article 3 of the law provides that the public offering of any document that is not among those mentioned in the article is prohibited. Article 3 provides that "securities" include shares, bonds (obligations), and

277. Id. art. 7.
278. Id. arts. 2, 11.
279. Id. art. 12.
280. Id. art. 60.
281. Id. art. 2 ("A public offering is considered to be that which is made through some means of mass communication or to an unspecified person in order to subscribe, sell or acquire securities or documents [defined in Art. 3]"). The law directs the Commission to establish general criteria to determine whether an offering is "public." Id.
282. Id.
283. Id. art. 11.
284. Id.
285. Id. art. 5.
other credit instruments that are issued in series or in mass. This article also provides that the law is applicable to documents that grant to their title holders rights of credit, property, or participation in the capital of corporations, as well as to other documents that, because of their characteristics, may be susceptible to a public offering.

The preparation for a public stock offering in Mexico is extensive and includes matters such as preparation or review of bylaws, agreements, stock certificates, minute books, encumbrances, financial statements, and resolutions.286 A registrant must fulfill several requirements to obtain registration with the National Registry of Securities and Securities Intermediaries.287 First, an issuer must file a registration application with the Mexican Securities Commission.288 The issuer must pay a registration fee that varies according to the size of the offering.289 In the application the issuer must provide considerable information about itself, the securities, and numerous other matters.290 For example, the application must contain legal information supported by voluminous documentation;291 economic information prepared by a credit rating institution or independent professional auditor;292 financial information, including audited financial statements for the previous year; in certain cases, interim financial statements;293 and information regarding the form of the proposed public offering.294 The Commission reviews the information presented in the prospectus and other documents, and may request additional information or clarifications.295 Corrections of the prospectus must be made in accordance with the observations of the Commission.296 The purpose of these requirements is to protect investors by requiring the disclosure of adequate information about the shares that are being offered and their issuers.297 The review process thus appears to be similar to that in the United States. The process takes about two months before a company is given permission to make a public offering.298 In 1989 the Commission authorized a form of registration similar to shelf registration in the United States, which allows a company to make a public offering any

286. Creel, supra note 38, at 312-19.
287. Id. at 320.
288. Securities Market Law, supra note 2, art. 14; Creel, supra note 38, at 320 n.71.
290. Creel, supra note 38, at 320.
291. Id. at 322.
292. Id. at 324.
293. Id. at 325; Price Waterhouse, supra note 113, at 65 (Additional information is required for the five most recent years).
294. Creel, supra note 38, at 320 (The Company must provide detailed financial analysis of itself as well as, among other things, a description of its technology and employment); Listing Procedures, supra at 289.
295. Creel, supra note 38, at 331-32.
296. Id. at 331.
297. Id. at 309-10.
298. Listing Procedures, supra at 289.
time up to six months following registration with the Commission.\footnote{299}

Mexican accounting principles as expressed by the Institute of Public Accountants, through the Accounting Principles Commission, are generally similar to those of the United States, except in the areas of accounting for inflation and deferred taxes.\footnote{300} Generally, Mexican accounting principles require a balance sheet, income statement, statement of changes in stockholders' equity, statement of changes in financial position on a cash basis, and notes.\footnote{301} Listed companies are required to publish their annual financial statements in a major newspaper.\footnote{302} All issuers incorporated under Mexican law must appoint statutory auditors who are representatives of the shareholders.\footnote{303}

In addition to the information requirements, issuers must satisfy several other important requirements in order to obtain and maintain registration of securities in the Securities Section.\footnote{304} Among other things, the characteristics of the securities and the terms of their placement must permit significant circulation that will not prejudice or disrupt the market.\footnote{305} It must appear to the Commission that the issuer is solvent and liquid.\footnote{306} To obtain and maintain registration of securities, the issuer must follow policies, in respect of its participation in the securities market, congruent with the interests of investors.\footnote{307} Issuers must furnish the Commission, the stock exchange, and the public with information specified by the Commission through general rules.\footnote{308} Article 14 of the law also requires, as a condition of obtaining and maintaining registration, that the issuer not carry out transactions that artificially modify the return on the securities.\footnote{309} Issuers of securities representative of their capital must issue certificates for the securities within 180 days of funding of the issuer in respect of the shares or from the date on which the issuance of exchange has been declared.\footnote{310} The statute directs the Commission to promulgate regulations governing issuances by brokerage firms.\footnote{311}

\footnote{299. \textit{Id.}}
\footnote{300. \textit{Price Waterhouse}, \textit{supra} note 113, at 130.}
\footnote{301. \textit{Id.} at 131.}
\footnote{302. \textit{Id.}}
\footnote{303. \textit{Id.} at 126.}
\footnote{304. Securities Market Law, \textit{supra} note 2, art. 14.}
\footnote{305. \textit{Id.} art. 14., § II.}
\footnote{306. \textit{Id.} art. 14, § IV.}
\footnote{307. \textit{Id.} art. 14, § V. The Law directs the Commission to issue general regulations relating to, \textit{inter alia}, corporations of "variable capital" and companies controlling other companies.}
\footnote{308. \textit{Id.} art. 14, § VI.}
\footnote{309. \textit{Id.} art. 14, § VII. Issuers may not "concede to the holders benefits that do not derive from the proper nature of the securities . . . ."}
\footnote{310. \textit{Id.} art. 14, § VIII.}
\footnote{311. \textit{Id.} art. 14, § IX. Such regulations are to have the following objectives: (a) the prevention of trading that may produce conflicts of interest; (b) the orderly development of the market; (c) the adequate capitalization of the broker; and (d) "the continuity of an organization with high levels of technical and administrative efficiency."}
Registration of the securities with the Commission does not, under the law, imply certification of the merit or worth of the securities or the solvency of the issuer.\textsuperscript{312} This provision must be stated in the documents through which public offerings of securities are made.\textsuperscript{313} After registration with the National Registry of Securities, securities may be listed for trading on the Exchange\textsuperscript{314} if they meet the requirements of the Exchange.

Securities issued or guaranteed by the Federal government of Mexico, by credit or insurance institutions, by auxiliary credit organizations, and by investment companies must also be registered in the Securities Section of the National Registry.\textsuperscript{315} Under the statute, registration for these issuers is effected by notice to the Commission.\textsuperscript{316}

Prior to 1982, only shares sold to foreigners or shares issued by companies in certain industries were required to be in registered (as opposed to bearer) form.\textsuperscript{317} Under present law, all listed shares must be in registered form.\textsuperscript{318} The January 1990 amendments permit issuers of registered securities to issue non-voting shares.\textsuperscript{319}

§9 EXEMPT OFFERINGS

Under no circumstances may public offerings be made in Mexico without prior Commission approval. As discussed above, the law considers a public offering to be an offering made through mass means of communication (such as newspaper, radio, television, etc.) or to an undetermined person. The converse is a private offering: an offering made by direct contact with a specific person. Mexican law does not impose any specific conditions on these offerings. Rather, only the general concepts of honesty and good faith apply.\textsuperscript{320}

The general rule established by the Securities Market Law is that only documents registered in the Securities Section of the National Registry can be the subject of trading in the securities market.\textsuperscript{321} However, the statute provides for an exemption for trades in securities that, "without constituting a public offering," may have as their object (i) the subscription of stock; (ii) the merger or reorganization of corporations; (iii) the

\textsuperscript{312} Id. art. 14, § VII.
\textsuperscript{313} Id.
\textsuperscript{314} Id. art. 33.
\textsuperscript{315} Id. art. 15.
\textsuperscript{316} Id. In the case of stocks or certificates of patrimonial contribution issued by national credit corporations, it is necessary to comply with III, V, VI, VIII of article 14. However, registration is authorized without fulfillment of such requirements in the case of securities issued by credit institutions that may, in the judgement of the Bank of Mexico, achieve "ample circulation." See id. art. 15.
\textsuperscript{317} Listing Procedures, supra at 289.
\textsuperscript{318} Id.
\textsuperscript{319} Securities Market Law, supra note 2, art. 14 bis II.
\textsuperscript{320} See generally Diez, Problems in Selling Securities in Latin America, 4 INT'L FIN. L. Rev. 28-31 (June 1985).
\textsuperscript{321} Securities Market Law, supra note 2, art. 13.
sale of substantial portions of the assets of a business; or (vi) the brokering of documents to which reference is made in the second paragraph of article 3.\textsuperscript{838} Thus, if the documents in question are not sold in a public offering, but rather are the object solely of intermediation, an exemption would appear to be available. Likewise, so long as trades in securities do not constitute a public offering, the subscription of stock, merger or reorganization of a corporation, and sale of important portions of the assets of a business would be exempt from the requirement that only registered documents can be traded in the securities market.

\section*{§10 Trading by Affiliates and Secondary Distributions}

A secondary distribution refers to a public offering of outstanding shares.\textsuperscript{838} Typically, a secondary offering involves a block of stock too large to sell in the routine trading market.\textsuperscript{834} A secondary public offering would require prior approval of the Commission.\textsuperscript{836} As explained above, article 2 requires all public offerings of securities (and other documents covered by law) to be previously approved by the Commission. The statute does not distinguish between primary and secondary distributions. A different result is achieved, as indicated above, in the case of certain sales of securities not constituting a public offering.\textsuperscript{836}

\section*{§11 Continuous Disclosure}

In order to maintain registration in the Securities Section, issuers must furnish the Commission, the Exchanges, and the public, with information specified by the Commission in its general rules and regulations.\textsuperscript{827} The law thus generally authorizes the Commission to set periodic reporting requirements. The Commission has issued \textit{circularares} requiring corporations to provide periodic financial, legal, accounting, and other information to the Commission and the public.\textsuperscript{828} One such circular requires corporations to furnish annual reports with audited financial statements and unaudited quarterly reports with specified financial information.\textsuperscript{829}

\begin{footnotesize}
322. Id.
325. Cf. Rule 144A under the U.S. Securities Act of 1933, which permits resales of securities to qualified institutional buyers irrespective of the number of them, if the conditions of the Rule are met. 17 C.F.R. § 230.144A (1990).
327. Securities Market Law, \textit{supra} note 2, art. 14, § VI.
328. Creel, \textit{supra} note 38, at 338. "Circulars are the legal instrument used by the Mexican Securities Commission to interpret the Securities Market Law . . . as well as to establish the criteria applicable to all companies that wish to have their stock traded in the stock exchange." \textit{Id.} at 338 n.195.
\end{footnotesize}
This circular, 11-11, requires economic, legal, administrative, and accounting information to be presented on an annual and quarterly basis and also, in some cases, within a short time period after the occurrence of specified events.

The audited financial statements must contain an opinion of a Mexican certified public accountant. Issuers, the stock of which is listed for trading on the stock exchange, must also satisfy exchange requirements. These include quarterly and annual reporting requirements. Listed Mexican issuers must incorporate the effects of inflation in their accounting records and financial statements.

§12 Securities Law Violations — Remedies

As discussed below, the Securities Market Law prohibits insider trading. A person damaged by another person’s insider trading may bring a lawsuit for rescission of the trade and payment of damages. The statute of limitations for such an action is six months from the date the inside information was divulged to the public. In addition, persons who have violated the insider trading proscriptions may be fined and incur administrative sanctions.

If a purchaser of securities is defrauded in a private sale of stock in which there is direct dealing between the purchaser and the seller, the investor would be able to inform the District Attorney who could institute proceedings in a local (State or Federal District) court. This assumes that deceit or some element of cheating or dishonesty were involved in the transaction. The investor also has the possibility of filing a complaint in a Civil Court to obtain a recovery.

If the investor were defrauded in a public offering of securities in which there were no direct contact with the issuer, it is the public that would be considered to have been defrauded. Indeed, the Commission itself would be considered the object of the fraud in that it was induced to authorize the public offering. In this event, the District Attorney would institute criminal proceedings; jurisdiction would lie with the federal courts because of the federal law violation. The investor could also file a civil action to attempt recovery.

The Securities Law provides an arbitration system that is obligatory for brokerage houses and voluntary for investors. The system is designed to provide for international arbitration toward the objective of attracting foreign investment inflow.

330. Prospectus EMF, supra 59, at 37.
331. Creel, supra note 38, at 344-345.
332. Prospectus EMF, supra note 59, at 20.
333. Securities Market Law, supra note 2, art. 16 bis, § IV.
335. Id. at 8.
§13 Administrative Fines and Penalties; Criminal Violations

The Securities Law sets forth detailed provisions relating to administrative fines, penalties, and criminal punishment. The Securities Market Law authorizes sanctions of a prison term of two to ten years as well as a fine for persons who offer unregistered securities or other documents covered by the law to the public. The same criminal penalties apply to persons who engage in brokerage activities without proper registration.

Another class of offenses is created for miscellaneous activities that generally involve some element of intent. Thus, brokerage firm employees who intentionally engage in malfeasance with respect to their customers are subject to sanctions of imprisonment from two to ten years and a fine. These crimes may only be pursued at the petition of the Ministry of Finance with the prior opinion of the Commission. These sanctions do not preclude other punitive measures deriving from applicable laws.

Infractions of the Securities Market Law, or the general rules thereunder, may, in addition to the criminal penalties discussed above, result in administrative fines to be imposed by the Commission. The Commission may impose fines for the following activities, among others: (i) unauthorized use of designations such as broker, brokerage firm, or stock exchange specialist, that by law require a license, registration, or approval; (ii) the failure of issuers of registered securities to comply with the conditions of registration set forth in article 14 of the Securities Market Law or the furnishing of false information. Numerous other fines are authorized under the statute, mostly for the failure to observe affirmative obligations of the law.

§14 Insider Trading

The Securities Market Law was amended in 1983 with the adoption of article 16 bis, which prohibits insider trading. This provision has subsequently been amended several times. Under article 16 bis of the Securities Law, persons who have privileged information concerning an issuer of registered securities must abstain from carrying out transactions in any securities of the issuer for their own benefit or the benefit of third parties as long as the information is non-public. "Privileged information..."
tion” is defined as that stemming from the issuer and of which the public does not have access, and the knowledge of which could influence the prices of securities issued by the same company or another company. The statute calls on the Ministry of Finance and Public Credit, at the proposal to the Commission, to issue rules governing these matters.

For purposes of the Securities Market Law, the following persons, among others, are presumed to have access to privileged information: (i) administrators, officers, factors, and secretaries of associated institutions of issuers of registered securities; (ii) ten percent shareholders; (iii) persons who provide advisory services to issuers or their assistants and other agents of the issuer under specified circumstances; (iv) ten percent shareholders of brokerage firms and stock specialists when they are affiliated with or provide services to the issuer. As a preventative measure, the Securities Law imposes a requirement on the persons previously specified not to trade in securities of the issuer within certain periods from the previous trade.

The statute grants the Commission the authority to investigate alleged infractions of the insider trading provisions. The Commission may impose an administrative fine on a person who has violated the insider trading provisions. A fine may only be imposed after a hearing has been held. For insider trading violations, the Securities Law installs a six-month statute of limitations.

The Commission is using a monitoring system said to be “virtually identical” to that used by the New York and American stock exchanges to track trades. The Commission has instant access to market data on prices and volume, as well as detailed information on realtime trading activities of local brokerage firms. “When margins get too wide, a yellow or red warning flag is raised and the operation behind the trading is singled out for investigation,” according to a Commission official.

The Securities Market Law does not contain a general anti-fraud provision prohibiting misstatements or omissions of material facts in connection with the purchase or sale of a security, although the general fraud rules of the civil and criminal law would apply pursuant to their terms.

348. Id.
349. Id.
350. Art. 16 bis 1 imposes a reporting requirement on 10% shareholders in the case of transactions causing the acquisition or disposition of a 10% block.
351. Id. art. 16 bis 1, § IV.
352. Id. art. 16 bis 2.
353. Id. art. 16 bis 3.
354. Id. art. 16 bis 4.
356. Id.
357. Id.
§15 Regulation of Brokers

The Securities Market Law, as enacted in 1975, provided for the brokerage function to be performed by natural persons or corporations, both of which were required to be registered in the Brokers Section of the National Registry of Securities and Brokers (with certain limited exceptions). The law was amended to provide that only corporations could serve as intermediaries in the market, but contained a grandfather provision for individuals.

As indicated above, brokerage, or “intermediation,” in the Mexican securities market may only be undertaken by corporations registered in the Broker’s Section of the National Registry (an exemption from this rule is provided for operating companies of investment companies). “Intermediation” includes brokerage, agency, or other transactions or activities undertaken for the purpose of connecting the supply and demand for securities; transactions for the account of a person with securities issued or guaranteed by third parties that have been the object of public offer; and the management of portfolios of securities owned by third parties. To obtain registration as a broker, the applicant must be a corporation (subject to the grandfathering provision discussed above) and use in its name the phrases “brokerage firm” or “stock exchange specialist.” The corporation must meet minimum capital requirements set by the Minister of Finance based upon the recommendation of the Commission made through general rules. Banks are not allowed to perform brokerage services. Their own transactions or those of their clients must be effected through brokerage firms.

The following persons are ineligible to participate in the capital stock of the broker:

(a) brokerage firms or stock exchange specialists;

(b) foreign governments or foreign governmental branches;

(c) credit institutions (banks), except when acting as a fiduciary for beneficiaries who are eligible to be shareholders of brokers in the securities market and certain other requirements are met;

(d) insurance companies, bonding companies, auxiliary credit institutions, currency houses, and investment companies;

(e) other legal entities (except for the holding companies specified in the law for Regulating Financial Groups and any others authorized by the Commission through general rules; and

358. Securities Market Law, supra note 2, art. 12.
360. Securities Market Law, supra note 2, art. 12 (subject to the grandfathering provision noted above).
361. Id.
362. Id. art. 17.
(f) ten percent shareholders of specialists and the administrators and factors of such issuers.363

Under the July 1990 amendments, as mentioned above, the Minister of Finance may authorize foreign investment in brokerage firms up to 30 percent of capital, as long as the foreign investment is not for any one participant greater than 10 percent of the shares of the broker.364

Corporations must meet minimum capital and certain other requirements.365 Corporate brokerage firms must have a board of directors comprised of at least five persons.366 The charter and bylaws of corporate firms are subject to the approval of the Commission.367 Directors must submit to the Commission a general program of administration that must include, at a minimum, a feasibility study and a business plan.368 The merger of two or more brokerage firms must be approved by the Commission, and will take effect at the time of registration in the Public Registry corresponding to the corporate domicile.369

The Commission may cancel the authorization granted under article 17.370 The Commission may also veto persons, for 3 months to 5 years, from serving with brokerage firms when they are disqualified under the statute or when they seriously or repetitively violate the statute.371 A hearing would be required for this purpose.372 The Commission can suspend or cancel the registration of brokers in the National Registry when they: (1) fail to satisfy conditions of registration; (2) violate the law or any regulations promulgated thereunder; (3) engage in trades not in conformity with ethical and sound practices; (4) fail to undertake proper functions of intermediation; or (5) trade in securities not registered in the National Registry of Securities (except for transactions exempted under article 13).373

Registered intermediaries are permitted to trade securities, receive funds,374 render investment advice, and perform related services.375 They

363. Id. art 17.
364. Id.
365. Id. See Nacional Financiera, Nuevos Capitales Mínimos Para las Casas de Bolsas, El Mercado de Valores (Feb. 3, 1986).
366. Securities Market Law, supra note 2, art. 17 (The board members must be Mexican citizens or have "immigrant status.").
367. Id. (After obtaining such approval, the charter must be filed in the Registry of Commerce).
368. Id. art. 17.
369. Id.
370. Id.
371. Id.
372. Id.
373. Id. art. 20.
374. Id. art 22 (When a broker is not able to apply customer funds for the intended purpose by the next working day after receipt thereof, it must deposit them in a credit institution in a separate account.).
375. Id. art. 22.
may also engage in underwriting, placement, and stabilization activities, provide safekeeping services, form service corporations, and act as specialists, subject to the provisions of law regulating the same. In addition, brokers may act as common representatives of debtholders and holders of other securities; may administer the reserves for pension or retirement funds; and engage in similar activities authorized by the Minister of Finance upon the recommendation of the Commission through general rules. Short selling was illegal but beginning in 1990 is now permitted. Brokerage firms that are members of financial groups are able to offer complementary services with credit institutions and to use names that are similar to investment companies, operating companies of investment companies, and currency exchange houses.

Brokerage firms that are not part of financial groups, in accordance with general rules to be issued by the Ministry of Finance, upon the opinion of the Bank of Mexico and the Commission, shall be able to acquire shares of general deposit warehouses, financial leasing companies, and operating companies of investment companies. These acquisitions will require the previous approval of the Ministry of Finance. Furthermore, brokerage firms that are not part of financial groups are able to use the same or similar names as these affiliated financial companies and to offer complementary services with them. Such brokerage firms may undertake complementary services with national credit institutions. Trading of listed securities otherwise than on the Exchange by stock exchange members is prohibited, as is the trading of unregistered securities by

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376. Id. art. 23.
377. Id.
378. Id. art. 22, §IV(g).
379. Id. art. 22, §VI (Mexico does not have a statute analogous to the U.S. Trust Indenture Act of 1939).
380. Id. art. 22, §VI.
381. Id. art. VII.
382. Equity Financing, supra at 1.
384. Securities Market Law, supra note 2, art. VIII.
385. Id. art. 18.
386. Id.
387. Id.
388. Id.
389. Id. art. 31, § VIII(f) (An exception is provided for Mexican brokers trading in foreign markets). Off-exchange trading of listed securities was not always prohibited in Mexico. See also Ross, Changing, supra note 113, at 149-50 ("Bolsa has no rule compelling members to transact business in listed securities on the floor").

Off-exchange trading recently has been a subject of international consideration. At the 14th annual conference of the International Organization of Securities Commissions, the Technical Committee of IOSCO concluded that off-exchange trading threatens the integrity of international markets and recommended that disclosure of such trades be required. See Karmel, The IOSCO Venice Conference, 202 N.Y.L.J. 3 (1989). Members of IOSCO were thus urged to adopt requirements to ensure disclosure of volume and price information concerning off-exchange trades. Id. See also U.K. Will Ask Venice Meeting to Use British
intermediaries (unless an exception is available). 390

In 1990 amendments to the Securities Law expand areas in which brokerage firms may operate. 391 The 1990 legislation gives brokerage firms greater flexibility to operate in areas previously reserved for banks, such as working capital financing and foreign exchange services. 392 Brokerage firms are also now permitted to act as intermediaries on behalf of investment companies 393 and to open subsidiaries abroad. 394 Registered securities agents are responsible for the authenticity of securities they negotiate. 395 Securities agents must furnish periodic statistical information to the Commission about their activities. 396 Mexican brokers are also subject to rules of the Mexican Association of Brokerage Firms, a self-regulatory organization. 397

§ 16 Specialists

Mexican law now recognizes a type of financial intermediary known as a “specialist,” or “stock exchange specialist.” This is a new type of intermediary recognized under Mexican Law. 398 The Securities law allows brokerage houses, in accordance with Commission rules, to serve as specialists, provided they comply with regulations regarding the same set forth elsewhere in the law. 399 In order to serve as a specialist, registration by the stock exchange is required with respect to the securities being traded. 400 A specialist may only trade for its own account, 401 and only with respect to securities listed on a stock exchange of which they hold an equity share. 402 Specialists may trade with brokerage firms, other specialists, and with the general public in accordance with rules of the Commission. 403 In accordance with central bank rules, specialists may borrow


390. Securities Market Law, supra note 2, art. 13.
392. Id. at 8.
393. Id.
395. Securities Market Law, supra note 2, art. 26. The acquisition of control of 10% or more of the equity securities of a corporate securities firm, through one or more trades, must receive the prior approval of the Commission.
396. Id. art. 27.
397. Prospectus EMF, supra note 59, at 37.
399. Securities Market Law, supra note 2, art. 22, § V(g), as amended Jan. 4, 1990.
400. Mitchell, supra note 74, at 28.
401. Securities Market Law, supra note 2, art. 22 bis 1.
403. Securities Market Law, supra note 2, art. 22 bis 1.
from credit institutions or certain other institutions in order to engage in their business of trading in securities for their own account.\textsuperscript{404} In accordance with Commission rules, specialists may effect transactions in order to contribute to price stability, address imbalances in buy-sell orders and ease conditions or illiquidity in the market.\textsuperscript{405} Specialists may, further, in accordance with Commission rules, invest in shares of subsidiary or special purpose corporations that would engage in activities complementary to those carried out by the specialist.\textsuperscript{406} The Commission may establish by general rules other permissible activities for specialists.\textsuperscript{407}

Specialists are subject to restrictions with respect to other transactions they may engage in with issuers of the securities they trade.\textsuperscript{408} For example, specialists are prohibited from engaging in stock transactions with their shareholders.\textsuperscript{409} Specialists also are subject to limitations on their ability to refuse to deal in the stocks as to which they serve as specialist.\textsuperscript{410} The Commission, after obtaining the opinion of the Bank of Mexico, is empowered to issue administrative orders against any specialist whose actions contravene the Securities Market Law.\textsuperscript{411}

\section*{§17 Investment Companies}

Investment companies are regulated by federal legislation, \textit{Ley de Sociedades de Inversion}, enacted on January 14, 1985. These companies function to give access to the securities market to small and mid-size investors. Their organization and functioning is subject to the supervision and control of the Commission.

Mexican law recognizes three types of investment companies: common, which invests in equity securities; fixed-income; and investment companies of capital which invest in start-up or other risky ventures. Investment companies must be organized as stock corporations and managed by a board of no fewer than five directors. They must also have an investment committee. No natural or legal person may own more than 10 percent of the paid-in capital. Investment companies, except capital-type companies, may only invest in securities approved by the Commission and registered in the National Registry. Investment companies may issue their own shares only in accordance with general rules of the Commission. Management services to investment companies may be provided by special companies approved by the Commission or by brokerage companies or banks.

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{404} \textit{Id.} art. 22 bis 1, § II.
\item \textsuperscript{405} \textit{Id.} art. 22 bis 1, § III.
\item \textsuperscript{406} \textit{Id.} art. 22 bis 1, § III(d).
\item \textsuperscript{407} \textit{Id.} art. 22 bis 1, § IV.
\item \textsuperscript{408} \textit{Id.} art. 22 bis 1, § I.
\item \textsuperscript{409} \textit{Id.} art. 22 bis 1, § II.
\item \textsuperscript{410} \textit{Id.} art. 22 bis 1, § III.
\item \textsuperscript{411} \textit{Id.} art. 22 bis 1, § II.
\end{itemize}
\end{footnotesize}
The Commission is given a number of enforcement and related powers in the securities law. Most of its powers in this regard are contained in chapter five of the law, although others are scattered throughout the statute. The Commission has the general power to investigate violations of the law and to make inspections of suspected violators. The power to inspect and review the operations of brokerage firms, stock exchange specialists, and stock exchanges is granted by the statute. The Commission also has the power to inspect and oversee issuers of registered securities, but only in matters relating to the obligations imposed on them by the Securities Market Law. This provision, generally, would not authorize the Commission to investigate or question the routine corporate affairs of the issuer. Should a person engage in an unregistered public offering, the Commission may suspend their operations and carry out an audit of their affairs. Such administrative actions are also authorized when a person, without due authorization, acts as a broker in the securities market. The Commission may suspend the improper use of advertising and the registration of securities or brokers in the National Registry.

The Commission is given broad powers with respect to the operation of brokerage firms and the market. The Commission may intervene in the affairs of brokers and issue administrative orders in the event of violations of the registration provisions of the law. The statute empowers the Commission to audit the affairs of brokers and stock exchanges in order to cancel or normalize activities that may threaten their stability or liquidity. The Commission may suspend quotations in securities when disorderly or chaotic conditions exist in the market for that security, or when transactions are carried out that do not follow "healthy" uses or practices. The Commission may order increases in the capital of brokers and stock exchanges and intervene in the affairs of stock exchanges in certain cases. When, in spite of intervention by the Commission in

413. Securities Market Law, supra note 2, chap. 5.
414. See, e.g., Id. chap. 1, art. 5; chap. 2, art. 16; art. 16 bis 3, 7, 20; chap. 3, art. 27; chap 4, arts. 32, 38.
415. Id. art. 41, § III.
416. Id. art. 41, § I.
417. Id. § II.
418. Id. § VIII.
419. Id.
420. Id. art. 41, § VIII.
421. Id. § VII (The Commission may cancel administratively activities of brokers or stock exchanges that violate the law).
422. Id. § VI.
423. Id. art. 38.
the affairs of a stock exchange, irregularities persist, the Ministry of Finance may cancel the franchise of the exchange.\textsuperscript{424}

When a person is determined to have violated securities registration or broker registration provisions of the law, or when a brokerage firm, specialist, or stock exchange is determined to have engaged in transactions endangering their solvency, stability, or liquidity, additional enforcement powers are available to the Commission.\textsuperscript{425} In these cases, taking into account the irregularities they have observed, the Commission may (i) issue an administrative order necessary to normalize the situation and set a deadline for compliance; (ii) order suspension of illegal activities; (iii) designate an auditor to be in charge of canceling or normalizing illegal transactions; and (iv) designate a general auditor to manage the entire enterprise with all attendant executive powers.\textsuperscript{426}

The procedures established in the Securities Market Law for authorization, registration, inspection, surveillance, intervention, and suspension or cancellation of authorizations and registrations "are of public interest."\textsuperscript{427} Parties affected by administrative actions may appeal for a hearing before pertinent authorities.\textsuperscript{428} Aggrieved parties must exhaust their administrative remedies before resorting to any other kind of legal defense.\textsuperscript{429}

An example of remedial powers exercised under the statute occurred in 1988 and 1989. In December 1988 (several months after the 1987 market crash), the Commission suspended futures trading, assumed administrative control over four brokerage firms, and levied fines for a variety of irregularities against a large number of companies and institutions.\textsuperscript{430} In 1989, four top officers from two of Mexico's largest brokerage firms were indicted on charges of illegal trading and criminal fraud\textsuperscript{431} and administrative actions were instituted against a number of market officials.\textsuperscript{432}

\textbf{§19 Transnational Aspects}

Mexican law recognizes that its nationals, and others subject to its jurisdiction, participate in international securities transactions. For example, article 13 of the Securities Market Law provides that public offerings in foreign countries of securities issued in Mexico or by Mexican corpora-

\textsuperscript{424} Id.
\textsuperscript{425} Id. art. 47.
\textsuperscript{426} Id.
\textsuperscript{427} Id. art. 50.
\textsuperscript{428} Id.
\textsuperscript{429} Id.
\textsuperscript{431} \textit{Indictments in Mexico}, N.Y. Times, Feb. 20, 1989, at D2, col. 3.
\textsuperscript{432} \textit{Mexico Moves Against Brokerage Abuses as Salinas Continues to Assert Power}, Wall St. J., Feb. 15, 1989. at A11, col. 2.
tions shall be subject to registration in a Special Section of the National registry. Article 13 indicates that brokerage firms, when dealing with securities registered in the Special Section, are subject to the laws of the country in which the trades take place. The general prohibition of off-exchange trading by stock exchange members specifically does not apply to brokers trading in foreign markets. The requirement of article 11, set forth above, that requires registration in Mexico in the case of public offerings abroad of securities issued in Mexico or by Mexican corporations, appears to purport to give the Mexican registration provisions an extraterritorial effect.

The internationalization of Mexico’s securities market has become increasingly manifest in the last several years. While Mexican companies and the government itself have borrowed in international debt markets in the past, such financing markedly increased in 1989 and 1990. Many of these financings have been Euromarket offerings. As of 1990, the securities of four Mexican issuers are traded in ADR form in the United States. Mexican law allows banks to open overseas branches and engage in banking transactions with foreigners as well as nationals. These events can be seen as part of the overall globalization of world capital markets.

Mexico has also been a participant in various international processes that generally reflect the globalization of securities regulation. The Mexican Securities Commission has begun negotiations with the Securities and Exchange Commission to enter into a multi-jurisdictional disclosure system with the United States. Mexico also participates in the

433. Securities Market Law, supra note 2, art. 31, § VIII(f).
434. Id.
436. Latin American Corporate Finance: Can Pay, Will Pay, The Economist, June 2, 1990, at 83 ("Latin American companies are flocking back to the international capital markets"); Zellner, Mexico Penetrates the Capital Market, Bus. Mexico, June, 1990, at 20 ("Mexico is back in the world’s capital markets").
437. Id. (Euromarket offerings by Banco Nacional de Comercio and Pemex in 1989).
439. PRICE WATERHOUSE, supra note 113, at 83.
441. For example, the governing body of Mexico’s accounting profession, the Mexican Institute of Public Accountants, is a founding member of the International Accounting Standards Committee. See PRICE WATERHOUSE, supra note 113, at 128.

Regarding the globalization of securities regulation generally, see Hawes, Internationalization Spreads to Securities Regulators, 9 Pa. Int’l Bus. L. 202 (1987). The Securities Law gives the Commission the power to participate in international organizations working in the securities area. Securities Market Law, supra note 2, art. 41, § XIX.

442. See Mexican Regulators, supra note 334, at 7. For a discussion of the multi-jurisdictional proposal between the United States and Canada, see Comment, Taking that First
International Organization of Securities Commissions and, in fact, the President of the Mexican Securities Commission chairs IOSCO's developing markets working group. Mexico became a full member of GATT in 1985, and as a member of GATT, Mexico will be required to liberalize its restrictions on financial services in accordance with the General Agreement on Trade in Securities (GATS), now in draft form. Finally, Mexico and the United States decided in June 1990 to begin negotiations on a free trade agreement between the two countries that could have an impact on trading in financial services. In November 1990 Mexico announced it would join other Latin American nations and Spain in an effort to establish an electronic regional trading system.

Mexico's enforcement powers and interests have also been affected by the internationalization of the securities markets. On October 18, 1990, Mexico entered into a memorandum of understanding with the U.S. Securities and Exchange Commission governing a range of enforcement matters. The two countries agreed, among other things, to provide access to their enforcement files to each other and to assist with the procurement of testimony and documents from individuals.


