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INTERNATIONAL CAPITAL MARKETS SECTION

The Securities Market and Regulation of Mexico

SAMUEL WOLFF*
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§1 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

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The discussion of Mexico's securities law, *Ley del Mercado de Valores*, in this article is based, in part, on partial translations of the law by Leah Sular in 1985 and 1986 and Juan Redondo in 1990. Previous versions of this article appeared in the *Vanderbilt Journal of Transnational Law* and *Doing Business in Mexico*.

1. See generally *Equity Financing - General*, BUS. INT'L FINANCING FOREIGN OPERATIONS, Oct. 1, 1989 [hereinafter *Equity Financing*]; see generally *infra* notes 162, 213.

2. *Mexican Regulators Seek Bilateral U.S. Disclosure Pact*, 3 Int'l Sec. Reg. Rep. 7

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 1985,⁴ reentered international capital markets in 1989,⁵ and signed securities-related agreements with the United States in 1990.⁶

Mexico is a representative, federal republic consisting of thirty-one states and a federal district.⁷ 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.⁸ The federal government dominates the state governments, and within the federal system the executive branch is the most powerful of the three branches.⁹ 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.¹⁰ A large part of the law of business organi-

(May 7, 1990)(quoting Jaime Alvarez Soberanis, former legal advisor to the Mexican Securities Commission). The federal securities statute, *Ley del Mercado de Valores* [hereinafter Securities Market Law], was amended twice in 1990 — in January and July. See D.O., July 18, 1990; D.O., Jan. 4, 1990. The Securities Market Law was enacted by the Mexican Congress in 1975 and amended numerous times since then. D.O., Jan. 2, 1975; D.O., Dec. 30, 1980; D.O., Dec. 28, 1983; D.O., Feb. 8, 1985; D.O., Apr. 3, 1985; D.O., Dec. 27, 1985; D.O., Dec. 30, 1985; D.O., Dec. 31, 1986.

3. See, e.g., *Indictments in Mexico*, N.Y. Times, Feb. 20, 1989, at D2, col. 3; *Mexico Moves Against Brokerages as Salinas Continues to Assert Power*, Wall St. J., Feb. 15, 1989, at A11, col. 2. The Commission's power derives from article 40 of the Securities Market Law, which provides that the Commission is the agency in charge, within the terms of the Law and the regulations thereunder, to regulate the stock market and to enforce the observance of said law and regulations.

4. *Mexico: Financial Services and the Economic Recovery*, FIN. WORLD, June 26, 1990, at 28.

5. *Mexico Penetrates the Capital Market*, BUS. MEXICO, Jun. 1990, at 20 ("Mexico is back in the world's capital markets"). Mexico had borrowed in international capital previously but not for several years or more.

6. See generally *supra* note 2 and accompanying text. See also SEC, *Mexico Sign Memorandum on Securities Enforcement*, DAILY REPORT FOR EXECUTIVES, Oct. 22, 1990, at A-11. The United States and Mexico have also agreed in principle to begin negotiations on a free trade agreement. See Mashek, U.S., *Mexico Set Free Trade Talks*, Boston Globe, June 12, 1990, at 2.

7. Mexico's current political system is based upon a constitution dating from the Revolution of 1910. Perez, *An Introduction to the Legal Structure of Mexico for the Foreign Investor*, 4 CAL. W.L. REV. 236, 244 (1968); See generally Wolf, *A Study of Mexico's Capital Markets and Securities Regulation*, 20 VAND. J. TRANSNAT'L L. 385 (1987); The Mexican Constitution was promulgated on February 5, 1917. The country's modern financial history began with the Revolution. M. MAUNG, TWO MODELS OF FOREIGN DEVELOPMENT BANKS 31 (1973).

8. Perez, *supra* note 7, at 244.

9. Brinsmade, *Mexican Law — An Outline and Bibliography of English Source Materials Relating to Certain Aspects Thereof*, 6 INT'L LAW. 829, 830-31 (1972).

10. H. WRIGHT, FOREIGN ENTERPRISE IN MEXICO: LAWS & POLICIES 33 (1971).

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.*

12. Gordon, *The Joint Venture as an Institution for Mexican Development: A Legislative History*, ARIZ. ST. L.J. 173, 175 (1978); *Colloquium on Certain Legal Aspects of Foreign Investment in Mexico: Regulation of Capital Investment, Patents and Trademarks, and Transfer of Technology*, 7 GA. J. INT'L & COMP. L. 1 (1977) [hereinafter *Colloquium*]; Speech by President Lopez Mateos reprinted in *The Mexican Market 1960-1961*, 13 INTER-CONTINENTAL, S.A., Jan. 24, 1961, at 1.

13. Gordon, *supra* note 12, at 175; Gavin, *Mexico, Land of Opportunity*, 39 POL'Y REV. 32, 34 (1987); R. AUBREY, NACIONAL FINANCIERA AND MEXICAN INDUSTRY: A STUDY OF THE FINANCIAL RELATIONSHIP BETWEEN THE GOVERNMENT AND THE PRIVATE SECTOR OF MEXICO 13 (1966); R. VERNON, PUBLIC POLICY AND PRIVATE ENTERPRISE OF MEXICO 13-15 (1964).

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 1983 of the United Mexican States, No. 2-70553 (Nov. 16, 1983) [hereinafter Mexican Registration Statement].

15. H. PARKES, A HISTORY OF MEXICO 436 (1969).

16. See D. BROTHERS & L. SOLIS, MEXICAN FINANCIAL DEVELOPMENT 1 (1966); F. LEES & M. ENG, INTERNATIONAL FINANCIAL MARKETS: DEVELOPMENT OF THE PRESENT SYSTEM AND FUTURE PROSPECTS 372 (1975).

17. See generally Rowe, *The Latin Debt Crisis Drones On: After 5 Years, Debtor Nations and the Global Financial System Remain Vulnerable*, Wash. Post, Jan. 11, 1987, at G2, col. 1 [hereinafter Rowe, *Latin Debt Crisis*]; Rowe, *Bank Details Latin American Crisis*, Wash. Post, Sept. 8, 1986, at A18, col. 1; The Economist Intelligence Unit, 3 Country Report-Mexico (July 28, 1986); *Mexico in Trouble*, 33 WORLD PRESS REV. 25 (July 1986); Nacional Financiera, *La Situación Económica Nacional*, 9 EL MERCADO DE VALORES 197 (Mar. 3, 1986); Stockton, *Broad Talks on Mexican Debt*, N.Y. Times, Mar. 6, 1986, at D7, col. 1; Welt, *Latin America: A Region in Debt*, MGT. REV. (Feb. 1986); Hórmats, *Mexico Needs Special Help*, N.Y. Times, Feb. 26, 1986, at A23, col. 2; Berg, *Bankers Expect Mexican Debt Plea*, N.Y. Times, Feb. 24, 1986, at D10, col. 4; Stockton, *Ailing Mexico Seeks New Terms on its Debt*, N.Y. Times, Feb. 22, 1986, at A5, col. 1 [hereinafter Stockton, *Debt*]; Stockton, *Fall in Oil Prices Is Called a Spur to Mexico Crisis*, N.Y. Times, Feb. 10, 1986, at A1, col. 5 [hereinafter Stockton, *Fall*]; Banco Nacional de México, Review of the Economic Situation of Mexico (Feb. 1986); Nacional Financiera, *Diagnostico de la Situación Económica de México en 1985*, 50 EL MERCADO DE VALORES 1169 (Dec. 16, 1985); *Mexico: Still Suffering*, ECONOMIST, Nov. 30, 1985, at 77. Economic conditions improved moderately in 1987, see Rowe, *The Latin American Debt Morass: Five Years Later, the Crisis Has Faded But the Problem Remains*, Wash. Post, Aug. 16, 1987, at H1, col. 6.

18. F. LEES & M. ENG, *supra* note 16, at 359.

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.²⁰ In 1990 the government moved to privatize most of the banking industry.²¹ 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.²²

§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 legislation²³ governing the sale of securities and authorizing the establishment of an agency to regulate the securities market.²⁴ 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.²⁵ An agency within the executive branch was to administer the Act.²⁶ 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."²⁷ In 1946, the Mexican Congress formally established the National Securities Commission.²⁸ The

20. Laurie, *Oxygen of Recovery*, THE BANKER, Apr. 1990, at 49; *Playing the Next Country Fund*, FIN. WORLD, Feb. 20, 1990, at 15.

21. Johns, *Mexico Picks First Banks for Privatization*, Fin. Times, July 18, 1990, at 26; *Banking Bill Sent to Senate*, Wall St. J., July 12, 1990, at 8, col. 6; Tricks, *Mexican Government Unveils Bank Privatization Bill*, Reuters, Reuters Business Report, June 28, 1990; *Banks to be Returned to Private Ownership*, BUS. LATIN AM., May 14, 1990; Evans and Kraus, *Mexico's Privatization Plan Wins Praise*, AM. BANKER, May 7, 1990, at 14 (since nationalization in 1982, the number of banks in Mexico has shrunk from 60 to 18).

22. Shoreham, *Latin America: Privatization Gains New Momentum*, EUROMONEY, Mar. 1990, at 105-109 (Telmex Compañia Minera de Cananea); see generally *Telmex to Go on Sale*, BUS. INT'L, May 7, 1990; *New Privatization Deals Announced*, BUS. LATIN AM., Mar. 5, 1990 (The national airline, Mexicana, was partially privatized in 1989).

23. Ley que Establece los Requisitos para la Venta al Publico de Acciones de Sociedades Anonimas, D.O., Feb. 1, 1940.

24. P. HERMOSILLO, THE DEVELOPMENT OF THE NATIONAL SECURITIES COMMISSION: 1939-1956 7 (1956) [hereinafter P. HERMOSILLO, DEVELOPMENT].

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.

27. Corte, *supra* note 25, at 26.

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.²⁹ Although the 1939 Act contemplated regulation by an agency within the executive branch, the National Securities Commission was an independent Commission.³⁰ 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.³¹ Regulations under the 1946 Act³² authorized the establishment of the National Securities Register for the registration of various classes of securities.³³

Reform legislation in 1953 expanded the powers of the National Securities Commission.³⁴ 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.³⁵ The 1953 Act consolidated a number of laws, rules, and regulations into one compilation.³⁶ Legislation in 1954 and 1955 granted the National Securities Commission additional powers over investment companies.³⁷

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").³⁸ The Commission is an independent agency under the general supervision of the Ministry of Finance and Public Credit³⁹ which is responsible for

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.

30. Corte, *supra* note 25, at 26.

31. P. HERMOSILLO, DEVELOPMENT, *supra* note 24, at 20-21, 37.

32. Regulations for the Decree Creating the National Securities Commission, D.O., Sept. 7, 1946.

33. Corte, *supra* note 25, at 27-28.

34. Ley de la Comision Nacional de Valores, D.O., Dec. 31, 1953. See generally Carrillo, *Control Estatal de la Venta Publica de Valores en Mexico*, 15 REVISTA DE LA FACULTAD DE DERECHO DE MEXICO 335 (1965), reprinted in WRIGHT, *COMMERCIAL LAW OF MEXICO AND THE UNITED STATES: SELECTED TOPICS* 117 (1966).

35. M. HERRERA, *LA COMISION NACIONAL DE VALORES* (2d ed. 1960).

36. P. HERMOSILLO, DEVELOPMENT, *supra* note 24, at 43.

37. Ley de Sociedades de Inversion (D.O., Dec. 31, 1954, amended Dec. 31, 1955, Dec. 31, 1963, Dec. 30, 1965) [hereinafter *Investment Company Law*]. See Hermosillo, *Les societees d'investissement: Resume de l'evolution legislative du Mexique*, 1958 REV. DE LA SOCIETE FRANCAISE D'ETUDES & EXPANSION 109 (1956) [hereinafter *Hermosillo, Les Societe*].

38. Creel & Del Campo, *A Public Stock Offering in Mexico*, 16 N.Y.U. J. INT'L L. & POL. 305, 333 (1984) [hereinafter *Creel*].

39. *Id.* (citing A. ROMERO, *DERECHO BANCARIO* 42-44 (1978)); Gomez Gordo, *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.⁴⁰ The Commission has primary responsibility for regulating the securities market and overseeing compliance with the Securities Market Law.⁴¹ The Ministry of Finance, however, has final administrative authority to interpret the Securities Law.⁴² The Commission's powers include, registration authority over securities and brokers, inspection and oversight responsibilities with regard to brokers,⁴³ and rule-making power.⁴⁴ When circumstances so require, the Commission may intervene administratively in the market or may take a variety of other enforcement measures.⁴⁵

The Commission is composed of the Governing Board (the supreme authority of the Commission), the President, and the Consulting Committee.⁴⁶ The Governing Board consists of eleven members, five of whom are designated by the Ministry of Finance.⁴⁷ One of these five designees will be appointed President of the Commission.⁴⁸ 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).⁴⁹ 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.⁵⁰ Within the Commission are various staff bureaus under the general supervision of the President.⁵¹

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."⁵² Only documents registered in the Securities Section may be publicly offered.⁵³ 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.*

46. Comision Nacional de Valores, Memoria de Labores 35 (1984) [hereinafter Memoria de Labores]; Securities Market Law, *supra* note 2, art. 43.

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.⁵⁴ The Brokers Section records registration of all brokers by categories of either natural persons or corporations.⁵⁵ 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.⁵⁶

[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.⁵⁷ 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.⁵⁸ The Ministry of Finance has primary responsibility in Mexico for the financial system, including the formulation of policies regarding public debt and fiscal policy.⁵⁹

[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 1980.⁶⁰ Indeval, a clearinghouse and depository for securities traded in Mexico, eliminates the need for physical transfer of securities.⁶¹ Re-organized in 1987 as a private corporation,⁶² Indeval provides for the "safekeeping, administration, compensation, liquidation and transfer of securities."⁶³ It uses a fully automated securities clearance system.⁶⁴

54. *Id.*

55. COMISION NACIONAL DE VALORES, LEYES Y DISPOSICIONES DEL MERCADO DE VALORES 282-83 (1982).

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.

59. Prospectus of the Emerging Mexico Fund, Inc. I-23 (Oct. 2, 1990) [hereinafter Prospectus EMF].

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,⁶⁵ 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.⁶⁶ *Banco de Mexico*, the central bank, formulates and implements monetary policy.⁶⁷ The Mexican Association of Brokerage Firms, a self-regulatory organization, is involved in the regulation of Mexican broker-dealers;⁶⁸ the Mexican Institute of Public Accountants oversees the accounting profession; and the Bank Disincorporation Committee is supervising the privatization of the banking industry.⁶⁹

§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.⁷⁰ This law, which became effective as of January 3, 1975, and has been amended numerous times,⁷¹ is an advanced, comprehensive statement of securities regulation.

The law on Investment Societies⁷² provides for the organization and functioning of various types of investment companies. This law repealed the Law on Investment Corporations that was published in 1955.⁷³ The Law on Investment Societies was amended in January 1990 to facilitate

65. Regarding the National Foreign Investment Registry, see A. HOAGLAND, *COMPANY FORMATION IN MEXICO* 29 (1980) [hereinafter A. HOAGLAND, *FORMATION*]; Creel, *supra* note 38, at 311; Camp & Rojas, *Recent Developments Under the Mexican Foreign Investment Law and The Law Regulating the Transfer of Technology*, 8 *LAW. AM.* (1976); H. MAY & F. ARENA, *IMPACT OF FOREIGN INVESTMENT IN MEXICO* (1971); Trevino, *Mexico: The Present Status of Legislation and Governmental Policies on Direct Foreign Investments*, 18 *INT'L LAW.* 297 (1984).

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

67. *Id.*

68. *Id.* at 37.

69. See generally *Banks Ready for Privatization, Finance Liberalization Seen*, *BUS. EUROPE*, Oct. 1, 1990.

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

71. D.O., July 18, 1990; D.O., Jan. 4, 1990; D.O., Dec. 31, 1986; D.O., Dec. 27, 1985; D.O., Feb. 8, 1985; D.O., Apr. 3, 1985 (errata); D.O., Dec. 28, 1983; D.O., Dec. 31, 1981; D.O., Dec. 30, 1980; D.O., May 12, 1978; D.O., Nov. 28, 1977.

72. D.O., Jan. 14, 1985, as amended.

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

74. Mitchell, *Foreign Investment in the Mexican Financial System*, N.Y.L.J. 28 (May 23, 1990).

75. D.O., July 18, 1990.

76. Prospectus EMF, *supra* note 59, at I-23.

77. Disposiciones del Mercado de Valores, in *Comision Nacional de Valores, Leyes y Disposiciones del Mercado de Valores* (1980).

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.

81. *Regulation of the National Registry of Securities and Intermediaries* D.O., Nov. 22, 1979.

82. *Ley Para Promover la Inversion Mexicana y Regular la Inversion Extranjera*, D.O., Mar. 9, 1973.

83. *Reglamento de la Ley para Promover la Inversion Mexicana y Regular la Inversion Extranjera*, D.O., May 16, 1989.

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;⁸⁶ 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,⁸⁷ 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."⁸⁸

Securities are defined to include shares, obligations (bonds, debentures), and other credit instruments that are issued in series or in mass.⁸⁹ 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.⁹⁰ In 1966

86. See Mitchell, *Foreign Investment in the Mexican Financial System*, N.Y.L.J. 3-4 (May 23, 1990).

87. See *infra* § 7.

88. Securities Market Law, *supra* note 2, art. 3.

89. *Id.*

90. 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.⁹¹ In 1984 this figure was almost ninety-eight percent⁹² and was ninety-seven percent in 1989.⁹³ *Certificados de la federacion*⁹⁴ (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.⁹⁵ The government issued *cetes* as an instrument for short-term finance and control of the money supply.⁹⁶ *Cetes* are issued through *Banco de Mexico*, have a maximum maturity of one year,⁹⁷ and are liquid investments which brokers sell at a discount from face value at maturity.⁹⁸ *Cetes* are auctioned weekly by *Banco de Mexico* and traded on the Mexican Stock Exchange.⁹⁹

In 1980 the Commission approved commercial paper and bankers' acceptances for issuance by Mexican companies, expanding the types of money market instruments available.¹⁰⁰ "Commercial paper consists of promissory notes issued by a corporation, obligating it to pay principal plus interest to the holders within a specified period.¹⁰¹ It is unsecured, short-term indebtedness sold primarily to institutional investors at a discount from face value.¹⁰² Petrobonds, government-issued debt securities which began trading on the Stock Exchange in 1977, are three-year obligations collateralized by Mexican oil.¹⁰³ Other fixed-income instruments include notes, corporate bonds and debentures,¹⁰⁴ 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.

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.

93. Prospectus EMF, *supra* note 59, at 31.

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.

97. Mexican Registration Statement, *supra* note 14, at 31.

98. Baird, *Betting on the Peso*, *Barron's*, Dec. 1, 1980, at 35-36.

99. See generally *Short-term Investment Instruments*, BUS. INT'L FINANCING FOREIGN OPERATIONS, Oct. 1, 1989. The yield on *cetes* has replaced the average cost of bank funds as the basis for determining the prime rate.

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."¹⁰⁵ These instruments are three-year, adjustable-rate bonds issued by the government.¹⁰⁶ Treasury bonds are government issued fixed-interest instruments denominated in free-rate dollars.¹⁰⁷ Treasury promissory notes are similar to Treasury bonds, except the notes are pegged to the controlled-dollar rate.¹⁰⁸ Bank industrial development bonds are government-issued ten-year bonds designed to finance specific industrial development projects.¹⁰⁹ Equity securities are issued in Mexico, and a number of classes of them trade on the stock exchange.¹¹⁰ Foreign investors are permitted to purchase debt securities in Mexico, except for *cetes* which may only be purchased by Mexican nationals.¹¹¹ Foreign investment in equity securities is, however, subject to numerous restrictions under the Foreign Investment Law.¹¹²

§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.¹¹³ 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.¹¹⁴ Meetings of this type became customary in other places, including "the back of a shop run by the widow of one Genin."¹¹⁵ Mexico's first formal, though unofficial, stock exchange, *La Bolsa de Valores de Mexico*, was organized in 1894 but it dissolved in the early

105. Newman, *Confidence Creates New Options*, BUS. MEXICO, Mar., 1990, at 16 (*ajustabonos*).

106. *Id.*

107. *Id.* at 18 (*tesobonos*).

108. *Id.* (*pagafes*). These instruments are auctioned weekly with *cetes*. *Short-term Investment Instruments*, BUS. INT'L FINANCING FOREIGN OPERATIONS, Oct. 1, 1989.

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*].

114. Corte, *The Public Sale of Shares in Mexico*, STUDIES IN LAW AND ECONOMIC DEVELOPMENT 23-24 (1967). See O. MOORE, *EVOLUCION DE LAS INSTITUCIONES FINANCIERAS EN MEXICO* (1963). See generally A. LAGUNILLA INARRITU, *HISTORIA DE LA BOLSA DE MEXICO 1895-1933* (1973); A. LAGUNILLA INARRITU, *HISTORIA DE LA BOLSA DE MEXICO 1933-1970* (1976).

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?)).

1900s.¹¹⁶ 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).

117. Corte, *supra* note 25, at 24.

118. *Id.*

119. *Id.*

120. F. LEES & M. ENG, *supra* note 16, at 378.

121. 13 Intercontinental, S.A., *The Mexican Market* 5 (June 15, 1960).

122. *Id.*

123. Creel, *supra* note 38, at 333.

124. *Id.* at 333.

125. NACIONAL FINANCIERA, STATISTICS ON THE MEXICAN ECONOMY 329 n.2 (1977).

126. *Id.*

127. Securities Market Law, *supra* note 2, art. 31(f). See generally *infra* note 389 and accompanying text.

128. *Equity Financing*, *supra* at 1; J. La Cascia, *supra* note 39, at 50; F. LEES & M. ENG *supra* note 16, at 374; R. AUBAY, NACIONAL FINANCIERA AND MEXICAN INDUSTRY: A STUDY OF THE FINANCIAL RELATIONSHIP BETWEEN THE GOVERNMENT AND THE PRIVATE SECTOR OF MEXICO 80 (1966).

129. 1 Intercontinental, S.A., *The Mexican Market* 1 (1960). For a discussion of market characteristics in the 1960's, see *supra* at 113; Ross, *The Mexican Stock Market — An Appraisal*, FIN. ANALYSTS J. (1962) [hereinafter Ross, *Appraisal*]; Ross, *Progress*, *supra* note 104, at 48.

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,

	<u>1985</u> (\$mil)	<u>1986</u> (\$mil)	<u>1987</u> (\$mil)	<u>1988</u> (\$mil)	<u>1989</u> (\$mil)
Total Volume	81,987	118,642	219,081	421,775	471,234

130. J. LA CASCIA, *supra* note 39, at 50.

131. NACIONAL FINANCIERA, *supra* note 125, at 321.

132. F. LEES & M. ENG, *supra* note 16, at 374.

133. NACIONAL FINANCIERA, *supra* note 125, at 321.

134. *Id.*; Nacional Financiera, *Comportamiento del Mercado de Valores en 1985*, 46 EL MERCADO DE VALORES 153 (1986) (1985 data).

135. 1983 Prospectus, *supra* note 60, at 14.

136. *Id.*

137. Memoria de Labores, *supra* note 46; at 17.

138. *Equity Financing*, *supra* at 1.

139. F. LEES & M. ENG, *supra* note 16, at 377.

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 100.¹⁴⁶ From 1959 through 1967, the price index fluctuated from a low of 90 (1962) to a high of 116 (1965).¹⁴⁶ The stock index was 128 in October 1971¹⁴⁷ and 199.5 in February 1973.¹⁴⁸ In 1978 the Exchange began compiling a new index¹⁴⁹ consisting of 40 actively traded stocks issued by companies in various economic sectors.¹⁵⁰ Following are high and low index values respectively, as of the dates specified:¹⁵¹

1981	1,490 - 765
1985	11,445 - 3,493
1986	47,103 - 10,826

Along with other world markets, Mexico's stock market crashed in October 1987.¹⁵² The market plummeted from a high of 373,216¹⁵³ on October 6, 1987 to 95,484¹⁵⁴ on November 17, 1987. The drop of over sixty percent brought total market capitalization from \$35 billion to \$15 billion.¹⁵⁵ The high and low index values for 1988 were 230,094 - 86,607.¹⁵⁶ The values for 1989 were 443,029 - 203,715.¹⁵⁷ 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.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 1988.¹⁵⁹ One source reports that

145. See A. BASCH & M. KYBAL, *supra* note 91, at 79.

146. *Id.*

147. F. LEE & M. ENG, *supra* note 16, at 377.

148. *Id.* at 378.

149. 1983 Prospectus, *supra* note 60, at 15.

150. Prospectus of Tubos de Acero de Mexico, S.A. (May 24, 1985).

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.

152. See generally Wild Week in Mexico: Peso Crumbles, *Barron's*, Nov. 23, 1987, at 72; Mexico Moves to Prop Up Stock Prices, *Barron's*, Nov. 16, 1987, at 66; Rates Fall Sharply Once More: Credit Markets Expect Further Easing by Fed, *N.Y. Times*, Oct. 29, 1987, at D1, col. 3; Fading Prospects: Mexico's Turnaround of Sagging Economy Now Seen Imperiled, *Wall St. J.*, Nov. 23, 1987, at 1.

153. Nacional Financiera, *El Comportamiento del Mercado de Valores en 1987*, EL MERCADO DE VALORES 52 (Feb. 1988).

154. *Wild Week*, *supra* note 152, at 72.

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).

156. Prospectus EMF, *supra* note 59, at 30.

157. *Id.*

158. Acciones y Valores de Mexico, S.A. de C.V., *El Mercado* 28 (Sept. 1990).

159. See generally *Stock and Bond Financing*, 1989 BUS. INT'L FINANCING FOREIGN OPERATIONS, Aug. 1, 1989.

during the six-month period which ended June 30, 1990, only two new issues had been brought to market.¹⁶⁰ 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 1990.¹⁶¹ 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.¹⁶² A futures market was authorized in 1983 but trading remains minimal or non-existent.¹⁶³

As of 1990 there were 25 brokerage firms that were members of the stock exchange and authorized to trade on the floor.¹⁶⁴ Trading on the exchange takes place from 10:00 a.m. to 1:30 p.m. each weekday and is effected by open outcry.¹⁶⁵ Recent legislation recognized the position of securities specialists, but as of 1990 there were none.¹⁶⁶ Traditionally, the market has operated without specialists or other formal market-makers;¹⁶⁷ instead, brokers execute transactions directly with other brokers.¹⁶⁸ The stock exchange operates an automatic suspension system to regulate price volatility.¹⁶⁹

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,¹⁷⁰ to be included with supporting material in a listing application.¹⁷¹ Majority foreign-owned corporations are not allowed to list.¹⁷² 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.¹⁷³ Listed companies must release annual audited financial statements and unaudited quarterly financial statements.¹⁷⁴

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.

172. *Listing Procedures*, BUS. INT'L, Oct. 1, 1989.

173. Creel, *supra* note 38, at 335.

174. PRICE WATERHOUSE, *supra* note 113, at 65.

§6 INTERMEDIARIES

[a] *Banks*

Historically, the most important intermediaries in the Mexican financial arena were commercial banks.¹⁷⁵ 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 1864.¹⁷⁶ The government established the National Banking Commission in 1924, and the Bank of Mexico in 1925.¹⁷⁷ It promulgated banking regulations in 1897, 1915, 1924, and 1932.¹⁷⁸ The most important laws regulating banks since that time, prior to the enactment of new banking legislation in 1985,¹⁷⁹ 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 Públicos* (a national foreign trade bank).¹⁸⁰ The Central Bank is *Banco de Mexico*, chartered in 1925.¹⁸¹ 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.¹⁸² "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."¹⁸³

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.¹⁸⁴ One of its principal objectives is to channel credits into economic sectors not having ready

175. Saldaña, *Mexican Financial Institutions: A Banker's Viewpoint*, 4 CAL. W. L. REV. 306, 307 (1968). See generally MOORE, *EVOLUCION DE LAS INSTITUCIONES FINANCIERAS EN MEXICO* (1963); D. SHELTON, *THE BANKING SYSTEM: PUBLIC AND PRIVATE IN MEXICO* (1967).

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.

179. Ley Reglamentaria del Servicio Publico de Banca y Crédito (Jan. 14, 1985).

180. A. HOAGLAND, *supra* note 65, at J-1 through J-9.

181. Mexican Registration Statement, *supra* note 14, at 30.

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).

183. Mexican Registration Statement, *supra* note 14, at 30.

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-

185. See D. BROTHERS & L. SOLIS, *supra* note 91, at 12.

186. J. LA CASCIA, *supra* note 39, at 39; F. LEES & M. ENG, *supra* note 16, at 366.

187. R. GOLDSMITH, *THE FINANCIAL DEVELOPMENT OF MEXICO* 21 (1966). New legislation regulating *Nafinsa* was passed in 1986. *Ley Organica de Nacional Financiera* (Organic Law of Nacional Financiera), D.O., Dec. 26, 1986. See *Ley Organica De Nacional Financiera*, *El Mercado de Valores* 1 (Jan. 12, 1987).

188. Mexican Registration Statement, *supra* note 14, at 30.

189. See BETETA, *supra* note 182, at 74; J. LA CASCIA, *supra* note 39, at 46; D. BROTHERS & L. SOLIS, *supra* note 91, at 30.

190. A. HOAGLAND, *FORMATION*, *supra* note 65, J-1.

191. Mexican Registration Statement, *supra* note 14, at 31. See *Decreto Que Establece La Nacionalizacion de la Banca Privada*, D.O., Sept. 1-2, 1982. Subsequent to nationalization, an unofficial, private banking system developed. Sarmiento, *Mexico's Phantom Bankers Come Out of the Shadows*, *Wall St. J.*, Aug. 7, 1987, at 19, col. 3; THACKRAY, *COMMERCIAL PAPER: PARALLEL BANKING BEATS BARTER*, *EUROMONEY*, Jul. 1986, at 87.

192. The Economist Intelligence Unit, *Country Profile — Mexico 1987-1988*, at 26 (Aug. 1987).

193. See generally *infra* notes 258-272 and accompanying text.

194. Prospectus EMF, *supra* note 59, at I-24

195. PRICE WATERHOUSE, *supra* note 113, at 79.

ties Market, and may not, directly or indirectly, have a share in their capital stock, except as trustees for qualified persons.¹⁹⁶ 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,¹⁹⁷ 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.¹⁹⁸ "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.¹⁹⁹ Recent legislation in Mexico allows Mexican brokers to open subsidiaries abroad²⁰⁰ and to act as intermediaries on behalf of investment companies.²⁰¹ In 1980 twenty-four corporate brokerage firms were registered with the Commission.²⁰² This number remained relatively constant throughout the decade.²⁰³ 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.

201. *Mexican Regulators Seek Bilateral U.S. Disclosure Pact*, *supra* at 2.

202. A. HOAGLAND, FORMATION, *supra* note 65, at J-32. Certain financial, operating, and statistical information concerning Mexican brokerage firms is set forth in Nacional Financiera, *Información Financiera, Operativa y Estadística de las Casas de Bolsa*, 48 EL MERCADO DE VALORES 1134 (Dec. 1, 1986).

203. Prospectus EMF, *supra* note 59, at 28.

kers in Mexico are discussed further below.²⁰⁴

[c] *Investment Companies*

The Mexican Congress enacted legislation in 1951,²⁰⁵ subsequently amended,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.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."²⁰⁸ Numerous investment companies subsequently were formed under this law.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.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.²¹¹ Since that time, the government has continued to support the mutual fund industry.²¹² The number of mutual funds increased from 117 in 1988 to 174 in 1989.²¹³ In 1990 there was substantial activity by mutual funds in the Mexican primary market.²¹⁴ In order to operate in Mexico, investment companies must receive approval from the Ministry of Finance.²¹⁵ They may be operated by brokerage firms or banks.²¹⁶

204. See *infra* §15.

205. Ley que Establece el Regimen de las Sociedades de Inversion (Act Establishing Rules for Investment Companies), D.O., Jan. 4, 1951.

206. D.O., Dec. 31, 1955; *Id.*, Dec. 31, 1963; *Id.*, Dec. 31, 1965.

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, *Las 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).

208. L. LOSS, SECURITIES REGULATION IV 2290. (2d ed. Supp., 1969).

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 Meracado de Valores* 268-269 (1982).

210. A. BASCH & M. KYBAL, *supra* note 91, at 133.

211. Mitchell, *supra* note 74, at 28.

212. Prospectus EMF, *supra* note 59, at 35.

213. *Id.*

214. Acciones Y Valores de Mexico, S.A. de C.V., *El Mercado* (Sept. 1990). See also *Equity Financing*, *supra* at 1.

215. PRICE WATERHOUSE, *supra* note 113, at 81.

216. *Id.*

The Mexico Fund, Inc. is a diversified, close-ended investment company registered under the United States Investment Company Act of 1940.²¹⁷ Incorporated under Maryland law in 1981, the Mexico Fund invests primarily in equity securities listed on the Mexican Stock Exchange.²¹⁸ A Mexican corporation, registered as an investment adviser under the United States Investment Advisers Act of 1940, advises the Fund.²¹⁹ The Fund makes investments through a trust, organized under Mexican law, of which *Nafinsa* is the trustee.²²⁰ 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."²²¹ 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.²²² 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.²²³ 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.²²⁴

[d] *Auxiliary Credit Institutions*

The Mexican financial system includes other types of institutions involved in various financial activities.²²⁵ Auxiliary Credit Organizations, governed by the General Law of Credit Institutions and Auxiliary Credit Organizations, are warehouse corporations, financial leasing companies,

217. 1983 Prospectus, *supra* note 60, at 10.

218. *Id.*

219. *Id.*

220. *Id.* at 3, 10.

221. *Id.* at 10-11.

222. *Id.* at 11.

223. Transcript of The Mexico Fund, Inc. Offering of 10,000,000 Shares of Common Stock (1981) (available at the library of the Mexican Securities Commission, Mexico City).

224. *Two New Specialized Funds Should Attract Investors*, *BUS. INT'L*, June 18, 1990. See also Prospectus EMF, *supra* note 59, at 1 ("a newly organized, non-diversified, closed-end management investment company seeking long-term capital appreciation through investment primarily in Mexican equity securities").

225. Mitchell, *supra* note 74, at 3-4.

credit unions, factoring companies, and entities involved in foreign exchange activities.²²⁶ 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.²²⁷ 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.²²⁸ Specialists may only trade for their own account and not for the account of others.²²⁹ Detailed rules governing specialists were set forth in the January 1990 amendments and are analyzed further below;²³⁰ however, as of 1990 there were no specialists operating in the Mexican market.²³¹

[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.²³² New legislation regulating financial groups was enacted in July 1990.²³³ The "Law to Regulate Financial Groups"²³⁴ 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.²³⁵ Each group must have at least three of these entities not counting operating companies of investment companies.²³⁶ 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.²³⁷ The Ministry of Finance,

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.

232. Mitchell, *supra* note 74, at 28.

233. Law to Regulate Financial Groups, D.O., July 18, 1990.

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.*

1973.²⁵¹ Even before the banks were nationalized in 1982, foreigners could not own stock in them and could not operate branches in Mexico.²⁵² In the mid-1980's Mexico began to relax its restrictions on foreign investment.²⁵³ This policy of liberalization was reflected in new foreign investment regulations promulgated in 1989.²⁵⁴ 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.²⁵⁵ Broadly speaking, B shares may represent up to 49 percent of capital.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.²⁵⁷

The relaxation of foreign investment restrictions has continued to ac-

251. *Ley Para Promover La Inversion Mexicana Y Regular La Inversion Extranjera*, D.O., Mar. 9, 1973. Before the Revolution of 1910, foreign ownership of the means of production in Mexico was extensive, particularly in the mining and petroleum industries. See generally J. COCKCROFT, *MEXICO: CLASS FORMATION, CAPITAL ACCUMULATION AND THE STATE* 86 (1983) (foreigners began to dominate much of economy in the late 1800's). For example, in 1910 foreigners owned over 25% of the land, 60% of mining, 70% of oil production, and indeed dominated almost every industrial sector except agriculture. Murphy, *Expropriation and Aftermath: The Prospects for Foreign Enterprise in the Mexico of Miguel de la Madrid*, 18 *TEX. INT'L L. J.* 431, 433 (1983). After the Revolution, a policy against unrestrained foreign investment evolved based on a theory that foreign economic domination was a threat to national sovereignty. *Colloquium*, *supra* note 12, at 40. See also Schill, *The Mexican and Andean Investment Codes: An Overview and Comparison*, 6 *L. & POL. INT'L BUS.* 437, 448-49 (1974). Mexican investment policies thus derive from concepts in the 1917 Constitution. Gordon, *supra* note 12, at 173. A decree of 1944 authorized the government to prohibit foreign ownership of more than 49% of any Mexican corporation. H. PARKS, *supra* note 15, at 363. The 1973 legislation which technically is still in effect (but which has been eroded by regulations) followed from these precepts. For a translation of the 1973 legislation, see PALACIO, *ANALISIS DE LA LEY DE INVERSION EXTRANJERA EN MEXICO* (1974). See generally Murphy, *The Echeverrian Wall: Two Perspectives on Foreign Investment and Licensing in Mexico*, 17 *TEX. INT'L L. J.* 135 (1982); *The Foreign Investment Transaction in Mexico*, 8 *LOV. L.A. INT'L & COMP. L. J.* 67 (1985); Vizcaino, *The Law on Foreign Investment*, 7 *GA. J. INT'L & COMP. L.* 34 (1977); Radway, *Doing Business in Mexico: A Practical Legal Analysis*, 14 *INT'L LAW.* 361, 374 (1980). Regarding the initial phase of the easing of restrictions, see Rohan, *An Improved Climate? Restrictions Easing on Foreign Operations*, 221 *INDUS. WK.* 24-25 (1984); *New Resolutions for Foreign Investment*, *INT'L FIN. L. REV.*, Dec. 1986, at 47; *Approval of Foreign Investment Assured*, *INT'L FIN. L. REV.*, Oct. 1986, at 46.

252. Darling, *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; PRICE WATERHOUSE, *supra* note 113, at 83.

253. *New Resolutions for Foreign Investment*, *INT'L FIN. L. REV.* 47 (Dec. 1986); *Approval of Foreign Investment Assured*, *INT'L FIN. L. REV.* 46 (Oct. 1986).

254. *Reglamento de la Ley para Promover la Inversion Mexicana Y Regular la Inversion Extranjera*, D.O., May 16, 1989.

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

256. *Id.*

257. *Id.*

celerate under Salinas, who became President of Mexico in December 1988. In January 1990, Mexico enacted new legislation permitting foreign investment in financial services.²⁵⁸ Under this legislation banks are permitted to issue "Series C" shares which may be held by foreigners.²⁵⁹ 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.²⁶⁰ 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.²⁶¹

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.²⁶² 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.²⁶³ This legislation was also enacted in July 1990.²⁶⁴ 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,²⁶⁵ but the Ministry of Finance may authorize foreign investment in brokerage firms, up to a limit of 30 percent of capital.²⁶⁶ 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.²⁶⁷ Foreigners making these investments are considered, for these purposes only, as a

258. The Economist Intelligence Unit, Mexico — Country Report No. 1 - 1990, at 11.

259. *Id.*

260. Prospectus EMF, *supra* note 59, at I-24.

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.²⁶⁸ 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.²⁶⁹ These restrictions generally mirror those applicable to multiple service banks under the July 1990 Law of Credit Institutions²⁷⁰ 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.²⁷¹

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.²⁷²

§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.²⁷³ 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.²⁷⁴ The Securities Market Law defines "securities" as shares of stock, bonds, and other credit instruments that are mass issued or serialized.²⁷⁵ The Securities Market Law charges the regulatory authorities with promoting a balanced and competitive securities market.²⁷⁶ Mexico's commercial laws, commercial and stock exchange practices, and Civil Code for the

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.

272. See Moffett, *Mexico Opens Much of Market to Foreign Capital Through a Trust Fund by State Development Bank*, Wall St. J., Mar. 26, 1990, at C12; Suggan, *The Bolsa Booms Again*, FORBES, Apr. 16, 1990, at 54; Darling, *Mexico's Market Goes More Public*, L.A. Times, Apr. 22, 1990, at D10; Laurie, *supra* note 20, at 50.

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.

289. *Listing Procedures*, Bus. INT'L, Oct. 1, 1989. There are also fixed fees to pay for investigations by the Commission and the Exchange.

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.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.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.³⁰¹ Listed companies are required to publish their annual financial statements in a major newspaper.³⁰² All issuers incorporated under Mexican law must appoint statutory auditors who are representatives of the shareholders.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.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.³⁰⁵ It must appear to the Commission that the issuer is solvent and liquid.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.³⁰⁷ Issuers must furnish the Commission, the stock exchange, and the public with information specified by the Commission through general rules.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.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.³¹⁰ The statute directs the Commission to promulgate regulations governing issuances by brokerage firms.³¹¹

299. *Id.*

300. PRICE WATERHOUSE, *supra* note 113, at 130.

301. *Id.* at 131.

302. *Id.*

303. *Id.* at 126.

304. Securities Market Law, *supra* note 2, art. 14.

305. *Id.* art. 14., § II.

306. *Id.* art. 14, § IV.

307. *Id.* art. 14, § V. The Law directs the Commission to issue general regulations relating to, *inter alia*, corporations of "variable capital" and companies controlling other companies.

308. *Id.* art. 14, § VI.

309. *Id.* art. 14, § VII. Issuers may not "concede to the holders benefits that do not derive from the proper nature of the securities . . ."

310. *Id.* art. 14, § VIII.

311. *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.³¹² This provision must be stated in the documents through which public offerings of securities are made.³¹³ After registration with the National Registry of Securities, securities may be listed for trading on the Exchange³¹⁴ 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.³¹⁵ Under the statute, registration for these issuers is effected by notice to the Commission.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.³¹⁷ Under present law, all listed shares must be in registered form.³¹⁸ The January 1990 amendments permit issuers of registered securities to issue non-voting shares.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.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.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

312. *Id.* art. 14, § VII.

313. *Id.*

314. *Id.* art. 33.

315. *Id.* art. 15.

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.

317. *Listing Procedures, supra* at 289.

318. *Id.*

319. Securities Market Law, *supra* note 2, art. 14 bis II.

320. See generally Diez, *Problems in Selling Securities in Latin America*, 4 INT'L FIN. L. REV. 28-31 (June 1985).

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 3.³²² 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.

§10 TRADING BY AFFILIATES AND SECONDARY DISTRIBUTIONS

A secondary distribution refers to a public offering of outstanding shares.³²³ Typically, a secondary offering involves a block of stock too large to sell in the routine trading market.³²⁴ A secondary public offering would require prior approval of the Commission.³²⁵ 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.³²⁶

§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.³²⁷ The law thus generally authorizes the Commission to set periodic reporting requirements. The Commission has issued *circulares* requiring corporations to provide periodic financial, legal, accounting, and other information to the Commission and the public.³²⁸ One such circular requires corporations to furnish annual reports with audited financial statements and unaudited quarterly reports with specified financial information.³²⁹

322. *Id.*

323. Sim, *The New Issues Market*, HANDBOOK OF FINANCIAL MARKETS: SECURITIES, OPTIONS AND FUTURES 124-125 (1986). In a secondary placement, the original stockholders offer their shares for sale. Creel, *supra* note 38, at 319.

324. Sim, *supra* note 323, at 125. For an example of a secondary distribution made in the 1960's, see 9 Intercontinental, S.A., *The Mexican Market* 2 (Oct. 15, 1960).

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).

326. Securities Market Law, *supra* note 2, art. 13.

327. Securities Market Law, *supra* note 2, art. 14, § VI.

328. Creel, *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." *Id.* at 338 n.195.

329. *Id.* at 338-41. See PRICE WATERHOUSE, *supra* note 113, at 65.

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.³³⁰ 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.³³¹ Listed Mexican issuers must incorporate the effects of inflation in their accounting records and financial statements.³³²

§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.³³³ 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.³³⁴ The system is designed to provide for international arbitration toward the objective of attracting foreign investment inflow.³³⁵

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.

334. *Mexican Regulators Seek Bilateral U.S. Disclosure Pact*, *supra* at 2.

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.³³⁶ The same criminal penalties apply to persons who engage in brokerage activities without proper registration.³³⁷

Another class of offenses is created for miscellaneous activities that generally involve some element of intent.³³⁸ Thus, brokerage firm employees who intentionally engage in malfeasance *viz-a-viz* their customers are subject to sanctions of imprisonment from two to ten years and a fine.³³⁹ These crimes may only be pursued at the petition of the Ministry of Finance with the prior opinion of the Commission.³⁴⁰ These sanctions do not preclude other punitive measures deriving from applicable laws.³⁴¹

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.³⁴² 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;³⁴³ (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.³⁴⁴ Numerous other fines are authorized under the statute, mostly for the failure to observe affirmative obligations of the law.³⁴⁵

§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.³⁴⁶ 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.³⁴⁷ "Privileged informa-

336. Securities Market Law, *supra* note 2, art. 52, § II.

337. *Id.* art. 52, § I.

338. *Id.* art. 52 bis.

339. *Id.*

340. *Id.* art. 52 bis 2.

341. *Id.*

342. *Id.* art. 51.

343. *Id.* art. 51, § I.

344. *Id.* art. 51, § II.

345. *See Id.* art. 51, §§ III - XI.

346. D.O., Dec. 31, 1986; D.O., Jan. 4, 1990.

347. Securities Market Law, *supra* note 2, art. 16 bis.

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.³⁴⁸ The statute calls on the Ministry of Finance and Public Credit, at the proposal to the Commission, to issue rules governing these matters.³⁴⁹

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;³⁵⁰ (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.³⁵¹ 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.³⁵²

The statute grants the Commission the authority to investigate alleged infractions of the insider trading provisions.³⁵³ The Commission may impose an administrative fine on a person who has violated the insider trading provisions.³⁵⁴ 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.³⁵⁵ 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.³⁵⁶ "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.³⁵⁷

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.

355. *Mexican Regulators Seek Bilateral U.S. Disclosure Pact*, *supra* at 2.

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).³⁵⁸ The law was amended to provide that only corporations could serve as intermediaries in the market, but contained a grandfather provision for individuals.³⁵⁹

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 Registry³⁶⁰ (an exemption from this rule is provided for operating companies of investment companies).³⁶¹ "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."³⁶² 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.

359. *Id.* art. 17; D.O., Feb. 8, 1985; D.O., Dec. 27, 1985.

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 Minimos 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,³⁷⁶ provide safekeeping services,³⁷⁷ form service corporations, and act as specialists, subject to the provisions of law regulating the same.³⁷⁸ In addition, brokers may act as common representatives of debtholders³⁷⁹ and holders of other securities;³⁸⁰ 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.³⁸¹ Short selling was illegal³⁸² but beginning in 1990 is now permitted.³⁸³ 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.³⁸⁴

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.³⁸⁵ These acquisitions will require the previous approval of the Ministry of Finance.³⁸⁶ 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.³⁸⁷ Such brokerage firms may undertake complementary services with national credit institutions.³⁸⁸ Trading of listed securities otherwise than on the Exchange by stock exchange members is prohibited,³⁸⁹ as is the trading of unregistered securities by

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.

383. *Short Selling Regs Should Make Stock Market More Appealing*, Bus. Eur., Oct. 1, 1990.

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 companies³⁹³ 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

Rules as Model, INT'L SEC. REG. REP. (Sept. 13, 1989) (growing recognition that off-exchange dealings could damage credibility of exchanges). Off-exchange trading has also been controversial in the European Community. See Clarkson, *EC States Continue War Over Investment Regime*, Reuters (Dec. 14, 1990); *Pan-European Share Markets*, THE ECONOMIST, Dec. 8, 1990, at 86.

390. Securities Market Law, *supra* note 2, art. 13.

391. *Mexican Regulators Seek Bilateral U.S. Disclosure Pact*, *supra* at 2.

392. *Id.* at 8.

393. *Id.*

394. Darling, *Mexico's Market Goes More Public*, L.A. Times, Apr. 22, 1990, at D10; see, e.g., *Mexico-Based Financial Services Giant Opens Manhattan Office: Probrusa Cites Growing U.S. Investor Interest in Mexico as Impetus*, PR Newswire, Nov. 5, 1990.

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.

398. Mitchell, *supra* note 74, at 28.

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 I.

402. Mitchell, *supra* note 74, at 28.

403. Securities Market Law, *supra* note 2, art. 22 bis I.

from credit institutions or certain other institutions in order to engage in their business of trading in securities for their own account.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.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.⁴⁰⁶ The Commission may establish by general rules other permissible activities for specialists.⁴⁰⁷

Specialists are subject to restrictions with respect to other transactions they may engage in with issuers of the securities they trade.⁴⁰⁸ For example, specialists are prohibited from engaging in stock transactions with their shareholders.⁴⁰⁹ Specialists also are subject to limitations on their ability to refuse to deal in the stocks as to which they serve as specialist.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.⁴¹¹

§17 INVESTMENT COMPANIES

Investment companies are regulated by federal legislation, *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.

404. *Id.* art. 22 bis 1, § II.

405. *Id.* art. 22 bis 1, § III.

406. *Id.* art. 22 bis 1, § III(d).

407. *Id.* art. 22 bis 1, § IV.

408. *Id.* art. 22 bis 1, § I.

409. *Id.* art. 22 bis 1, § II.

410. *Id.* art. 22 bis 1, § III.

411. *Id.* art. 22 bis 1, § II.

§18 ENFORCEMENT

The Commission is given a number of enforcement and related powers in the securities law.⁴¹² Most of its powers in this regard are contained in chapter five of the law,⁴¹³ although others are scattered throughout the statute.⁴¹⁴ The Commission has the general power to investigate violations of the law and to make inspections of suspected violators.⁴¹⁵ The power to inspect and review the operations of brokerage firms, stock exchange specialists, and stock exchanges is granted by the statute.⁴¹⁶ 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.⁴¹⁷ 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.⁴¹⁸ Such administrative actions are also authorized when a person, without due authorization, acts as a broker in the securities market.⁴¹⁹ 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.⁴²⁰ 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.⁴²¹ 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.⁴²² The Commission may order increases in the capital of brokers and stock exchanges and intervene in the affairs of stock exchanges in certain cases.⁴²³ When, in spite of intervention by the Commission in

412. Mexico recently entered into a memorandum of understanding with the United States covering enforcement matters. See *SEC, Mexico Sign Memorandum on Securities Enforcement*, Daily Report for Executives, Oct. 22, 1990.

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.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.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.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."⁴²⁷ Parties affected by administrative actions may appeal for a hearing before pertinent authorities.⁴²⁸ Aggrieved parties must exhaust their administrative remedies before resorting to any other kind of legal defense.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.⁴³⁰ In 1989, four top officers from two of Mexico's largest brokerage firms were indicted on charges of illegal trading and criminal fraud⁴³¹ and administrative actions were instituted against a number of market officials.⁴³²

§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-

424. *Id.*

425. *Id.* art. 47.

426. *Id.*

427. *Id.* art. 50.

428. *Id.*

429. *Id.*

430. The Economist Intelligence Unit, Country Report — Mexico No. 1, at 13 (Feb. 12, 1989). Earlier that year, Mexico discovered irregularities at the stock exchange, and two officers resigned. *Mexican Exchange Missing Funds*, N.Y. Times, June 23, 1988, at D10, col. 3.

431. *Indictments in Mexico*, N.Y. Times, Feb. 20, 1989, at D2, col. 3.

432. *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 members⁴³³ specifically does not apply to brokers trading in foreign markets.⁴³⁴ 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.⁴³⁵

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 1990.⁴³⁶ Many of these financings have been Euromarket offerings.⁴³⁷ As of 1990, the securities of four Mexican issuers are traded in ADR form in the United States.⁴³⁸ Mexican law allows banks to open overseas branches and engage in banking transactions with foreigners as well as nationals.⁴³⁹ These events can be seen as part of the overall globalization of world capital markets.⁴⁴⁰

Mexico has also been a participant in various international processes that generally reflect the globalization of securities regulation.⁴⁴¹ 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.⁴⁴² Mexico also participates in the

433. Securities Market Law, *supra* note 2, art. 31, § VIII(f).

434. *Id.*

435. *Cf.* 15 U.S.C. § 77e (1990) (as interpreted by the SEC in SEC Release 33-4708 (1964), now superseded by SEC Regulation S, adopted in 1990).

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).

438. Prospectus EMF, *supra* note 59, at 36 (In July 1990, Telefonos de Mexico, S.A. de C.V. privately placed \$150 million of Rule 144A eligible notes through U.S. placement agents).

439. PRICE WATERHOUSE, *supra* note 113, at 83.

440. *See* Nacional Financiera, *Globalization of Capital Markets*, El Mercado de Valores (Jan. 15, 1990).

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.⁴⁴³ Mexico became a full member of GATT in 1985,⁴⁴⁴ 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.⁴⁴⁵ Finally, Mexico and the United States decided in June 1990 to begin negotiations on a free trade agreement between the two countries⁴⁴⁶ 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.⁴⁴⁷

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.

Step: The Securities and Exchange Commission's Proposed Multijurisdictional Disclosure System, 14 MD. J. INT'L L. & TRADE 44 (1990); *Proposed U.S. Canadian Disclosure Rules Will Save Issuers Time and Money*, SEC. WEEK, Jan. 15, 1990, at 5; Karmel, *SEC Regulation of Multijurisdictional Offerings*, 16 BROOKLYN J. INT'L L. 3 (1990). The multijurisdictional system was proposed with Canada on July 26, 1989. See Rel. 33-6841, Fed. Sec. L. Rep. (CCH) 84,432, at 80,281 (July 26, 1989), and re-proposed in Release 33-6879, Fed. Sec. L. Rep. (CCH) (Oct. 16, 1990). On the subject generally, see *Breeden Says Several Nations Interested in Facilitating Cross-Border Offerings*, 21 Sec. Reg. L. Rep. 1847 (CCH) (Dec. 22, 1989).

443. *Mexican Regulators Seek Bilateral U.S. Disclosure Pact*, *supra* at 2; Nacional Financiera, Reunion del Comité de Desarrollo de la Organización Internacional de Comisiones de Valores, El Mercado de Valores (June 15, 1990).

444. *Mexico: Attracting Foreign Investment*, INSTITUTIONAL INVESTOR, June 1990, at S8. See *Aperture of Opportunity*, THE BANKER, Apr. 1990, at 54; *Mexico: Financial Services and the Economic Recovery*, FIN. WORLD, June 26, 1990, at 28.

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