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The new Draft Law on Securities Markets and Investment Services begins its passage through parliament

1. Introduction

Last June, the Council of Ministers approved the Draft Law on Securities Markets and Investment Services (the "**Draft**"), which has just begun its parliamentary process (see here) with the opening of the period for proposing amendments to the Draft in the Congress of Deputies, after the Draft was published on 12 September in the Official Gazette of the Spanish Parliament (see here).

The Draft is part of an ambitious plan to adapt the main regulations relating to securities markets and market infrastructures to European Union law. It also includes the approval of three royal decrees on investment services companies, financial instruments, the registration regime for negotiable securities and market infrastructures; and the supervisory powers of the National Securities Market Commission (Comisión Nacional del Mercado de Valores).

In this legal briefing, we will highlight some of the main new features included in the Draft which, if approved, will also transpose the following Directives into national law:

(i) Directive 2019/2034 of the European Parliament and of the Council of 27 November 2019 on the prudential supervision of investment firms to (i) separate prudential requirements based on the size of investment firms and other requirements relating to systemic risks and their economic importance; and (ii) in turn, adapt the supervisory framework at national level.

(ii) The Directive of the European Parliament and of the Council accompanying the proposals for EU Regulations on crypto-asset markets, on the temporary regime for market infrastructures based on distributed registry technology and digital operational resilience. In addition, the rule will introduce the necessary adaptations for the implementation of the Regulation on crypto-asset markets (MiCA).

(iii) Directive 2021/338 of the European Parliament and of the Council of 16 February 2021, which is part of a package of measures aimed at facilitating economic recovery following the COVID-19 pandemic, removing certain administrative burdens created in terms of documentation and disclosure that are not compensated by a corresponding increase in investor protection, and adjusting the limitation of positions in certain derivatives and the related hedging exemption regime.

(iv) Directive 2020/1504 of the European Parliament and of the Council of 7 October 2020, which excludes legal persons authorised as providers of equity finance services from the scope of Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 (MiFID II).

(v) Directive 2019/2177 of the European Parliament and of the Council of 18 December 2019 transferring the authorisation and supervision of certain providers of data reporting services, other than those relating to authorised information systems and authorised publication agents to the European Securities and Markets Authority.

In addition to this adaptation to EU regulations, the Draft includes certain provisions aimed at facilitating the development of the Spanish securities markets in the current competitive environment, as well as substantially improving the regulatory approach and system of the previous regulations.

2. Main amendments

The new Draft Law on Securities Markets and Investment Services is now going through parliament:

A. It will regulate the specific details of the regime applicable to special purpose acquisition companies (*sociedades cotizadas con propósito para la inversión*) (**"SPACs"**). To this end, Final Provision Two will amend the revised text of the Companies Act, introducing a new section in Title XIV (new articles 535 bis to 535 quinquies).

As they are structured, SPACs are intended to be a mechanism for diversification of funding sources, especially for developing companies. These are public companies that are incorporated for the purpose of acquiring all or part of the capital of another public or private company or companies, having previously raised funds from investors who then become shareholders of the SPAC. In this respect, the only activity of the SPAC will be the initial public offering of securities, the application for admission to trading and the acquisition of that holding in another company (which may be carried out through a sale and purchase, merger, spin-off, non-monetary contribution, global transfer of assets and liabilities or other similar transactions).

The Draft provides that SPACs should include in their corporate name the designation "Public Company for Acquisition Purposes", or its abbreviation, "SPAC, S.A.", until the planned acquisition is completed. A maximum period of 36 months must also be provided for in the articles of association for the formalisation of the acquisition agreement, which may be extended for up to an additional 18 months by the decision of the General Meeting of Shareholders.

One of the main issues raised by this arrangement is the mechanisms for reimbursing SPAC shareholders for their investment in certain cases. In this regard, the proposed regulation aims to ensure that the investor's capital is adequately protected by allowing the SPAC to use (i) a statutory right of separation; or (ii) the issuance of redeemable shares as a redemption mechanism. In both cases, it states that the investor's redemption value shall be the amount equivalent to the portion of the actual amount held in the transitional account created by the institution at the time of its establishment. The option for a SPAC to reduce its capital through the acquisition of its own shares as a redemption mechanism is also provided.

It should be noted that if, as a result of the approved acquisition, any shareholder were to acquire, directly or indirectly, a controlling interest in the resulting company, as "control" is defined in the Draft, it would be exempted from the obligation to make a takeover bid. Similarly, if, as a result of the redemption mechanism that is set up, any shareholder of the SPAC acquires a controlling interest in the SPAC, it will also be exempted from the obligation to make a takeover bid.

B. In relation to takeover bids:

(a) Whoever obtains control of a public company not only through shareholders' agreements as was the case in the past, but also through "other" agreements with other holders of securities, will be obliged to make a takeover bid for all the shares or other securities which directly or indirectly may give the right to subscribe or acquire them. The bid must be made

to all holders at a fair price.

(b) The rules applicable to regulated markets on takeover bids shall be extended to multilateral trading facilities. In accordance with the above, multilateral trading facilities will also be subject to the rules on the opt-out from trading of a financial instrument that until now only applied to regulated markets. In any event, the application of the regulation on the opt-out in relation to Multilateral Trading Systems will not take place until the entry into force of the regulatory implementation of the new law.

(c) Currently, the CNMV may waive the obligation to make a takeover bid in those cases in which another equivalent procedure ensures the protection of the legitimate interests of the shareholders affected by the exclusion, as well as those of the holders of convertible bonds and other securities entitling them to subscription. With the proposed reform, it will also be able to waive the obligation to make a takeover bid in cases where the security is listed on another trading venue domiciled in the European Union.

C. For investment firms, it will separate prudential requirements according to the size of investment firms and other requirements related to systemic risks and their economic importance, and adapt the supervisory framework at national level. In particular:

(a) In general, institutions whose total value of their consolidated assets or the group of which they form part is equal to or greater than EUR 30 billion shall be credit institutions for all purposes supervised by the Banco de España and shall be subject to the prudential supervision established in Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013, Law 10/2014 of 26 June 2014 on the regulation, supervision and solvency of credit institutions, as well as its regulatory implementation.

(b) Investment firms with consolidated assets of more than EUR 15 billion or that are part of a group that complies with this requirement shall be investment firms authorised and supervised by the CNMV which, without becoming credit institutions, shall be subject to the prudential requirements established for credit institutions

(c) Investment firms with consolidated assets equal to or greater than EUR 5 billion and which must comply with conditions to be established by regulation relating to the size, nature, scale and complexity of the business, as well as the systemic risk of the firm, shall be subject to the prudential regulation of credit institutions when so determined by the CNMV.

(d) Other investment firms shall be subject to the prudential regulation established in this law and its implementing regulations, and shall also be supervised by the CNMV. In practice, this will be the case for most investment services firms in the Spanish market.

In addition, it will introduce the concept of national financial advisory firms.

D. It will simplify the admission to trading of fixed-income securities and reduce the amount of fees for fixed-income issues.

E. It will eliminate the obligation of the central securities depository to have an information system for the supervision of trading, clearing, settlement and registration of securities.

F. It will adjust the information obligations of participants in Spanish post-contracting infrastructures, eliminating procedures and information obligations that are already unnecessary due to the

implementation of directly applicable European regulations.

G. It will simplify the system of penalties for parties involved in securities markets: infringements and penalties will be established, in all their degrees, in a single article for each type of infringement. The various infringements and penalties are also grouped according to the EU Regulation from which they originate.

H. It will incorporate measures to strengthen investor protection against firms offering investment services without proper authorisation by the CNMV. In particular, search engines, social networks and media shall be required to collect information stating that advertisers of financial instruments or investment services seeking to advertise on their systems are authorised to provide investment services before publishing their advertisements or featuring such advertisers in search results, websites or social networks on a paid basis. In addition, they must check that these advertisers are not included in the list of entities cautioned by the CNMV or by foreign supervisory bodies.

I. It will extend the deadline for the submission of the second half-yearly financial report from two to three months.

3. Next steps and entry into force

As we stated at the beginning of this legal briefing, the Draft has just begun its parliamentary processing, so it is expected to be definitively approved during the first quarter of 2023 and, in any case, before the end of the 2022-2023 session.

As it is a draft law in the process of being approved, the Draft will likely undergo amendments before its final approval, which would be introduced by the Congress or by the Senate, or even by both chambers, which we will report on in due course.

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As currently drafted, the Draft provides, as a general rule, for the entry into force of most of its provisions twenty days after their publication in the Official State Gazette.