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## A Study of Mexico's Capital Markets and Securities Regulation

Samuel Wolff

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## A Study of Mexico's Capital Markets and Securities Regulation

*Samuel Wolff\**

### TABLE OF CONTENTS

I. INTRODUCTION . . . . .	386
II. BACKGROUND . . . . .	390
III. THE SECURITIES MARKET . . . . .	394
A. <i>Market History</i> . . . . .	394
1. The Stock Exchange . . . . .	394
2. The Securities Commission . . . . .	396
3. Government Bond Issues . . . . .	398

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\* Special Counsel, Office of International Corporate Finance, Division of Corporation Finance, United States Securities and Exchange Commission; Postdoctoral Fellow, Yale University Graduate School, 1986; LL.M. (Securities Regulation) 1983, J.D. 1982, Georgetown University Law Center; A.B. 1979, Brown University; General Course 1977-1978, The London School of Economics. This article was written under a Postdoctoral Fellowship from Yale University. The author dedicates this article to his parents.

The discussion of Mexico's securities law, *Ley del Mercado de Valores*, in this article is based on a translation of the law by Leah Sylar. The author is not aware of any other English language translation of the law. The author thanks Ms. Sylar, and is also grateful for the assistance of Joaquín González, Francisco Castellános, Xavier Gurza, William Haseltine and Patricia Kearin. The opinions expressed herein and any errors are those of the author.

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B.	<i>Market Participants</i> .....	399
1.	Issuers .....	399
2.	Intermediaries .....	402
3.	Regulators .....	408
C.	<i>Market Characteristics</i> .....	410
1.	Types of Securities .....	410
2.	The Market .....	412
IV.	REGULATION .....	418
A.	<i>Introduction</i> .....	418
B.	<i>Regulation of the Offering of Securities</i> .....	419
C.	<i>Broker Regulation</i> .....	422
D.	<i>Market Regulation</i> .....	423
1.	Fraud .....	423
2.	Exchange Regulation .....	424
3.	Periodic Reporting .....	424
E.	<i>Remedies</i> .....	425
V.	CONCLUSION .....	425

## I. INTRODUCTION

Mexico has been in the throes of a severe economic crisis since 1982.<sup>1</sup> Almost a decade since the discovery of large oil reserves and the rise in

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1. 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 REVIEW 25 (July 1986); Nacional Financiera, *La Situación Económica Nacional (The National Economic Situation)*, 9 EL MERCADO DE VALORES [THE SECURITIES MARKET] 197 (March 3, 1986); Stockton, *Broad Talks on Mexican Debt*, N.Y. Times, March 6, 1986, at D7, col.1; Welt, *Latin America: A Region in Debt*, MGMT. REV. (Feb. 1986); Hormats, *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 (Diagnosis of the Economic Situation in Mexico in 1985)*, 50 EL MERCADO DE VALORES [THE SECURITIES MARKET] 1169 (Dec. 16, 1985); *Mexico: Still Suffering*, Economist, Nov. 30-Dec. 6, 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.

world oil prices promised such hope for Mexico, the nation finds itself beset by massive foreign indebtedness, rampant inflation and soaring interest rates. Mexico's foreign indebtedness rose from \$23 billion in 1977 to \$105 billion in 1986, making the country the second largest debtor nation in the world.<sup>2</sup> Inflation, under twenty percent in 1977, rose to a record ninety-nine percent in 1982, the same year the government nationalized the banking industry.<sup>3</sup> By mid-1986, inflation reached approximately ninety-eight percent on an annualized basis and interest rates paid on Mexican treasury certificates reached about ninety-five percent, up from seventy-three percent at the beginning of the year and forty-nine percent in 1984.<sup>4</sup> While the causes of the crisis are multi-faceted, the most readily identifiable one is the collapse of the international oil market. Petroleum exports account for almost three quarters of Mexico's foreign earnings, but the price of oil plummeted in 1986, prompting the *New York Times* to report that the steady decline in oil prices has pushed Mexico to "the edge of economic disaster."<sup>5</sup> The Mexican people have borne the enormous economic and social costs of the crisis with characteristic fortitude, although a group estimated at 20,000 to 50,000 people rallied in Mexico City on February 5, 1986, for a moratorium on debt repayment.<sup>6</sup>

One of the many problems underlying Mexico's economic plight is the underdevelopment of the country's capital market. Like the government itself, Mexican enterprises historically have relied on debt financing as

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2. See Rowe, *Latin Debt Crisis*, *supra* note 1, at G2, col. 1.

3. See THE ECONOMIST INTELLIGENCE UNIT, 3 COUNTRY REPORT-MEXICO, *supra* note 1, at 74. In August 1987, Mexico signed a debt rescheduling agreement with 210 international banks. Jacobson, *Mexico Builds Reserves to \$15 Billion*, Wash. Post, Aug. 15, 1987, at D1, col. 3.

4. THE ECONOMIST INTELLIGENCE UNIT, 3 COUNTRY REPORT - MEXICO, *supra* note 1, at 8, 11. BANCO NACIONAL DE MEXICO, *supra* note 1, at 74.

The peso depreciated to 1056 pesos to the U.S. dollar in March 1986 from 448, 149 and 23 at the end of 1985, 1982 and 1980, respectively. See Wall St. J., March 9, 1987, at 26; BANCO NACIONAL DE MEXICO, *supra* note 1, at 74. The exchange rate was 12.50 pesos to the dollar from 1954 until August 31, 1976, when the Government announced that Banco de Mexico would no longer maintain the fixed exchange rate. MEXICO FUND, INC., PROSPECTUS, A-20 (June 3, 1981) [hereinafter PROSPECTUS]. These changes in the value of the peso should be considered when interpreting the financial tables in the text.

5. Stockton, *Debt*, *supra* note 1, at A5, col. 1; see also BANCO NACIONAL DE MEXICO, *supra* note 1, at 57; *Decline in Oil Prices Will Contribute to Difficult Year*, 9 BUSINESS AMERICA 20 (March 1986).

6. Stockton, *Fall*, *supra* note 1, at A1, col. 5.

their primary source of funds.<sup>7</sup> A 1972 study published in *Inter-American Economic Affairs* found high debt/equity ratios among Mexican corporations and heavy reliance upon short-term debt.<sup>8</sup> "Unable to raise long-term financing in the domestic market, private Mexican companies looked abroad during the late 1970s. Their foreign debt soared to about \$18 billion."<sup>9</sup>

Because of high debt levels in both the public and private sectors, in addition to general economic conditions, companies in Mexico will experience more difficulty in obtaining bank loans<sup>10</sup> and increasingly will have to seek alternative sources of capital. In fact, Mexican corporations already are turning "to brokerage houses to finance their working capital and expansion through long-term debt instruments, commercial paper and bankers' acceptances."<sup>11</sup> Many private companies desperately need fresh equity capital to stay afloat.<sup>12</sup> The most "pressing job" for the capital market in the 1980s is "raising money to revitalize Mexico's industrial base."<sup>13</sup>

While Mexico's capital market offers no panacea or short-term solution to the economic crisis, development of the market could reduce dependence on bank indebtedness and generally contribute to the processes of capital formation and economic development.<sup>14</sup> Both private companies and government agencies could increase issuance of securities in the capital market to raise funds as an alternative to borrowing from banks. In addition, greater reliance on equity financing might reduce the overall

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7. 10 INTERNATIONAL CAPITAL MARKETS § 1.05[9] (H. Bloomenthal ed. 1986). "[M]ost Mexican businesses have been dependent upon bank loans at high interest rates as a source of capital or, if willing to assume the currency risks, attempting to borrow funds abroad." *Id.* (citations omitted). "Until recently, Mexican business borrowed almost exclusively from banks, either domestic or international." Field, *Opportunity Amid Chaos*, FORBES, Apr. 21, 1986, at 80.

8. Johnston, *Should the Mexican Government Promote the Country's Stock Exchange?*, 1972 INTER-AM. ECON. AFF. 45.

9. Frazier, *Mexico Tries to Revive Private Capital Markets to Spur Growth, Help End Financial Crisis*, Wall St. J., Nov. 1, 1984, at 34, col. 1.

10. Field, *supra* note 7, at 80.

11. *Id.* See also Sarmiento, *Mexico's Phantom Bankers Come Out of the Shadows*, Wall St. J., Aug. 7, 1987, at 19, col. 3.

12. Frazier, *supra* note 9, at 34.

13. *Id.*

14. "Capital markets are one of the basic factors of economic growth in Latin America." A. BASCH & M. KYBAL, CAPITAL MARKETS IN LATIN AMERICA 3 (1970). See Wai and Patrick, *Stock and Bond Issues in Less Developed Countries*, 20 INT'L MON. FUND STAFF PAPERS 253, 300 (1973); cf. Lloyd, *The Role of Capital Markets in Developing Countries*, INTERECONOMICS, Mar.-Apr. 1977, at 97.

cost of capital for Mexican organizations.<sup>15</sup> The former head of Mexico's government development agency correctly pointed out in 1984 that "the development of the capital market must play an important role in [Mexico's] economic recovery."<sup>16</sup>

This Article will analyze Mexico's capital markets and regulations, primarily from an empirical point of view. The discussion will begin with an overview of the Mexican financial and legal systems to provide a context for the analysis of the market and the law. The essay will then discuss the Mexican securities market, including history, participants and characteristics. Finally, Mexico's *Ley del Mercado de Valores* ("Securities Market Law")<sup>17</sup> will be analyzed.<sup>18</sup> The objective of the study is to increase understanding of the Mexican market by Mexicans and foreigners alike. The study should be useful to policymakers in Mexico and other developing countries who are attempting to promote development of their countries' market. A more thorough understanding of the market by foreign corporations and financial institutions might facilitate international financial transactions and contribute to international investment. Increased familiarity with the Securities Market Law by international lawyers could improve compliance with Mexican laws by foreign issuers, intermediaries and investors. Finally, the references to United States laws should benefit Mexican executives and attorneys involved in transactions subject to United States laws.<sup>19</sup>

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15. See, e.g., Modigliani and Miller, *The Cost of Capital, Corporation Finance and the Theory of Investment*, 48 AM. ECON. REV. 261 (June 1958); B. GRAHAM, D. DODD & S. COTTLE, SECURITY ANALYSIS 539 (1962).

16. Frazier, *supra* note 9, at 34.

17. *Ley del Mercado de Valores* (Securities Market Law), D.O., Jan. 2, 1975 [hereinafter Securities Market Law].

18. To the knowledge of the author, there is no publicly available complete English translation of Mexico's Securities Law. See letter from Nacional Financiera, S.A. to the author (June 10, 1985); letter from Bufete Sepulveda, S.C. to the author (Sept. 20, 1984) (letters available at the offices of the author). *Regla del Registro de Valores e Intermediarios* (Regulation of the National Registry of Securities and Intermediaries), D.O., Nov. 22, 1979, has been translated. See COMMERCIAL, BUSINESS AND TRADE LAWS-MEXICO (M. Gordon ed. 1983). A major treatise in the field of international securities regulation, R. ROSEN, INTERNATIONAL SECURITIES REGULATION (1986), is expected to contain a chapter on Mexico's securities law and market in an upcoming volume.

19. For examples of litigation against Mexican defendants involving allegations of violations of United States securities laws, see *West v. Multibanco Comermex, S.A.*, [current] Fed. Sec. L. Rep. (CCH) ¶ 93,054 (9th Cir. Jan. 6, 1987); *Wolf v. Banco Nacional de Mexico, S.A.*, 739 F.2d 1458 (9th Cir. 1984) (alleged violations of the United States Securities Act of 1933 and the Securities Exchange Act of 1934); *Braka v. Multibanco Comermex, S.A.*, 589 F. Supp. 802 (S.D.N.Y. 1984); *McDaniel v. Compa-*

## II. BACKGROUND

Growing from a population of 19,654,000 in 1940 to 77,700,000 in 1984,<sup>20</sup> Mexico is the eleventh largest nation in the world.<sup>21</sup> A representative, federal republic<sup>22</sup> consisting of thirty-one states and a federal district, Mexico is governed by a constitution dating from the Revolution of 1910. Its Constitution vests legislative power in a bicameral Congress, executive power in the President and judicial authority in a federal court system comprising the Supreme Court of Justice, circuit courts, courts of appeal and district courts.<sup>23</sup> The federal government dominates the state governments, and within the federal system the executive branch is the most important of the three branches.<sup>24</sup> 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.<sup>25</sup> A large part of the law of business organizations, for example, is statutory but is not part of the Commercial Code.<sup>26</sup>

Though essentially part of the capitalist group of nations,<sup>27</sup> Mexico

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nia Minera Mar de Cortes, 528 F. Supp. 152 (D. Ariz. 1981); Current Development, *Foreign Bank Time Deposit Accounts Under the Securities Act of 1933: Wolf v. Banco Nacional de Mexico, S.A.*, 1 UCLA PAC. BASIN L.J. 302 (1982).

20. H. PARKES, A HISTORY OF MEXICO 436 (1969); ENCYCLOPEDIA AMERICANA, THE AMERICANA ANNUAL 349 (1985) (population est. mid-1984). The population of Mexico City is estimated at 18 million people.

21. Madrid, *Mexico: The New Challenges*, 63 FOREIGN AFF. 62, 65 (1984). See generally Castañeda, *Mexico's Coming Challenges*, 64 FOREIGN POL'Y 120 (1986); H. CLINE, MEXICO, REVOLUTION TO EVOLUTION 1940-1960 (1962); L. PADGETT, MEXICO'S POLITICAL SYSTEM (1966); F. BRANDENBURG, THE MAKING OF MODERN MEXICO (1964); P. ROMANELL, THE MAKING OF THE MEXICAN MIND: A STUDY IN RECENT MEXICAN THOUGHT (1952).

22. J. LA CASCIA, CAPITAL FORMATION AND ECONOMIC DEVELOPMENT IN MEXICO 10 (1969). The Constitution provides that the states must adopt a republican, representative and democratic form of government. Perez, *An Introduction to the Legal Structure of Mexico for the Foreign Investor*, 4 CAL. W.L. REV. 236, 244 (1968).

23. Perez, *supra* note 22, at 244. The Mexican judicial system also includes state courts.

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

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

26. *Id.*

27. Gordon, *The Joint Venture as an Institution for Mexican Development: A Legislative History*, ARIZ. ST. L.J. 173, 175 (1978) (hereinafter Gordon, *Joint Venture*); *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*).

has considerable state participation in business and finance.<sup>28</sup> Since World War II, the Mexican economy has grown rapidly and has become much more diversified and industrialized,<sup>29</sup> and the rate of economic growth in the postwar era has been unsurpassed by any other undeveloped country.<sup>30</sup> The country's modern financial history began with the Mexican Revolution,<sup>31</sup> and today the financial system is the most advanced in Latin America.<sup>32</sup> Mexico's central bank and its primary development bank, Nacional Financiera ("Nafinsa"), have played a major role in the financial system since 1940.<sup>33</sup> Although Mexico has "a substantially free market economy,"<sup>34</sup> the government does participate significantly in economic affairs.<sup>35</sup> The governments of modern capitalist countries often play a significant regulatory role, although only a minor ownership role.<sup>36</sup> In Mexico, however, not only is government regulation of the economy pervasive,<sup>37</sup> but the government has also nationalized a number of industries<sup>38</sup> and owns indirectly (through shareholdings) many other enterprises.<sup>39</sup>

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28. Gordon, *Joint Venture*, *supra* note 27, at 175; Gavin, *Mexico, Land of Opportunity*, 39 POL'Y REV. 32, 34 (1987). See also Johnston, *supra* note 8, at 54-55. "In addition to fiscal and monetary policies and social infrastructure investments like social security, it has substantial industrial investments including the oil monopoly, the electric energy monopoly, and large holdings in numerous industries from steel and automobiles to fertilizers." *Id.*

29. Y. MARONI, 23 MEXICO'S ECONOMIC AND FINANCIAL RECORD (1966) (Study by the Board of Governors of the Federal Reserve System); Post-Effective Amendment No. 9 to Registration Statement under the Securities Act of 1933 of the United Mexican States, No. 2-70553 (Nov. 16, 1983) [hereinafter Mexican Registration Statement].

30. H. PARKES, *supra* note 20, at 436.

31. M. MAUNG, TWO MODELS OF FOREIGN DEVELOPMENT BANKS 31 (1973).

32. See D. BROTHERS & L. SOLÍS, MEXICAN FINANCIAL DEVELOPMENT 1 (1966). The Mexican capital market is the largest in Latin America. F. LEES & M. ENG, INTERNATIONAL FINANCIAL MARKETS: DEVELOPMENT OF THE PRESENT SYSTEM AND FUTURE PROSPECTS 372 (1975).

33. M. MAUNG, *supra* note 31, at 31.

34. *Colloquium*, *supra* note 27, at 1; 13 Intercontinental, S.A.: The Mexican Market 1960-1961, at 1 (speech by President Mateos on January 24, 1961).

35. R. AUBEY, NACIONAL FINANCIERA AND MEXICAN INDUSTRY: A STUDY OF THE FINANCIAL RELATIONSHIP BETWEEN THE GOVERNMENT AND THE PRIVATE SECTOR OF MEXICO 13 (1966).

36. Gordon, *Joint Venture*, *supra* note 27, at 175.

37. Mexican Registration Statement, *supra* note 29, at 10-11; See also R. VERNON, PUBLIC POLICY AND PRIVATE ENTERPRISE IN MEXICO 13-15 (1964).

38. *E.g.*, oil, railroads, electricity, mining and banking.

39. F. LEES & M. ENG, *supra* note 32, at 359.



Both the public and private sectors play an important role in the Mexican economy. . . . The Government promotes and directs private enterprise in the commercial and industrial sectors of the economy. The Government influences the level and nature of private investment in certain economic activities by granting the concessions required for regulated enterprises. . . ; by regulating the issuance of import licenses. . . ; by restricting the importation of foreign goods. . . ; and by credit, financial and exchange control policies.<sup>40</sup>

However, in recent years the government, in partial response to pressure from creditors, has attempted to reduce its direct role in the economy, and toward this end has, among other things, sold or dissolved a number of state-owned enterprises.

A critical feature of Mexico's economy is the country's policy regarding foreign investment. Before the Revolution of 1910, foreign ownership of the means of production in Mexico was extensive, particularly in industries like mining and petroleum.<sup>41</sup> For example, in 1910 foreigners owned over twenty-five percent of the land, sixty percent of mining, seventy percent of oil production, and indeed dominated almost every industrial sector except agriculture.<sup>42</sup> After the Revolution, a policy against unrestrained foreign investment evolved based on the theory that foreign economic domination was a threat to national sovereignty.<sup>43</sup> The current policy of the federal government is that Mexico's economic development should be financed primarily from internally generated sources.<sup>44</sup>

Mexican investment policies thus developed from concepts in the 1917 Mexican Constitution.<sup>45</sup> A decree of 1944 authorized the government to prohibit foreign ownership of more than forty-nine percent of any Mexican corporation.<sup>46</sup> Since that time, Mexico has enacted a "tall bulwark of protectionist legislation," namely the Law to Promote Mexican In-

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40. Mexican Registration Statement, *supra* note 29, at 10-11.

41. See generally J. COCKCROFT, *MEXICO: CLASS FORMATION, CAPITAL ACCUMULATION AND THE STATE* 86 (1983). In the late 1800s foreigners increasingly began to dominate much of the economy. *Id.*

42. 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); H. WRIGHT, *supra* note 25, at 53-57.

43. *Colloquium, supra* note 27, at 40. See also Ross, *Mexican Securities are Making Progress*, 55 *BANKING* 48 (1963) [hereinafter Ross, *Progress*]; Schill, *The Mexican and Andean Investment Codes: An Overview and Comparison*, 6 *LAW & POL'Y INT'L BUS.* 437, 448-49 (1974).

44. Mexican Registration Statement, *supra* note 29, at 28.

45. Gordon, *Joint Venture, supra* note 27, at 173.

46. H. PARKES, *supra* note 20, at 363.

vestment and Regulate Foreign Investment<sup>47</sup> ("Investment Law") and the Law Relating to the Control and Registry of the Transfer of Technology and the Use and Exploitation of Patents and Trademarks.<sup>48</sup> Under the Investment Law, foreigners may not acquire control of a Mexican company without prior approval of the National Commission on Foreign Investment.<sup>49</sup> The Investment Law relegates all businesses to one of four categories that establish, in varying degrees, the permissible extent of foreign participation. The four categories include: (1) those activities exclusively reserved for the state; (2) those reserved exclusively to Mexican individual or institutional investors; (3) those in which forty-nine percent or less foreign ownership is permitted; (4) those in which forty-nine percent or less foreign ownership is permitted or such other percentage that the Foreign Investment Commission may authorize.<sup>50</sup> The Investment Law has forced many foreign-controlled companies to sell control to local investors. Many companies have accomplished this by offering their shares publicly on the stock exchange,<sup>51</sup> an approach that will become more attractive as the Mexican capital market strengthens and expands.<sup>52</sup> As part of its efforts to revamp the economy, and partially in response to pressures from creditors, Mexico has begun recently to relax its restrictions on foreign investment.<sup>53</sup>

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47. Ley Para Promover la Inversión Mexicana y Regular la Inversión Extranjera (Law to Promote Mexican Investment and Regulate Foreign Investment), D.O., March 9, 1973 [hereinafter Investment Law]. For a translation of the Investment Law, see 12 I.L.M. 643 (1973). See generally PALACIO, ANALISIS DE LA LEY DE INVERSIÓN EXTRANJERA EN MÉXICO [ANALYSIS OF THE FOREIGN INVESTMENT LAW IN MEXICO] (1974).

48. See Murphy, *The Echeverriean 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 LOY. L.A. INT'L & COMP. L.J. 67 (1985).

49. Vizcaino, *The Law on Foreign Investment*, 7 GA. J. INT'L & COMP. L. 34 (1977).

50. Murphy, *supra* note 48, at 137-138.

51. Radway, *Doing Business in Mexico: A Practical Legal Analysis*, 14 INT'L LAW. 361, 374 (1980).

52. *Id.* Despite Mexico's foreign investment laws, it has been reported that some Mexican companies are still dominated from abroad through various techniques. J. COCKCROFT, *supra* note 41, at 158; Rohan, *An Improved Climate? Restrictions Easing on Foreign Operations*, 221 INDUS. WK. 24-25 (1984).

53. *Back to the Brink in Mexico*, BUS. WK., June 23, 1986, at 42-43. See also *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.

### III. THE SECURITIES MARKET

#### A. Market History

##### 1. The Stock Exchange

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.<sup>54</sup> Meetings of this type became customary in other places, including "the back of a shop run by the widow of one Genin."<sup>55</sup> Mexico's first formal, though unofficial, stock exchange, La Bolsa de Valores de Mexico, was organized in 1894 but dissolved in the early 1900s.<sup>56</sup> 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.<sup>57</sup> Mexico extended official recognition to the stock exchange in 1932,<sup>58</sup> when the legislature dissolved Bolsa de Valores de Mexico, S.C.L., and created the present stock exchange, La Bolsa de Valores de Mexico, S.A. de C.V., located in Mexico City.<sup>59</sup>

In 1897 only eleven stocks were quoted on La Bolsa de Valores de Mexico,<sup>60</sup> and in the early period trading volume was very low as the following table illustrates.<sup>61</sup>

Mexican Stock Exchange Trading Volume  
(Value traded in thousands of pesos)

1935	1940	1945	1950
1,747	5,050	16,748	54,296

54. Corte & Ritch, *The Public Sale of Shares in Mexico*, 2 STUDIES IN LAW AND ECONOMIC DEVELOPMENT 23-24 (1967) [hereinafter Corte]. See O. MOORE, EVOLUCIÓN DE LAS INSTITUCIONES FINANCIERAS EN MÉXICO [EVOLUTION OF FINANCIAL INSTITUTIONS IN MEXICO] (1963); cf. H. PARKES, *supra* note 20, at 190 ("boom market in London for Mexican mining stocks" in early 1800s). See generally L. INARRITU, HISTORIA DE LA BOLSA DE MÉXICO 1895-1933 [History of the Mexican Stock Exchange 1895-1933] (1973); HISTORIA DE LA BOLSA DE MÉXICO 1933-1970 [HISTORY OF THE MEXICAN STOCK EXCHANGE 1933-1970] (1976).

55. Corte, *supra* note 54, at 24, (citing La Bolsa de Valores de México, S. A. de C. V., *Què Es La Bolsa de Valores (What is the Securities Exchange?)*).

56. Corte, *supra* note 54, at 24. See generally Molina, *El Mercado de Valores en México (The Securities Market in Mexico)*, 14 EL TRIMESTRE ECONÓMICO (1947).

57. Corte, *supra* note 54, at 24.

58. *Id.*

59. *Id.*

60. *Id.*

61. NACIONAL FINANCIERA, STATISTICS ON THE MEXICAN ECONOMY (1977).

The government established a second stock exchange in 1950 in Monterrey. La Bolsa de Valores de Monterrey, S.A. de C.V., located in the iron- and steel-producing center of the country, listed principally industrial issues.<sup>62</sup> Volume on the Monterrey Exchange, in thousands of pesos, was 176,000 in 1960; 203,600 in 1962; 51,500 in 1963; 1,348,000 in 1966; and 5,599,000 in 1971.<sup>63</sup> The intensive industrialization of the northern region and the development of the border industries between the United States and Mexico resulted in the growth of this exchange.<sup>64</sup> 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.<sup>65</sup> Volume on the Guadalajara Stock Exchange, in thousands of pesos, was 6,000 in 1960; 11,500 in 1962; 33,200 in 1963; 72,000 in 1966; and 3,569,000 in 1971.<sup>66</sup>

The three exchanges existed in Mexico until 1976,<sup>67</sup> but “[b]ecause different quotations for the same security in the different regional exchanges resulted in speculation, authorities felt it would be more advantageous to have only one stock exchange in Mexico.”<sup>68</sup> At the end of 1975 the Mexican Securities Commission ordered the Guadalajara and Monterrey exchanges to cease operations as of the beginning of the next year,<sup>69</sup> at which time the two regional exchanges merged with the Mexico City Stock Exchange.<sup>70</sup> Many of the securities formerly traded on the two regional exchanges have been traded since on the Mexico City exchange.<sup>71</sup>

In 1966 one scholar noted that “[a]lthough the stock exchange in Mexico City has been in operation for a long time, its total yearly activity is still small and it plays only a minor role in the flow of funds in

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62. F. LEES & M. ENG, *supra* note 32, at 378.

63. *Id.*; R. AUBEY, *supra* note 35, at 79.

64. F. LEES & M. ENG, *supra* note 32, at 378.

65. 13 INTERCONTINENTAL, S.A., THE MEXICAN MARKET 5 (June 15, 1960).

66. F. LEES & M. ENG, *supra* note 32, at 378.

67. *Id.*

68. Creel & Del Campo, *A Public Stock Offering in Mexico*, 16 N.Y.U. J. INT'L L. & POL. 305, 333 (1984) [hereinafter Creel]. The process of trading on the difference in prices for the same securities in different markets is called “arbitrage.” Arbitrage tends to make prices in different markets more uniform and therefore is not necessarily an undesirable process.

69. *Id.* at 333.

70. NACIONAL FINANCIERA, STATISTICS ON THE MEXICAN ECONOMY, *supra* note 61, at 329 n.2.

71. *Id.*

Mexico.”<sup>72</sup> This author estimated that in 1959 and 1960, total transactions on all exchanges comprised only five percent of the securities traded in Mexico, with the balance being traded on the over-the-counter market.<sup>73</sup> Among the reasons for this situation were that many issuers made markets in their own securities<sup>74</sup> and that financial institutions often preferred to deal directly with each other rather than through intermediaries.<sup>75</sup> Recent securities legislation in Mexico generally has required all listed securities to be traded on the Exchange, thus reducing over-the-counter and third-market activities.<sup>76</sup> “For these and other reasons, the value and volume of trading in stocks and bonds have increased rapidly.”<sup>77</sup>

## 2. The Securities Commission

In 1939 the Mexican Congress enacted legislation<sup>78</sup> governing the sale of securities and authorizing the establishment of an agency to regulate the securities market.<sup>79</sup> 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.<sup>80</sup> An agency within the

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72. R. AUBEY, *supra* note 35, at 79. For a discussion of market characteristics in the 1960s, see Ross, *The Changing Mexican Market*, FIN. ANALYSTS J. 149 (1964) [hereinafter Ross, *Changing*]; Ross, *The Mexican Stock Market—An Appraisal*, FIN. ANALYSTS J. (1962) [hereinafter Ross, *Appraisal*]; Ross, *Progress*, *supra* note 43, at 48.

73. R. AUBEY, *supra* note 35, at 79. A later source estimated total transactions on the exchanges at ten percent of total trading in Mexico. See A. HOAGLAND, COMPANY FORMATION IN MEXICO: BANKING AND FINANCE at J-30-31 (1980) [hereinafter A. HOAGLAND, FORMATION].

74. D. BROTHERS & L. SOLIS, *supra* note 32, at 43.

75. *Id.* at 42. In the United States markets, the direct trading of securities between two parties (usually institutions) with no broker or other intermediary is said to occur in the “fourth market.” HANDBOOK OF FINANCIAL MARKETS: SECURITIES, OPTIONS AND FUTURES 164-65 (F. Fabozzi & F. Zarb 2d ed. 1986) [hereinafter HANDBOOK]. “At some point it becomes worthwhile for institutions to attempt to deal directly with each other and save the brokerage fee.” D. BROTHERS & L. SOLIS, *supra* note 32, at 51. See generally Feuerstein, *Toward a National System of Securities Exchanges: The Third and Fourth Markets*, 28 FIN. ANALYSTS J. 28 (1972).

76. See A. HOAGLAND, FORMATION, *supra* note 73, at J-31.

77. *Id.*

78. Ley que Establece los Requisitos para la Venta al Público de Acciones de Sociedades Anonimas (Law Establishing the Requirements for Public Sale of Shares of Joint Stock Companies), D.O., Feb. 1, 1940.

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

80. *Id.* at 7-8; Corte, *supra* note 54, at 25-26.

executive branch was to administer the Act.<sup>81</sup> Decisions of the agency were appealable to the Ministry of National Economy.<sup>82</sup> 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."<sup>83</sup>

It was not until 1946, however, that the Mexican Congress formally established the National Securities Commission.<sup>84</sup> The National Securities Commission included representatives from a number of organizations, including the Bank of Mexico, Nacional Financiera and the Mexican Stock Exchange.<sup>85</sup> Although the 1939 Act contemplated regulation by an agency within the executive branch, the National Securities Commission was an independent commission.<sup>86</sup> 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.<sup>87</sup> Regulations under the 1946 Act<sup>88</sup> authorized the establishment of the National Securities Register for the registration of various classes of securities.<sup>89</sup>

Reform legislation<sup>90</sup> in 1953 expanded the powers of the National Securities Commission. Under the new law the commission could, among other things, regulate stock exchanges, authorize securities for institutional investment, approve Mexican securities offered abroad and foreign securities offered in Mexico, and analyze the status and trends of the

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81. P. HERMOSILLO, DEVELOPMENT, *supra* note 79, at 12.

82. *Id.*

83. Corte, *supra* note 54, at 26.

84. Decreto que Crea la Comisión Nacional de Valores (Decree Creating the National Securities Commission), D.O., April 16, 1946. Corte, *supra* note 54, at 26. See generally Hermosillo, *Characteristics of the Securities Market in Mexico*, 31 PROC. NAT. ASSN. SEC. ADMIN. 89 (1948) [hereinafter Hermosillo, *Characteristics*]; Hermosillo, *Comparison of the SEC and the Comisión Nacional de Valores*, 32 PROC. NAT. ASSN. SEC. ADMIN. 47 (1949) [hereinafter Hermosillo, *Comparison*].

85. P. HERMOSILLO, DEVELOPMENT, *supra* note 79, at 18.

86. Corte, *supra* note 54, at 26.

87. P. HERMOSILLO, DEVELOPMENT, *supra* note 79, at 20-21, 37.

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

89. Corte, *supra* note 54, at 27-28.

90. Ley de la Comisión Nacional de Valores (Law of the National Securities Commission), D.O., Dec. 31, 1953. See generally Carrillo, *Control Estatal de la Venta Pública de Valores en México (State Control of the Public Sale of Securities in Mexico)*, 15 Revista de la Facultad de Derecho de México 335 (1965), reprinted in WRIGHT, COMMERCIAL LAW OF MEXICO AND THE UNITED STATES: SELECTED TOPICS 117 (1966).

Mexican securities market.<sup>91</sup> The 1953 Act consolidated a number of laws, rules and regulations into one compilation.<sup>92</sup> Legislation in 1954 and 1955 granted the National Securities Commission additional powers over investment companies.<sup>93</sup>

The 1975 Securities Market Law abolished the National Securities Commission and established in its place La Comisión Nacional de Valores ("Mexican Securities Commission" or "Commission").<sup>94</sup> The Commission is under the general supervision of the Ministry of Finance and Public Credit,<sup>95</sup> which is responsible for the overall formulation and coordination of Mexican financial policies.<sup>96</sup> The Commission today has primary responsibility for regulating the securities market and overseeing compliance with the regulations of the Securities Market Law.<sup>97</sup>

### 3. Government Bond Issues

Although in the early period the Mexican securities market was relatively quiescent, some activity did occur in the area of public debt financing. Notable was the sale of bonds and other debt instruments by the government of Mexico to foreigners beginning in the 1800s.<sup>98</sup> For example, in the 1820s the Mexican government floated two debt issues on the London Stock Exchange,<sup>99</sup> and French bankers later sold an issue of Mexican government bonds.<sup>100</sup> Bonds sold prior to the 1910 Revolution

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91. M. HERRERA, LA COMISIÓN NACIONAL DE VALORES [THE NATIONAL SECURITIES COMMISSION] (2d ed. 1960).

92. P. HERMOSILLO, DEVELOPMENT, *supra* note 79, at 43.

93. Ley de Sociedades de Inversión (Law of Investment Companies), (D.O., 12-31-54, amended 12-31-55, 12-31-63, 12-30-65) (hereinafter Investment Company Law). See Hermosillo, *Les sociétés d'investissement: Résumé de l'évolution législative du Mexique*, 1958 REV. DE LA SOCIÉTÉ FRANÇAISE D'ÉTUDES & EXPANSION 109 (1956) [hereinafter Hermosillo, *Les Sociétés*].

94. Creel, *supra* note 68, at 307.

95. *Id.* (citing A. ROMERO, DERECHO BANCARIO [BANKING LAW] 42-44 (1978) [hereinafter ROMERO]); Gomez Gordo, *Marco Jurídico y Estructura Institucional del Mercado de Valores (Legal Framework and Institutional Structure of the Securities Market)*, REVISTA DE INVESTIGACIONES JURIDICAS DE LA ESCUELA LIBRE DE DERECHO, No. 5 (1981); J. LA CASCIA, *supra* note 22, at 46.

96. Mexican Registration Statement, *supra* note 29, at 29.

97. Creel, *supra* note 68, at 308.

98. H. PARKES, *supra* note 20, at 190.

99. *Id.* "[T]he discount rate demanded by the London bankers was so heavy that not much more than half the money ever reached the Mexican government." *Id.*

100. *Id.* at 260. "[M]ore than a third of the money was deducted by the bankers as their discount rate, and another quarter remained in Europe as interest on the Mexican debt." *Id.* Other examples include the sale of bonds by the State of Jalisco and the

were restructured under a debt settlement agreement of 1942,<sup>101</sup> but Mexican bonds continued to be sold in international markets. In 1963 the government floated its first international issue of Economic Development Bonds.<sup>102</sup> The government and its instrumentalities have issued highway, electrification, and industrial promotion bonds; agricultural, internal debt, and external sinking fund bonds; and other similar securities.<sup>103</sup> In 1981 Mexico sold two issues of "external bonds" aggregating \$200,000,000.<sup>104</sup> In 1983 Mexico registered for sale in the United States \$500,000,000 principal amount of external bonds.<sup>105</sup> In 1985 Petroleos Mexicanos, the state-owned oil company, made a private placement in Japan of yen-denominated debt securities in an amount equivalent to approximately \$47 million.<sup>106</sup>

## B. Market Participants

The principal participants in the Mexican market, as in other securities markets, are issuers, intermediaries, investors and regulators. Some participants perform more than one function in the market by issuing, trading or purchasing different types of securities simultaneously.

### 1. Issuers

Issuers of securities in Mexico are either private, public or quasi-public, and irrespective of these distinctions are either "listed" (i.e., listed for trading on an exchange) or "unlisted." The laws of Mexico establish two broad categories of private enterprises: civil companies, governed by states' civil codes, and commercial companies, governed by federal law.<sup>107</sup>

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federal government in 1898 and 1904, respectively. See LAWRENCE TURNER & CO., GOVERNMENT AND OTHER SECURITIES OF CUBA, PUERTO RICO, SANTA DOMINGO AND MEXICO 31, 32 (1908).

101. Mexican Registration Statement, *supra* note 29, at 40, 43, 48.

102. J. LA CASCIA, *supra* note 22, at 29.

103. Mexican Registration Statement, *supra* note 29, at 41-43.

104. *Id.* at ii.

105. *Id.*

106. THE ECONOMIST INTELLIGENCE UNIT, 4 Q. ECON. REV. MEX. 17 (Nov. 17, 1985).

107. Creel, *supra* note 68, at 315. See generally Cormack & Barker, *The Mexican Law of Business Organizations*, 6 S. CAL. L. REV. 181 (1933); Montes de Oca, *The Commercial Laws of the Republic of Mexico*, in DIGEST OF COMMERCIAL LAWS OF THE WORLD (1978). In keeping with the civil law tradition, Mexico divides private law into civil law and commercial law. Brinsmade, *supra* note 24, at 836. The civil codes of the states of Mexico and the Code of the Federal District govern civil entities. Creel, *supra* note 68, at 315 n.52. Federal law, generally the Ley General de Sociedades Mercantiles



Civil companies include civil partnerships (*sociedades civiles*) and civil associations (*asociaciones civiles*), both of which are essentially non-profit.<sup>108</sup> The shares in a civil company are issued only in registered form, and no shareholder liability exists after the shares are fully paid.<sup>109</sup>

Commercial companies, governed by federal law, are similar to common-law companies or corporations.<sup>110</sup> In Mexico, as in the United States, properly recorded commercial companies enjoy a juridical personality completely distinct from the juridical personality or legal status of their members.<sup>111</sup> The corporation (*sociedad anonima* or "S.A.") is the most popular legal form of organization in Mexico.<sup>112</sup> The Mexican corporation is similar to the limited liability company or stock company used elsewhere in both civil- and common-law countries.<sup>113</sup> No personal liability attaches to shares of this type of company, except as to any consideration not paid when the shares were issued.<sup>114</sup> Although a *sociedad anonima* may be owned publicly or privately, all publicly held corporations must be in the *sociedad anonima* form of organization.<sup>115</sup> Another

(General Law of Commercial Companies), D.O., Aug. 4, 1934, governs commercial companies. The 1829 Commercial Code of Mexico had been the primary source of law for commercial companies. See A. CONEY & J. GODOY, *THE LEGAL AND MERCANTILE HANDBOOK OF MEXICO* 274 (1892); ROJAS, *TRANSLATION OF THE COMMERCIAL CODE OF MEXICO* (1954); FOREIGN TAX LAW ASSOCIATION, *THE COMMERCIAL CODE OF MEXICO* (1957), but has been superseded in large part by the General Law of Commercial Companies and other laws such as the General Law of Credit Institutions and Auxiliary Organizations. See Brinsmade, *supra* note 24, at 836. The General Law of Commercial Companies is federal legislation applicable throughout Mexico. See generally Comment, *Mexican Business Associations*, 4 *TEX. INT'L. L.F.* 79 (1968); Crawford, *The Capital Structure of Mexican Corporations*, 28 *TUL. L. REV.* 45 (1953); Dalton, *Mexican Corporate Activities*, 15 *J. KAN. B.A.* 400 (1947); R. SHAFER, *MEXICAN BUSINESS ORGANIZATIONS* (1973); Cormack & Barker, *supra*, at 181; Montes de Oca, *supra*.

108. Brinsmade, *supra* note 24, at 838; Creel, *supra* note 68, at 315 n.52.

109. Formerly, shares in a civil company could be issued in registered or bearer form. See Dalton, *supra* note 107, at 401.

110. Dillenbeck, *The Shareholder's Suit in Mexican Law*, 9 *AM. J. COMP. L.* 78, 79 (1960).

111. Crawford, *Use of Mexican Corporate Shares*, 27 *TUL. L. REV.* 38 (1953) (citing Ley General de Sociedades Mercantiles (General Law of Commercial Companies) arts. 2-3 (1934)).

112. A. HOAGLAND, *FORMATION*, *supra* note 73, at C-1 (1980).

113. *Id.*

114. W. DIAMOND & D. DIAMOND, *CAPITAL FORMATION AND INVESTMENT INCENTIVES AROUND THE WORLD, Mexico-2* (1985).

115. *Id.*

form of corporation is the "corporation with variable capital" (*sociedad anonima de capital variable*, or "S.A. de C.V."), which, for practical purposes, is identical to an ordinary corporation except that it has more flexibility under the law to increase or decrease its capital.<sup>116</sup> A "limited liability company" (*sociedad de responsabilidad limitada*) is a legal entity of Mexican nationality combining features of a corporation and partnership.<sup>117</sup> In this type of organization, ownership of capital is not represented by shares of stock but rather by generally nontransferable "participations."<sup>118</sup> A limited liability company may engage in certain types of activities prohibited to corporations.<sup>119</sup>

Mexican law also recognized several types of partnerships, including a general partnership (*sociedad en nombre colectivo*), limited partnership (*sociedad en comandita simple*) and limited partnership with shares (*sociedad en comandita por acciones*).<sup>120</sup> Other forms of organization permitted by Mexican law are joint ventures, sole proprietorships and cooperative societies.<sup>121</sup>

In addition to private issuers, public or governmental issuers participate in the Mexican securities market by issuing securities either publicly or privately. While the federal government itself issues debt securities,<sup>122</sup> other public issuers include Nacional Financiera<sup>123</sup> and other national credit institutions.<sup>124</sup>

Public and private issuers may list their securities for trading on the Mexican Stock Exchange. Issuers with equity securities listed on the Mexican Stock Exchange totaled 356 in 1975,<sup>125</sup> 450 in 1980,<sup>126</sup> and 215 in 1982.<sup>127</sup> Securities of Mexican issuers may also be eligible for

116. *See id.*

117. A. HOAGLAND, FORMATION, *supra* note 73, at C-16.

118. *Id.* at C-16 to C-17.

119. W. DIAMOND, *supra* note 114, at Mexico-3.

120. A. HOAGLAND, FORMATION, *supra* note 73, at C-19 to C-20.

121. *Id.* at C-20 to C-21.

122. *See supra* note 98 and accompanying text.

123. As of December 31, 1984, Nafinsa's capital stock consisted of 51,000,000 Series A shares restricted to ownership by the Mexican Government and 49,000,000 Series B shares which have unrestricted ownership. *See* Nacional Financiera, Report on the Activities 1984, note 9 to Financial Statements.

124. *See generally* J. LA CASCIA, *supra* note 22, at 83; F. LEES & M. ENG, *supra* note 32, at 374-375.

125. Wise, *Buoyant Bolsa: Investors Shrug Off Political Uncertainties*, BARRONS, Mar. 10, 1975, at 9.

126. Baird, *Betting on the Peso: Though Devaluation Looms, New Mexican Fund Will Bow*, BARRONS, Dec. 1, 1980, at 35, 46.

127. PROSPECTUS, *supra* note 4, at 16 (1983).

listing on United States (as well as other foreign) exchanges.<sup>128</sup>

## 2. Intermediaries

Financial intermediaries facilitate the flow of funds from savers to users by accumulating the surplus funds of some sectors and distributing them efficiently to final deficit or user sectors.<sup>129</sup> This process is known as intermediation.<sup>130</sup> Intermediaries exercise a significant amount of control over the flow of funds among economic sectors. For example, if demand for funds increases relative to supply, financial intermediaries will raise interest rates and thereby induce a greater supply of funds.<sup>131</sup> Financial institutions direct the transfer of savings into capital formation, which is a key element for economic growth. Financial institutions intermediate in Mexico as in other countries, facilitating capital flows from savers to users of funds. The following is a brief discussion of the prominent financial intermediaries of Mexico.

*Banks.* Historically, the most important intermediaries in the Mexican financial arena were commercial banks. From the inception of the Mexican banking system in the mid-1800s until its unexpected nationalization in 1982, the Mexican banking system has developed gradually and in a relatively stable manner. Mexican banks began to develop in the mid-1800s, when silver banks and working capital loan companies were established to finance mining ventures and operations.<sup>132</sup> The first private bank, the Bank of London, Mexico and South America, was founded in 1864.<sup>133</sup> The government established the National Banking Commission in 1924 and the Bank of Mexico in 1925<sup>134</sup> and promulgated banking regulations in 1897, 1915, 1924, and 1932.<sup>135</sup> The most important laws regulating banks since that time were the Organic Law of the Bank of

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128. American Depository Shares of Tubos de Acero de México, S.A. (a steel production company), for example, are listed on the American Stock Exchange. See TUBOS DE ACERO DE MÉXICO, S.A., PROSPECTUS (May 24, 1985).

129. HANDBOOK, *supra* note 75, at 5-9.

130. *Id.* at 8-9.

131. *Id.*

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

133. Saldaña, *supra* note 132, at 307.

134. *Id.* at 308. It has been said that French financiers initially controlled the Bank of Mexico. H. PARKES, *supra* note 20, at 289.

135. Saldaña, *supra* note 132, at 307-08. See A. ROMERO, *supra* note 95.

Mexico and the General Law of Credit Institutions and Auxiliary Organizations. New banking legislation was enacted in 1985.<sup>136</sup>

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, Nafinsa, Banco Nacional de Obras y Servicios Públicos (a national public works bank) and Banco Nacional de Comercio Exterior (a national foreign trade bank).<sup>137</sup> The Central Bank and sole bank of issue is Banco de Mexico, chartered in 1925.<sup>138</sup> 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.<sup>139</sup> "Through these means, Banco de México regulates loan operations and investments of banks and is instrumental in channelling financial resources into selected areas of the economy."<sup>140</sup>

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.<sup>141</sup> Its primary mission is to channel credits into economic sectors not having ready access to private financing.<sup>142</sup> 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.<sup>143</sup> Nafinsa represents probably the most original contribution by Mexico to the types of institutions promoting growth and development in Latin America.<sup>144</sup>

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136. In 1985 Congress enacted several banking measures designed to establish rules for the post-nationalization operation of banks. See, e.g., NACIONAL FINANCIERA, EL MERCADO DE VALORES [THE SECURITIES MARKET] 162 (Feb. 17, 1985); *id.* at 644 (July 8, 1985). See also *Foreign Investors Reassured*, INT'L FIN. L. REV., June 1986, at 48.

137. A. HOAGLAND, FORMATION, *supra* note 73, at J-1 to J-9.

138. Mexican Registration Statement, *supra* note 29, at 30.

139. *Id.*; see J. LA CASCIA, *supra* note 22, at 33; Beteta, *The Central Bank, Instrument of Economic Development in Mexico*, in MEXICO'S RECENT ECONOMIC GROWTH 75 (Lopez ed. 1967).

140. Mexican Registration Statement, *supra* note 29, at 30.

141. *Mexico's Money Men Learn to Lure Capital*, BUS. WK., Nov. 26, 1966, at 117-18. See generally R. AUBEY, *supra* note 35.

142. D. BROTHERS & L. SOLIS, *supra* note 32, at 12.

143. J. LA CASCIA, *supra* note 22, at 39; F. LEES & M. ENG, *supra* note 32, at 366.

144. 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 National Financiera), D.O., Dec. 26, 1986. See Ley Organica De Na-

As of August 31, 1982, Mexico's then private banking system included twelve deposit banks, thirty-five multi-service banks, seven financial banks, one credit mortgage institution and five long-term credit banks.<sup>145</sup> Other banks that have existed from time to time in Mexico include private development banks, capitalization banks, savings and loan institutions and trust companies.<sup>146</sup> Over the years, Mexican banks "developed their commercial capabilities to a very substantial degree and [became] increasingly active in industrial, housing, transport and export financing and recently, in agricultural development financing."<sup>147</sup> Then, on September 1, 1982, in his state of the union message,<sup>148</sup> lame-duck President Jose Lopez Portillo announced the nationalization of the private Mexican banking institutions, and on September 6, 1982, the government declared them National Credit Societies owned entirely by Mexico.<sup>149</sup> The effects that the nationalization has had and will have on Mexico's financial system are not completely apparent. Legislation in the 1980s, however, has de-emphasized the importance of banks as intermediaries in the securities market. Ironically, in 1986 and 1987 the government began a "reprivatization" program, selling many non-bank subsidiaries of banks and a large portion of bank stock itself back to the private sector.

*Brokerage Firms.* The stock market departments of several commercial banks had played important roles as intermediaries in the Mexican stock market,<sup>150</sup> but the Securities Market Law provided for independent brokerage firms to operate in the market. Under present law, intermediation (i.e., brokerage, dealing and certain other activities) can be per-

cional Financiera, EL MERCADO DE VALORES 1 (Jan. 12, 1987).

145. Mexican Registration Statement, *supra* note 29, at 30.

146. See Beteta, *supra* note 139, at 74; J. LA CASCIA, *supra* note 22, at 46; D. BROTHERS & L. SOLIS, *supra* note 32, at 30.

147. A. HOAGLAND, FORMATION, *supra* note 73, at J-1.

148. "Without warning and, according to many, even without good reason, [Lopez Portillo] expropriated a national banking system made up of 57 banks with assets of some \$33 billion, 4,300 offices, 150,000 officers and employees, and 3,200 accounts . . . As he ended his three-hour address, the President was in tears." Hoagland, *Overview: Perspective From An American Lawyer in Mexico*, 18 INT'L LAW. 287 (1984) [hereinafter Hoagland, *Overview*].

149. Mexican Registration Statement, *supra* note 29, at 31. See Decreto Que Establece La Nacionalización de la Banco Privada (Decree That Establishes the Nationalization of Private Banking) D.O., Sept. 1-2, 1982. Since the nationalization, an unofficial, private ("parallel") banking system has developed. Sarmiento, *supra* note 11, at 19, col. 3.

150. A. HOAGLAND, FORMATION, *supra* note 73, at J-32; Ross, *Changing*, *supra* note 72, at 149, 150. See also Wise, *supra* note 125, at 9 (Banco Nacional de Mexico and Banco de Comercio had significant role in stock market).

formed only, with certain limited exceptions, by corporations registered in the Intermediaries Section of the National Registry of Securities and Intermediaries.<sup>151</sup> Under prior law, natural persons also could be brokers, although most registered brokers were corporations,<sup>152</sup> which, as such, could buy and sell securities, hold funds, render investment advice, make margin loans and provide safekeeping facilities.<sup>153</sup> In 1980 twenty-four corporate brokerage firms were registered with the Commission.<sup>154</sup>

*Investment Companies.* Congress enacted legislation in 1951,<sup>155</sup> subsequently amended,<sup>156</sup> providing for the establishment of investment companies in Mexico.<sup>157</sup> The Mexican Investment Company Law authorized the Commission to approve the formation and regulation of investment companies.<sup>158</sup> 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."<sup>159</sup> Numerous investment companies subsequently were

151. Securities Market Law, art. 12. 1985 amendments require registered brokers to be corporations, although the law contains a grandfather clause for individuals. Banks, investment companies and Banco de Mexico can serve as intermediaries under specified circumstances and are exempt from registration in the Intermediaries Section of the National Registry.

152. COMISIÓN NACIONAL DE VALORES, LEYES Y DISPOSICIONES DEL MERCADO DE VALORES [LAWS AND ORDERS OF THE SECURITIES MARKET] 282-283 (1982).

153. Securities Market Law, arts. 22 and 23.

154. A. HOAGLAND, FORMATION, *supra* note 73, at J-32. Recent 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).

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

156. D.O., Dec. 31, 1955; *id.*, Dec. 31, 1963; *id.*, Dec. 31, 1965.

157. Generally speaking, an "investment company" is a firm which sells securities to the public and reinvests the proceeds in securities. HANDBOOK, *supra* note 75, at 515. Cf. section 3 of the United States Investment Company Act of 1940, 15 U.S.C. § 80a-1 (1982) (definition of investment company under United States law). The major role of investment companies is to "answer the needs of many investors for the assembly, management and administration of professionally selected and diversified portfolios." HANDBOOK, *supra* note 75, at 515.

158. 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 Inversión (Investment Companies)*, 8-10 EL FORO 105 (1955); Hermosillo, *Les Sociétés*, *supra* note 93, at 109; S. Martínez, *Las Sociedades de Inversión en México*, 8 REV. DE LA FACULTAD DE DERECHO DE MÉXICO 233 (1958).

159. L. LOSS, SECURITIES REGULATION IV, at 2290. (Supp. to 2d ed., 1969).

formed under this law.<sup>160</sup> 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.<sup>161</sup>

In 1985 Congress enacted a new Investment Companies Act.

The Mexico Fund, Inc., perhaps the most original participant in the Mexican securities market, is a diversified, closed-end investment company, which is registered under the United States Investment Company Act of 1940.<sup>162</sup> Incorporated under Maryland law in 1981, the Mexico Fund invests primarily in equity securities listed on the Mexican Stock Exchange.<sup>163</sup> A Mexican corporation, which is registered as an investment adviser under the United States Investment Advisers Act of 1940, advises the Fund.<sup>164</sup> The Fund makes investments through a trust, organized under Mexican law, of which Nafinsa is the trustee.<sup>165</sup> The Mexico Fund was structured to comply with Mexico's foreign investment laws described above; that is, 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."<sup>166</sup> In addition to regulation of the Mexico Fund under the United

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160. See A. BASCH & M. KYBAL, *supra* note 14, at 133. The first registered investment company was FIRME, S.A., which was formed in 1956 and was registered in the National Securities Registry in 1957. J. LA CASCIA, *supra* note 22, at 52; COMISIÓN NACIONAL DE VALORES, LEYES Y DISPOSICIONES DEL MERCADO DE VALORES [LAWS AND ORDERS OF THE SECURITIES MARKET] 268-269 (1982) lists the following investment companies in the National Registry of Securities and Brokers as of 1982: Fondo de Rendimiento Líquido, S.A.; Fobur, S.A.; Fondo Accivalmex, S.A.; Fondo de Inversiones Banamex, S.A.; FIRME, S.A.; Fondo Industrial Mexicano, S.A.; Fondo Invermexico, S.A., Sociedad de Inversión; Multifondo de Desarrollo de Capital, S.A.; Fondo Delta, Sociedad de Inversión, S.A.; Fondo de Inversiones Bursátiles, S.A.; Fondo Arka, S.A.; and Fondo Mexicano de Capitales, S.A. (Fondomex).

161. A. BASCH & M. KYBAL, *supra* note 14, at 133.

162. PROSPECTUS, *supra* note 4, at 10 (Nov. 17, 1983).

163. *Id.*

164. *Id.*

165. *Id.* at 3, 10.

166. *Id.* at 10-11.

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.<sup>167</sup> 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.<sup>168</sup> The Mexico Fund or its affiliates also obtained various approvals or 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 National Patrimony and Industrial Promotion, the Ministry of Communications and Transportation, and the National Banking Commission.<sup>169</sup>

The Mexico Fund commenced operations on June 11, 1981, with assets of \$112,000,000 resulting from its initial public offering.<sup>170</sup> The beginning net asset value was \$12 per share, and primarily institutional buyers acquired the stock.<sup>171</sup> The shares, traded in the United States on the New York Stock Exchange, barely ever exceeded the initial offering price,<sup>172</sup> and reflecting problems in the Mexican economy, plunged to a low of \$2.25 per share in 1982.<sup>173</sup> On March 5, 1987, shares of the fund closed at \$5.13 on the New York Stock Exchange.<sup>174</sup>

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167. *Id.* at 11.

168. 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).

169. *Id.* In addition, the Fund requested a private letter ruling from the United States Internal Revenue Service, registered its shares under the United States Securities Act of 1933, registered under the United States Investment Company Act of 1940, registered its shares under the Securities Exchange Act of 1934, and listed its shares on the New York Stock Exchange and the London Stock Exchange.

170. PROSPECTUS, *supra* note 4, at 10 (Nov. 17, 1983). See generally *A New Way to Gamble on Recovery in Mexico's Economy*, 127 FORBES 99 (June 22, 1981); *Carámba*, 132 FORBES 50 (Dec. 5, 1983).

171. J. Berry, *Wash. Post*, Jan. 5, 1983, at D1.

172. Marcial, *It's Still Mañana For the Mexico Fund*, *BUS. WK.*, Feb. 28, 1983, at 84.

173. PROSPECTUS, *supra* note 4, at 12. See also R. Bleiberg, *Down Mexico Way: Short-term Gains Shouldn't Obscure Long Term Losses*, 64 BARRONS 9 (May 7, 1984); *Bolsa Bloodbath*, 151 *FIN. WORLD* 14 (Sept. 15, 1982).

174. *Wall St. J.*, March 6, 1987, at 5, col. 1.



### 3. Regulators

The principal regulatory authorities involved in Mexico's capital markets are discussed below.

*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 Credit has final authority over the administration of the securities market and the interpretation of the Securities Law.<sup>175</sup> 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, the National Registry of Securities and Securities Brokers, and the Securities Depository.<sup>176</sup>

*Mexican Securities Commission.* The Commission is an independent agency within the Ministry of Finance in charge of certain defined regulatory functions.<sup>177</sup> The Commission is the primary body responsible for actual oversight of the securities market and monitoring compliance with the Securities Law.<sup>178</sup> The Commission's powers include, broadly speaking, inspection and oversight responsibilities with regard to brokers and companies.<sup>179</sup> When circumstances so require, the Commission may intervene administratively including cancelling authorizations and registrations and advising the treasury on securities market matters.<sup>180</sup>

The Commission comprises the Governing Board (the supreme authority of the Commission), the President,<sup>181</sup> the Consulting Committee, and the Evaluation and Control Unit.<sup>182</sup> Appointed by the Ministry of Finance, the President of the Commission represents the Ministry, executes resolutions of the Governing Board, and administers the affairs of

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175. Securities Market Law, D.O., Jan. 2, 1975, art. 8.

176. The Ministry of Finance and Public Credit also has authority over the Bank of Mexico and the National Banking and Insurance Commission. See F. LEES & M. ENG, *supra* note 32, at 359-364; J. LA CASCIA, *supra* note 22, at 46.

177. Creel, *supra* note 68, at 307 (citing A. ROMERO, *supra* note 95, at 42-44 and J. Gordoia, *Marco Juridico y Estructura Institucional del Mercado de Valores, (Legal Framework and Institutional Structure of the Securities Market)*, REVISTA DE INVESTIGACIONES JURIDICAS DE LA ESCUELA LIBRE DE DERECHO, No. 5 (1981)).

178. Creel, *supra* note 68, at 308.

179. *Id.* at 308 n.18 (citing A. ROMERO, *supra* note 95, at 59).

180. *Id.*

181. The current President of the Commission is Lorenzo E. Peon. *Loosening The Strings on Mexico's Capital Market*, BUS. WK., Sept. 3, 1984, at 39.

182. COMISIÓN NACIONAL DE VALORES, MEMORIA DE LABORES 35 (1984) [hereinafter MEMORIA DE LABORES]; Creel, *supra* note 68, at 308.

the Commission.<sup>183</sup> Within the Commission are various bureaus, under the general supervision of the President, such as Brokers, Stock Issues, Legal, Statistics and Information, Finance and Administration, Audit, Technical, Stock Operations, Computers, Personnel, Financial Analysis, Investment Companies, General Services, and Economic Studies.<sup>184</sup>

*National Registry of Securities and Securities Intermediaries.* The National Registry, a division of the Commission, administers the registration of both securities and intermediaries pursuant to the Securities Market Law.<sup>185</sup> Securities that will be publicly offered must be registered under the securities section.<sup>186</sup> The Intermediaries Section records registration of all intermediaries by categories of either natural persons or corporations.<sup>187</sup>

*Institute for the Deposit of Securities.* The government established the Securities Depository ("Indeval") in 1978, although the depository did not commence operations until 1980.<sup>188</sup> Indeval, a clearinghouse and depository for securities traded in Mexico, eliminates the need for physical transfer of securities.<sup>189</sup> The depository is a separate agency from the Commission, although subject to its supervision. Indeval provides for the "safekeeping, administration, compensation, liquidation and transfer of securities."<sup>190</sup>

*Other.* Several other institutions more tangentially involved in various aspects of Mexico's financial system include the National Banking Commission, the Bureau of Foreign Investment and Transfer of Technology, the National Foreign Investment Registry,<sup>191</sup> the Ministry of National

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183. Creel, *supra* note 68, at 309.

184. MEMORIA DE LABORES, *supra* note 182, at 35.

185. Securities Market Law, art. 10.

186. *Id.* art. 11; Creel, *supra* note 68, at 309. The securities section of the Registry provides for registration of securities by the following categories: (1) shares of (a) industrial, commercial and service companies (b) credit institutions (c) insurance companies (d) finance companies, and (e) investment companies; (2) bonds of (a) industrial, commercial and service companies and (b) other companies; (3) other securities, such as commercial paper, and bankers' acceptances; and (4) securities approved for sale abroad. COMISIÓN NACIONAL DE VALORES, LEYES Y DISPOSICIONES DEL MERCADO DE VALORES [LAWS AND ORDERS OF THE SECURITIES MARKET] 255-282 (1982).

187. COMISIÓN NACIONAL DE VALORES LEYES Y DISPOSICIONES DEL MERCADO DE VALORES 282-83 (1982).

188. PROSPECTUS, *supra* note 4, at 18 (Nov. 17, 1983).

189. *Id.*

190. Creel, *supra* note 68, at 310.

191. Under the 1973 Investment Law, *supra* note 47, foreign investors, certain other persons or entities, and their securities must register or be registered with the National Foreign Investment Registry. See generally A. HOAGLAND, FORMATION, *supra* note 73,

Patrimony and Industrial Promotion, and the Ministry of Communications and Transportation.

### C. *Market Characteristics*

#### 1. Types of Securities

The Mexican securities market consists of a fixed-income (debt) sector and a variable-income (equity) sector, but debt securities completely dominate the market. In 1966 approximately ninety-five percent of all trading on the Mexico City Stock Exchange was in fixed-income securities,<sup>192</sup> and in 1984 this figure was almost ninety-eight percent.<sup>193</sup>

*Debt. Certificados de la tesoreria de la federacion*<sup>194</sup> (colloquially, "cetes"), which are similar to United States treasury bills, dominate the Mexican debt market. In 1977 Congress authorized the issuance of treasury bills to improve the federal government's access to internal financial resources.<sup>195</sup> The government issues *cetes* as an instrument for short-term finance and control of the money supply.<sup>196</sup> *Cetes* are issued through Banco de Mexico, have a maximum maturity of one year<sup>197</sup> and are liquid investments which brokers sell at a discount from face value at maturity.<sup>198</sup>

In 1980 the Commission approved commercial paper and bankers' acceptances for issuance by Mexican companies, expanding the types of

at B-20; Mexican Registration Statement, *supra* note 29, at 29; Creel, *supra* note 68, 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).

192. J. LA CASCIA, *supra* note 22, at 50. See also A. BASCH & M. KYBAL, *supra* note 14, at 68 ("Until 1963 fixed-income securities accounted for approximately 98 percent of all trading on the Mexico City stock exchange."). During the 1940s, the major financial instruments in Mexico were deposit and savings accounts. D. BROTHERS & L. SOLIS, *supra* note 32, at 32.

193. MEMORIA DE LABORES, *supra* note 182, at 17.

194. See *id.* at 21. 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.*, *supra* note 106, at 13.

195. Mexican Registration Statement, *supra* note 29, at 31.

196. PROSPECTUS, *supra* note 4, at 14 (Nov. 17, 1983).

197. Mexican Registration Statement, *supra* note 29, at 31. For a short time the government attempted to place a ceiling on the interest rates paid on *cetes*, but new issues remained unsold. THE ECONOMIST INTELLIGENCE UNIT, 4 Q. *ECON. REV. MEX.*, *supra* note 106, at 13.

198. Baird, *supra* note 126, at 47.

money market instruments.<sup>199</sup> "Commercial paper consists of promissory notes issued by a corporation, obligating it to pay principal plus interest to the holders within a specified period."<sup>200</sup> It is unsecured, short-term indebtedness sold primarily to institutional investors at a discount from face value.<sup>201</sup>

Petrobonds, government-issued debt securities which began trading on the Stock Exchange in 1977, are three-year obligations collateralized by Mexican light crude oil.<sup>202</sup> Technically, "[p]etrobonds are certificates of participation issued by a trust of which Nafinsa is trustee."<sup>203</sup> The yield on petrobonds is indexed to the world price of Mexican oil.<sup>204</sup> The petrobond market is said to be a "futures market on oil."<sup>205</sup>

Other fixed-income securities issued or which have been issued in Mexico to varying degrees are notes (including dollar-denominated notes), corporate bonds and debentures,<sup>206</sup> bank indemnity bonds, mortgage bonds, time deposits,<sup>207</sup> bills of exchange, deposit certificates and pledge bonds.

*Equity.* Equity securities are referred to as "variable-income" securities in Mexico because the income depends on the earnings of the corporation and the decision of management to distribute the earnings to the shareholders through dividends or otherwise. A share of common stock represents ownership of the total value of the corporation in the same proportion that the share of stock bears to the total number of shares outstanding. The ownership interest gives the holder the right to partici-

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199. Mexican Registration Statement, *supra* note 29, at 31. Bankers' acceptances are an increasingly popular investment vehicle in Mexico. Nafinsa began auctioning bankers' acceptances in April, 1986. Banco Nacional de México, Review of the Economic Situation of Mexico (April 1986).

200. Creel, *supra* note 68, at 306. "Normally the Mexican Securities Commission grants authorization to issue these promissory notes with maturity dates of 15, 30, 45, 60, 75 and 91 days, according to the needs of the issuing corporation, but at the moment the promissory notes are issued, a fixed maturity date must be recorded by the Commission." *Id.* at 306 n.10.

201. Baird, *supra* note 126, at 47.

202. *Id.* at 50.

203. PROSPECTUS, *supra* note 4, at 14 (Nov. 17, 1983).

204. Sharon & Mitchell, *Hard Assets in Mexico*, FIN. WORLD, May 1, 1980, at 52-53. "The principal amount paid at the maturity of the certificates is related to the export price of Mexican crude oil at such maturity." PROSPECTUS, *supra* note 4, at 14 (Nov. 17, 1983).

205. Baird, *supra* note 126, at 50.

206. See Ross, *Progress*, *supra* note 43, at 48.

207. "[T]ime deposits with Mexican banks represent an important investment vehicle in Mexico." PROSPECTUS, *supra* note 4, at 14 (Nov. 17, 1983).

pate in the earnings of the corporation and typically to vote on all matters presented for shareholder vote in accordance with the charter of the corporation.

The capital stock of Mexican corporations is represented by different types of shares. "The shares into which the capital stock of the Mexican trading or industrial corporation is divided are represented by certificates which serve to accredit and to transmit the status and rights of membership. . . ."<sup>208</sup> Unless otherwise specified in the articles of incorporation, the shares of a Mexican corporation have equal value and confer equal rights,<sup>209</sup> and each share is indivisible.<sup>210</sup> Substantial rights attach to shares under the Securities Market Law and Commercial Law,<sup>211</sup> but some of these rights may vary under the corporation's articles and by-laws.<sup>212</sup> The owner of the security is identified in nominative shares.<sup>213</sup> The Foreign Investment Law requires that shares representing foreign capital in Mexican corporations be nominative in every case because this is the only legal method to identify foreign investment.<sup>214</sup> The general corporation law has been amended to provide also that all shares must be issued only in nominative form.

## 2. The Market

The securities market encompasses both the primary market and the secondary market. In a primary issue, a corporation or other enterprise sells securities to purchasers and receives the sale proceeds.<sup>215</sup> On the other hand, in a secondary market existing owners sell securities that are already outstanding to new purchasers.<sup>216</sup> The proceeds from the secondary market sales go to the current owner of the security rather than the

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208. Crawford, *Use of Mexican Corporate Shares*, 27 TUL. L. REV. 383 (1953).

209. *Id.*

210. *Id.* at 386.

211. Ley General de Sociedades Mercantiles (General Law on Commercial Companies), D.O., Aug. 4, 1934, art. 144 (rights of minority stockholders). *See generally* Creel, *supra* note 68, at 313 n.44.

212. Creel, *supra* note 68, at 313.

213. *Id.* at 315-16 n.57. Other categories of shares include common and preferred, regular and irregular, par and no par, and with and without premium. *Id.* (citing J. RODRIGUEZ Y RODRIGUEZ, I DERECHO MERCANTIL [COMMERCIAL LAW] 86-93 (1980)).

214. *Colloquium, supra* note 27, at 34.

215. Sim, *The New Issues Market*, in HANDBOOK, *supra* note 75, at 138; JENNINGS AND MARSH, SECURITIES REGULATION 11 (5th ed. 1982). "In a primary placement, the capital increase is approved solely to issue new shares to the investing public." Creel, *supra* note 68, at 319.

216. Reilly, *Secondary Markets*, in HANDBOOK, *supra* note 75, at 138.

company.<sup>217</sup> The secondary market is a source of liquidity for the primary market.<sup>218</sup> Secondary sources in Mexico report little data about sales of securities in the primary market.<sup>219</sup> The following is a discussion of the characteristics of Mexico's secondary market.<sup>220</sup>

*On the Exchange.* Trading on the exchanges has primarily been and remains in fixed-income securities.<sup>221</sup> In 1960 only three percent of all transactions on the Mexico City Stock Exchange were trades in equity shares.<sup>222</sup> 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 1966,<sup>223</sup> 2.1 percent in 1970;<sup>224</sup> 2.5 percent

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217. *Id.*

218. *Id.* "The primary market would be seriously hampered in its function of helping firms acquire new capital without the liquidity provided by the secondary market. . . ." *Id.* "Secondary markets are also important to a corporation because the prevailing market price of the security is determined by action in the secondary market." *Id.*

219. New issues of fixed-income securities in Mexico by the private sector totalled (in pesos) 1,610,000 in 1960; 11,060,000 in 1966; 14,529,000 in 1971. New issues of fixed-income securities by the public sector in such years aggregated (in pesos) 3,663,000, 4,150,000, and 15,750,000, respectively. F. LEES & M. ENG, *supra* note 32, at 376. One source reports that only ten new stock issues were placed in the past seven years, but reports twenty-six offerings in the first half of 1987, "including 13 bank issues as part of the government's program for reprivatizing a portion of its banking system." Barbash, *In Mexico the Outlook is For More Buoyancy on the Bolsa*, BARRONS, July 27, 1987, at 58, col. 1.

220. The "secondary market" should be distinguished from a "secondary offering," which refers to a block distribution either by public offering or private placement of outstanding securities. Sim, *The New Issues Market*, in HANDBOOK, *supra* note 75, at 124-125. "In a secondary placement, the original stockholders offer their own shares for sale." Creel, *supra* note 68, at 319 (citing ARTURO LEON Y PONCE DE LEON, *LA INVERSIÓN EN MÉXICO* 271 (1981)). Typically a secondary offering involves too large a block to sell in the routine trading market. Sim, *The New Issues Market*, in HANDBOOK, *supra* note 75, at 125. For example, in 1960 a majority shareholder of Teléfonos de México, S.A. offered 300,000 shares of stock in that company to the public, marketed through a consortium of Mexican banks and stock exchange houses. 9 INTERCONTINENTAL, S.A., *THE MEXICAN MARKET* 2 (Oct. 15, 1960). In a secondary distribution, "[t]here is no capital increase [to the issuer] as the shares being sold represent existing capital stock." Creel, *supra* note 68, at 319.

221. R. AUBEY, *supra* note 35, at 80; J. LA CASCIA, *supra* note 22, at 50; F. LEES & M. ENG, *supra* note 32, at 374.

222. 1 INTERCONTINENTAL, S.A., *THE MEXICAN MARKET* 1 (1960). This source reports that total transactions in 1959 were 80 billion pesos, of which only 4.3 billion pesos were transacted on the exchanges. *Id.*

223. J. LA CASCIA, *supra* note 22, at 50.

224. NACIONAL FINANCIERA, *STATISTICS ON THE MEXICAN ECONOMY*, *supra* note 61, at 321.

in 1971;<sup>225</sup> 3.2 percent in 1975;<sup>226</sup> 4.4 percent in 1976; and 4.4 percent in 1985.<sup>227</sup> For several years in the late 1970s, until *cetes* became popular, trading in equities increased, to eighteen percent in 1978, twenty-six percent in 1979, and sixteen percent in 1980.<sup>228</sup> Beginning in 1981, however, investment in *cetes* increased dramatically, and for this and possibly other reasons trading in equities fell to 1.9 percent in 1982,<sup>229</sup> 2.5 percent in 1984<sup>230</sup> and 4.4 percent, in 1985.

The overall volume of trading on the Exchange has increased steadily. "In 1971 transactions on the Mexico City Stock Exchange were 38 billion pesos compared to 5 billion pesos in 1960"<sup>231</sup> and 54 million pesos in 1950.<sup>232</sup> Transactions totalled 113 billion pesos in 1975;<sup>233</sup> 2,315 billion pesos in 1982;<sup>234</sup> 14,991 billion pesos in 1984;<sup>235</sup> and 25,435 billion pesos in 1985. Even in the midst of a severe economic crisis Mexico's securities market is said to be "booming."<sup>236</sup> Trading volume data from 1940 to 1985 are presented below.<sup>237</sup>

225. F. LEES & M. ENG, *supra* note 32, at 374.

226. NACIONAL FINANCIERA, STATISTICS ON THE MEXICAN ECONOMY, *supra* note 61, at 321.

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

228. PROSPECTUS, *supra* note 4, at 14 (Nov. 17, 1983).

229. *Id.*

230. MEMORIA DE LABORES, *supra* note 182, at 17.

231. F. LEES & M. ENG, *supra* note 32, at 377. The securities market became increasingly active during 1963 and 1964, reflecting increased industrial activity. D. BROTHERS & L. SOLIS, *supra* note 32, at 152.

232. NACIONAL FINANCIERA, STATISTICS ON THE MEXICAN ECONOMY, *supra* note 61, at 317.

233. *Id.* at 321. Trading volume quintupled in 1978 and doubled again in 1979. Baird, *supra* note 126, at 46.

234. PROSPECTUS, *supra* note 4, at 14 (Nov. 17, 1983).

235. MEMORIA DE LABORES, *supra* note 182, at 17.

236. Field, *supra* note 7, at 80. *See also* Barbash, *supra* note 219, at 58, col. 1.

237. Data from 1940-1975 are from NACIONAL FINANCIERA, STATISTICS ON THE MEXICAN ECONOMY, *supra* note 61. Data from 1978-1981 are from PROSPECTUS, *supra* note 4. Subsequent data are derived from reports of the Comisión Nacional de Valores and/or from various issues of Nacional Financiera, El Mercado de Valores. For early market data and characteristics, see Comisión Nacional de Valores, Memoria Anual (last published in 1972); *id.*, Boletín (monthly bulletin last published in 1974); *id.*, Informe de Actividades de la Comisión Nacional de Valores 1975 (1976); *id.*, Los Bancos y el Mercado de Valores. For later data see, e.g., Boletín Estadístico (quarterly); Cuaderno de Información Bursatil (monthly); Memoria de Labores (annually).

## MEXICAN STOCK EXCHANGE TRADING VOLUME

(value traded in millions of pesos)

Type of Security	1945	1950	1955	1960
Equity	12.9	13	54	159
Fixed-Income	3.8	40	173	4,944
Total	16.7	54	227	5,103

Type of Security	1965	1970	1975	1978
Equity	1,424	721	3,684	30,310
Fixed-Income	19,990	33,030	109,931	137,832
Total	21,415	33,752	113,616	168,142

Type of Security	1979	1980	1981	1982
Equity	93,795	74,875	102,497	44,079
Fixed-Income	262,516	407,248	1,086,238	2,271,065
Total	356,311	482,123	1,188,735	2,315,342

Type of Security	1983	1984	1985	1986
Equity	134,590	370,879	1,130,935	3,700,857
Fixed-Income	6,023,919	14,991,179	24,304,757	71,974,641
Total	6,158,509	15,362,058	25,435,692	75,675,498

Another measure of trading on the exchange is the average daily equity volume. In 1975 the average daily number of equity shares traded on the exchange was 157,743.<sup>238</sup> Average daily volume rose to 1,402,481 in 1978; 3,680,209 in 1980 and 5,208,546 in 1981.<sup>239</sup> In 1984 twenty stocks accounted for approximately fifty-five percent of all shares traded on the exchange.<sup>240</sup>

*Over-the-Counter.* The majority of trading in Mexico's secondary

238. PROSPECTUS, *supra* note 4, at 15.

239. *Id.*

240. MEMORIA DE LABORES, *supra* note 182, at 18.



market historically has not been on the exchange but has been in the over-the-counter or so-called "third" or "fourth" markets. In 1973 only twenty to thirty percent of the total volume traded was registered on the Exchange, with the remainder traded in a third market through banks, brokerage firms and other financial institutions.<sup>241</sup> The 1975 Securities Market Law generally prohibits off-board trading, however, of listed securities by registered securities agents, thus reducing over-the-counter and third-market activities.<sup>242</sup> Unfortunately, few statistics are available concerning trading and volume in the over-the-counter market.

*Price.* The Mexico City Stock Exchange began publishing a price index for equity securities in 1959, with the 1959 base year set at 100.<sup>243</sup> From 1959 through 1967, the price index fluctuated from a low of 90 (1962) to a high of 116 (1965).<sup>244</sup> According to one account, "the official 30 stock index of the Mexico City Stock Exchange (1959=100) was down from 152 in January 1971 to 128 in October 1971, due to the sluggish economy."<sup>245</sup> The index was 199.5 in February 1973.<sup>246</sup> In 1978 the Exchange began compiling a new index,<sup>247</sup> which currently consists of 40 actively traded stocks issued by companies in various economic sectors.<sup>248</sup> The following table sets forth index values as of the dates specified:<sup>249</sup>

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241. Rhoads, *The Mexican Stock Market, A Source of Corporate Financing*, in 1973 BUSINESS/MEXICO 199 (R. Opie ed. 1973). See also Wise, *supra* note 125, at 9.

242. A. HOAGLAND, FORMATION, *supra* note 73, at J-31. See Securities Market Law, art. 31.

243. See A. BASCH & M. KYBAL, *supra* note 14, at 79. Conceptually, the Mexican price index is similar to the Dow Jones Industrial Average, which is a price-weighted average of 30 large, well-known industrial stocks listed on the New York Stock Exchange. The Index is derived by totaling the current prices of the 30 stocks and dividing the sum by a divisor that has been adjusted to take into account stock splits and changes in the sample over time. HANDBOOK, *supra* note 75, at 297.

244. See A. BASCH & M. KYBAL, *supra* note 14, at 79.

245. F. LEES & M. ENG, *supra* note 32, at 377.

246. *Id.* at 378.

247. PROSPECTUS, *supra* note 4, at 15 (Nov. 17, 1983).

248. TUBOS DE ACERO DE MÉXICO, S.A., PROSPECTUS (May 24, 1985).

249. Data presented under "Original Price Index" are derived from COMISIÓN NACIONAL DE VALORES, BOLETÍN ESTADÍSTICO (4th quarter 1984) and from PROSPECTUS, *supra* note 4, at 15 (Nov. 17, 1983). Data presented under "Revised Price Index" are based on TUBOS DE ACERO DE MÉXICO, S.A., PROSPECTUS, *supra* note 248, or are derived from various issues of NACIONAL FINANCIERA, EL MERCADO DE VALORES.

## Original Price Index

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<u>Year Ended</u> <u>December 31,</u>	<u>High</u>	<u>Low</u>
1973	207.01	178.81
1974	215.11	185.52
1975	215.02	194.75
1976	335.34	213.74
1977	392.15	266.99
1978	889.06	3.62
1979	1,798.55	879.03
1980	1,488.41	1,052.35

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## Revised Price Index

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<u>Year Ended</u> <u>December 31</u>	<u>High</u>	<u>Low</u>
1981	1,490	765
1982	1,004	480
1983	2,452	655
1984	4,460	2,392
1985	11,445	*
1986	47,103	*

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\*Data unavailable.

In 1985 the index rose to a high of 11,445 points, gaining from about 5,600 in July 1985, to close at 11,197 points at the end of the year.<sup>250</sup> The increase continued even after the September 19, 1985 earthquake, and "shares of building and construction materials led the rally with the *Bolsa* operating from temporary quarters as its building too was badly damaged."<sup>251</sup> The market continued to rise in 1986, reaching 15,192 on

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250. Nacional Financiera, *Comportamiento del Mercado de Valores en 1985*, *supra* note 227, at 153.

251. THE ECONOMIST INTELLIGENCE UNIT, 4 Q. ECON. REV. MEX., *supra* note 106, at 9.

February 14, 1986, and closing 1986 at 47,103.<sup>252</sup> Of course, the significance of these increases is diminished when the data are adjusted for inflation, but the market performance is still astonishing given the state of the Mexican economy. The reasons for investors' confidence are not readily apparent, except insofar as the market may be used as a hedge against inflation.

#### IV. REGULATION

##### A. *Introduction*

Securities regulation is a specialized area of law which has as its overall purpose the creation and maintenance of a regulatory environment in which the securities market can flourish. While the ultimate function of the securities market is to channel resources to efficient users, the purpose of securities regulation is to protect investors and other players in the market so as to encourage participation and ultimately, capital formation. Securities regulation is designed to foster market efficiency and stability.

In 1965 an executive of the Inter-American Development Bank stated in an address to the Executive Committee of the Inter-American Council on Commerce and Production: "The first step in building capital markets in Latin America 'is to win the confidence of the saving public by the passage of pertinent legislation and the effective and equitable enforcement thereof.'"<sup>253</sup> A decade later Mexico enacted legislation comprehensively reforming regulation of the securities market. The Securities Market Law, which became effective on January 3, 1975, is divided into six chapters: (1) Preliminary Matters; (2) The National Registry of Securities and Intermediaries; (3) Securities Agents; (4) Stock Exchanges; (5) the National Securities Commission; and (6) The Institute for the Deposit of Securities. The chapters are subdivided into eighty-six articles. Further, the Securities Commission has promulgated rules and regulations to interpret and implement the Securities Market Law. A

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252. Nacional Financiera, *Compartamiento del Mercado de Valores en 1986*, EL MERCADO DE VALORES 94 (January 26, 1987); Field, *supra* note 7, at 80; Mexico, 20 INST'L INVESTOR 297 (June 1986). "The erratic Mexican market may become more volatile as concerns about austerity measures and oil prices increase." *Id.* The Economists Intelligence Unit observed in COUNTRY REPORT - MEXICO 14 (1987) that the booming Mexican stock market is "oblivious to its environment."

253. Poser, *Securities Regulation in Developing Countries: The Brazilian Experience*, 52 VA. L. REV. 1283, 1284 (1966) (address by T. Upton, Caracas, Venezuela, Oct. 26, 1965).

discussion<sup>254</sup> of the Mexican securities laws follows.

The Securities Market Law regulates the public offering of securities, the operations of intermediaries in selling securities and the activities of those responsible for regulating the market.<sup>255</sup> The Securities Market Law applies to securities and to credit instruments and other documents that may be the object of public offerings or of intermediation in the market, that grant to their holders rights of credit, property or participation in the capital of corporations.<sup>256</sup> The Securities Market Law defines "securities" as shares of stock, bonds, and other credit instruments that are mass issued or serialized.<sup>257</sup> The Securities Market Law charges the regulatory authorities with promoting a balanced and competitive securities market.<sup>258</sup>

### B. *Regulation of the Offering of Securities*

A "public offering" of securities is made through some means of mass communications or to an "unspecified person" in order to subscribe, sell or acquire securities or documents defined in article 3.<sup>259</sup> The registration provisions, probably the most important provisions of the Law, 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."<sup>260</sup> Article 11 provides that "[o]nly securities registered in the Securities Section can

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254. The following discussion is based upon an original translation of *Ley del Mercado de Valores*, Mexico's Securities Market Law, completed under the supervision of the author. While the discussion is thought to be accurate, practitioners and others should refer to the Spanish text of the Law itself.

255. Securities Market Law, art. 1.

256. *Id.*, art. 3. The securities laws of the United States, generally speaking, apply only to "securities," as defined in the various federal statutes.

257. *Id.* "Securities are the shares of stock, bonds and other credit instruments that are mass issued or serialized." *Id.*; cf. § 2(1) of the Securities Act of 1933, 15 U.S.C. § 77b(1) (1982); § 3(a)(10) of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10) (1982); § 2(a)(36) of the Investment Company Act of 1940, 15 U.S.C. § 80a-2(a)(36) (1982); § 202(a)(18) of the Investment Advisors Act of 1940, 15 U.S.C. § 80b-2(a)(18) (1982).

258. Securities Market Law, 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 market." *Id.*

259. Securities Market Law, 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]." *Id.*

260. *Id.*

be subject to public-offering.<sup>261</sup> These provisions form the core of Mexican securities regulation by giving the Commission the power to review securities offerings and determine when, and to some extent, 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 Registry.<sup>262</sup> Article 3 of the Law prohibits the public offering of any document not mentioned therein.<sup>263</sup>

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.<sup>264</sup> A registrant must fulfill several requirements to obtain the critical registration with the National Registry of Securities and Securities Intermediaries.<sup>265</sup> First and foremost, an issuer must file a registration application with the Mexican Securities Commission.<sup>266</sup> In the application the issuer must provide considerable information about itself, the securities and numerous other matters.<sup>267</sup> For example, the application must contain legal information supported by voluminous documentation;<sup>268</sup> economic information prepared by a credit rating institution or independent professional auditor;<sup>269</sup> financial information, including fi-

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261. Securities Market Law, art. 11; *cf.* section 5 of the United States Securities Act of 1933, 15 U.S.C. § 77e (1982).

262. Securities Market Law, art. 11; *cf.* United States SEC Release 33-4708, Fed. Sec. L. Rep. (CCH) ¶ 1361-63 (July 9, 1964) (SEC traditionally has not taken any action for failure to register securities of United States corporations distributed abroad to foreign nationals under the circumstances described in the Release).

263. Those which are listed include stocks, bonds, credit instruments and documents that grant "to their title holders rights of credit." Securities Market Law, art. 3.

264. Creel, *supra* note 68, at 312-19. This article discusses in detail the requirements for a public offering of securities in Mexico.

265. *Id.* at 320; *cf.* Regulation C of the Rules and Regulations of the United States Securities and Exchange Commission, 17 C.F.R. § 230.4 (1986).

266. Securities Market Law, art. 14; Creel, *supra* note 68, at 320 n.71; *cf.* section 6 of the United States Securities Act of 1933, 15 U.S.C. § 77f (1982), and Regulation C of the Rules and Regulations of the Securities and Exchange Commission, 17 C.F.R. § 230.4 (1986). Only securities issued in "public offerings" must be registered with the Mexican Securities Commission; the registration provisions of the Law do not govern private offerings.

267. Creel, *supra* note 68, at 320; *cf.* Regulation S-K of the Rules and Regulations of the Securities and Exchange Commission, 17 C.F.R. § 229 (1986).

268. Creel, *supra* note 68, at 322.

269. *Id.* at 324; *cf.* Items 201, 301, 503, and 505 of Regulation S-K of the Rules and Regulations of the United States Securities and Exchange Commission, 17 C.F.R. §§ 229.201, 229.301, 229.503, 229.505 (1986).

nancial statements examined by an independent public accountant;<sup>270</sup> and information regarding the form of the proposed public offering.<sup>271</sup> The Commission reviews the information presented in the prospectus and other documents, and may request additional information or clarifications.<sup>272</sup> Corrections of the prospectus must be made in accordance with the observations of the Commission.<sup>273</sup> 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.<sup>274</sup>

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.<sup>275</sup> 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.<sup>276</sup> The Commission must be satisfied that the securities have or will have ample circulation in relation to the market and the issuer.<sup>277</sup> It must appear to the Commission that the issuer is and will reasonably remain solvent and liquid.<sup>278</sup> To maintain registration of their securities, issuers must follow policies in the interests of its shareholders,<sup>279</sup> disclose periodic information<sup>280</sup> and refrain from artificially affecting or manipulating the price of its stock.<sup>281</sup> Despite the foregoing requirements, 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.<sup>282</sup>

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270. Creel, *supra* note 68, at 325; *cf.* Regulation S-X, 17 C.F.R. § 210.1-01 and Items 301-303 of Regulation S-K, of the Rules and Regulations of the United States Securities and Exchange Commission, 17 C.F.R. §§ 229.301-229.303 (1986).

271. Creel, *supra* note 68, at 320; *cf.* Item 508 of Regulation S-K of the Rules and Regulations of the Securities and Exchange Commission, 17 C.F.R. § 229.508 (1986).

272. Creel, *supra* note 68, at 331-32.

273. *Id.* at 331.

274. *Id.* at 309-10. All information or advertising directed to the public concerning securities is subject to the prior approval of the Commission, with certain exceptions. Securities Law, art. 5.

275. Securities Market Law, art. 14.

276. *Id.*, art. 14, sec. II.

277. *Id.*, art. 14, sec. III.

278. *Id.*, art. 14, sec. IV. The United States Securities Act of 1933 has no comparable requirement.

279. *Id.*, art. 14, sec. V.

280. *Id.*, art. 14, sec. VI; *cf.* section 13(a) of the U. S. Securities Exchange Act of 1934, 15 U.S.C. § 78m(a) (1982).

281. Securities Market Law, art. 14, sec. VII.

282. *Id.*, art. 14; *cf.* Item 501, Regulation S-K of the Rules and Regulations of the Securities and Exchange Commission, 17 C.F.R. § 229.501 (1986).

After registration with the National Registry of Securities, securities may be listed for trading on the Exchange.<sup>283</sup> A petition for listing on the Exchange must be filed, and numerous Exchange requirements must be satisfied prior to listing.<sup>284</sup> Only "public offerings" must be registered with the Commission; private offerings are recognized under Mexican law and are not governed by the registration provisions of the Law.

### C. *Broker Regulation*

The Securities Market Law, as enacted in 1975, provided for the brokerage function to be performed by natural persons or corporations, either of which were required to be registered in the Intermediaries Section of the National Registry of Securities and Intermediaries (with certain limited exceptions).<sup>285</sup> The law was amended in 1985, providing that only corporations (and in some circumstances, Banco de Mexico, commercial banks and investment companies) could serve as intermediaries in the Mexican market.<sup>286</sup> Applicants may not be affiliated with auxiliary credit organizations and must be bonded.<sup>287</sup> Corporations must meet minimum capital and certain other requirements.<sup>288</sup> Corporate brokerage firms must have a board of directors comprising at least three persons.<sup>289</sup> The charter and bylaws of corporate firms are subject to the approval of the Commission.<sup>290</sup> Under article 12 of the Securities Market Law, intermediation (as defined in article 4) in the market may be performed only by intermediaries (corporations) that are registered, with certain limited exceptions.

The Commission can suspend or cancel the registration of securities brokers when they: (1) fail to satisfy conditions of registration; (2) violate the Law or any regulations promulgated thereunder; (3) make trades not in conformity with ethical and sound practices; (4) fail to undertake proper functions of intermediation; or (5) trade in securities not regis-

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283. Securities Market Law, art. 33; Creel, *supra* note 68, at 332.

284. Creel, *supra* note 68, at 333. Rules of the Mexican Stock Exchange are contained in Reglamento Interior General (General Internal Regulations).

285. Securities Market Law, art. 12; *cf.* section 15 of the United States Securities Exchange Act of 1934, 15 U.S.C. § 78o (1982).

286. Securities Market Law, art. 17, D.O., Feb. 8, 1985, D.O., Dec. 27, 1985. The amendments contained a grandfather clause for individuals already registered.

287. Securities Market Law, art. 18.

288. *Id.*; *see* Nacional Financiera, *Nuevos Capitales Minimos Para las Casas de Bolsas*, EL MERCADO DE VALORES (Feb. 3, 1986); *cf.* rule 15c3-1 under the United States Securities Exchange Act of 1934.

289. Securities Market Law, art. 18.

290. *Id.*

tered in the National Registry of Securities (with certain exceptions).<sup>291</sup>

Registered intermediaries are permitted to trade securities, receive funds,<sup>292</sup> render investment advice and make loans for the acquisition of securities.<sup>293</sup> They may also engage in underwriting and stabilization,<sup>294</sup> provide safekeeping services,<sup>295</sup> form service corporations<sup>296</sup> and act as depository for bondholders and other security holders.<sup>297</sup> Trading of listed securities otherwise than on the Exchange by intermediaries generally is prohibited,<sup>298</sup> as is the trading of unregistered securities by intermediaries.

Registered securities agents are responsible for the authenticity of securities they negotiate.<sup>299</sup> The acquisition of control of ten percent or more of the equity securities of a corporate securities firm, through one or more trades, must receive the prior approval of the Commission.<sup>300</sup> Advertising by securities agents is generally prohibited.<sup>301</sup> Securities agents must furnish periodic statistical information to the Commission about their activities.<sup>302</sup>

#### D. Market Regulation

##### 1. Fraud

The Securities Market Law specifically prohibits two types of fraud: manipulation of stock prices and insider trading. In order to obtain registration of securities, issuers must undertake not to carry out trades

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291. *Id.*, art. 20. The cancellation of the registration of a securities firm shall be cause for dissolution of the corporation. *Id.*

292. *Id.*, art. 22. With respect to receiving funds, the law provides that in the event the broker cannot use the funds to execute a trade as directed, it must deposit them in a separate account in a credit institution no later than the next following business day after receipt. *Id.*

293. *Id.*, art. 23.

294. *Id.*; *cf.* rule 10b-7 under the United States Securities Exchange Act of 1934, 17 C.F.R. § 240.16-17 (1986).

295. Securities Market Law, art. 23.

296. *Id.*

297. *Id.*, art. 23, sec. IV.

298. *Id.*, art. 31, sec. VIII(f). Off-exchange trading of listed securities was not always prohibited in Mexico. *See* Ross, *Changing, supra* note 72, at 149-50 ("Bolsa has no rule compelling members to transact business in listed securities on the floor").

299. Securities Market Law, art. 26.

300. *Id.*, art. 24 Bis.

301. *Id.*, art. 25.

302. *Id.*, art. 27. *See also Aranceles Aprobados Para Las Casa de Bolsas* (Approved Tariffs for the Exchange Houses) (Circular 10-78), NACIONAL FINANCIERA, 39 EL MERCADO DE VALORES (Sept. 30, 1985) (fees).



that artificially change the return on the securities, so that they do not purport to give shareholders benefits that do not derive from the intrinsic value or "proper nature" of the securities.<sup>303</sup> Violation of this provision can result in a cancellation of registration and other penalties.

The Securities Market Law was amended in 1983 with the adoption of Article 16 Bis., which prohibits insider trading. The Law provides that persons who, because of their position with respect to companies having registered securities, or with respect to the securities market in general, have access to "privileged information," must abstain from trading in securities until the information is divulged to the investing public.<sup>304</sup> This provision applies to every person who has access to privileged information.

The Securities Market Law does not contain a general antifraud provision prohibiting misstatements or omissions of material facts in connection with the purchase or sale of a security,<sup>305</sup> although presumably the general fraud rules of the civil and criminal law apply.

## 2. Exchange Regulation

Chapter 4 of the Law regulates the Stock Exchange and the organization of new exchanges. Article 31 contains rules for the establishment of exchanges. Article 32 establishes requirements for members of exchanges.

## 3. Periodic Reporting

In order to maintain registration in the Securities Section, issuers must furnish to the Commission, the Exchange and the public, information

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303. Securities Market Law, art. 14, sec. VII.

304. *Id.*, art. 16 Bis. "Privileged information" is defined in art. 16 Bis., sec. I. Interestingly, section 16(b) of the United States Securities Exchange Act of 1934, 15 U.S.C. § 78p(b) (1986), embodies one of the insider trading provisions of the United States securities laws.

305. *Cf.* section 17(a) of the Securities Act of 1933, 15 U.S.C. § 77q(2) (1982); section 10(b) of the Securities Act of 1934, 15 U.S.C. § 78j(b) (1982); and rule 10b-5, 17 C.F.R. § 240.106-5 (1986), thereunder; sections 13(e), 14(a), 14(e) and 15(c) of the Securities Exchange Act of 1934, 15 U.S.C. §§ 78m(e), n(a), n(e) and o(c) (1982), and rules 13e-1 et seq.; Reg. 14A, 14E, and rules 15c-1 et seq. thereunder; sections 17(j), 20(a), 34(b), 36(a), and 48(a) of the Investment Company Act of 1940, 15 U.S.C. § 80a(48), and rule 17j-1 thereunder; sections 206, 207 and 215(b) of the Investment Advisors Act of 1940, 15 U.S.C. § 80b(6), (7), (15)(b), and rule 206(4)-1 thereunder.

specified by the Commission in its general rules and regulations.<sup>306</sup> The Commission has issued "circulars" requiring corporations to provide periodic financial, legal, accounting and other information to the Commission and the public.<sup>307</sup> One such circular requires corporations to furnish annual reports with audited financial statements and quarterly reports with specified financial information.<sup>308</sup>

#### E. Remedies

The Commission may suspend or cancel the registration of securities and brokers when issuers and agents fail to satisfy the conditions of registration.<sup>309</sup> The Commission also may order administrative review of an exchange when certain violations of law occur<sup>310</sup> and when, in spite of intervention by the Commission, an exchange cannot solve the problems giving rise to the audit.

As mentioned above, the Law proscribes insider trading. A person damaged by another person's insider trading may bring a lawsuit for rescission of the trade and payment of damages.<sup>311</sup> 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.

#### V. CONCLUSION

Mexico has reached a critical juncture in its economic history. The government must move forward decisively with measures designed to decrease inflation, interest rates, capital flight and the deficit, and increase growth, savings and investment. It would be in Mexico's long-term interest to relax significantly its restrictions on foreign investment. It would not be in Mexico's long-term interest to repudiate the debt or engage in unilateral rescheduling as Brazil did in 1987.

The capital market, obviously not a short-term solution to the economic crisis, does offer an alternative source of financing for Mexican

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306. Securities Market Law, art. 14, sec. VI; *cf.* sections 13 and 15(d) of the Securities Exchange Act of 1934, 15 U.S.C. §§ 78m, 78o(d) (1978) and regulations 13A, 15D and 14A thereunder.

307. Creel, *supra* note 68, 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.

308. *Id.* at 338-41.

309. Securities Market Law, art. 16.

310. *Id.*, art. 38.

311. *Id.*, art. 16 Bis., sec. IV.

organizations, which historically have been overly dependent upon bank borrowings. The government should devote increased attention to the development of the nation's capital market. Although the infrastructure for a national securities market is already in place, the institutional and regulatory framework could be improved, and the first objective would be to enact provisions designed to increase investor confidence. In this regard, policymakers in Mexico should consider adopting a general securities fraud provision with a liberal private remedy, a system of proxy and tender offer regulation, and a statute governing the rights of public bondholders and regulating trustees for public debt issues. The latter regulation, which might be analogous to the United States Trust Indenture Act of 1939, could be particularly useful in Mexico due to the predominance of the debt market. The Mexican government should take steps, as did the governments of Korea and Brazil, to increase the supply of shares.<sup>312</sup> Regulators also could adopt measures, such as tax incentives, designed to increase the demand for securities.<sup>313</sup>

The capital market in Mexico, as elsewhere, should function as a link between savers and users of funds and thus serve as a mechanism to allocate resources to the most efficient users.<sup>314</sup> Capital markets serve as a source of funds for private enterprises and public instrumentalities that need money for working capital, capital improvements, expansion, public projects or similar purposes. A deep and liquid capital market is an alternative to bank indebtedness; sophisticated corporate financing can tap unused sources of funds. The equity market is of critical importance; an optimal ratio of equity capital to debt can reduce the overall cost of capital for an organization.<sup>315</sup> The capital markets offer investment opportunities for savers who, either individually or through collective investment vehicles such as pension plans, may earn interest in the debt market and experience capital appreciation in the equity market. By improving the capital markets and "the allocation of investible resources, greater eco-

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312. Dickie, *Development of Third World Securities Markets: An Analysis of General Principles and a Case Study of the Indonesian Market*, 13 L. & POL. INT'L BUS. 177, 183; A. BASCH & M. KYBAL, *supra* note 14, at 75. One measure which might increase the supply of shares would be a more comprehensive set of statutory or regulatory exemptions from the securities registration requirement.

313. A. BASCH & M. KYBAL, *supra* note 14, at 83; Dickie, *supra* note 312, at 194-95. See generally R. LOONEY, *MEXICO'S ECONOMY: A POLICY ANALYSIS WITH FORECASTS TO 1990* 181 (1978). Such incentives might take the form of making the purchase of certain securities tax deductible to the purchaser or the receipt of earnings on certain securities tax exempt to the recipient.

314. D. BROTHERS & L. SOLIS, *supra* note 32, at 34.

315. See B. GRAHAM, D. DODD & S. COTTLE, *supra* note 15, at 539 (1962).

conomic efficiency and hence faster development might be achieved."<sup>316</sup> Maturation of the capital market could, over the long run, make a significant contribution to Mexico's economic development.

## APPENDIX

### LEY DEL MERCADO DE VALORES

(Securities Market Law)

#### TRANSLATION OF SELECTED PROVISIONS\*

The following is a translation of selected provisions of the Securities Market Law. Numerous sections of the statute have been omitted in the following translations. This translation is for educational purposes only; those concerned with actual legal issues arising under the statute should consult the original Spanish text.

### FIRST CHAPTER

#### Preliminary Matters

*ARTICLE 1:* This law regulates the public offering of securities, the operations of intermediaries in selling securities, the activities of the persons who regulate [the securities market]. . . .

In the application of this law, [regulatory] authorities should strive to promote a balanced development of the securities market and a healthy competition in the securities market.

*ARTICLE 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 the next article.

The National Securities Commission shall establish criteria for general application [setting forth] what is required if the offer is public. . . .

The public offering of securities and documents to which this law refers is required to be previously approved by the National Securities Commission.

*ARTICLE 3:* Securities are the shares of stock, bonds and other credit instruments that are mass issued or serialized.

The policy that the present law establishes for securities and the activities relating to them shall also be applicable to credit instruments and

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316. K. GRIFFEN, *FINANCING DEVELOPMENT IN LATIN AMERICA* 118 (1971).

\* D.O., Jan. 2, 1975, as amended D.O., May 12, 1978; D.O., Dec. 30, 1980; D.O., Dec. 28, 1983; D.O., Feb. 8, 1985; D.O., Dec. 27, 1985; D.O., Dec. 31, 1986.

other documents that may be in the object of 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.

The public offering of any document that is not of those mentioned in this article is prohibited.

*ARTICLE 4:* Intermediation in the securities market is considered to be the repeated execution of—

(a) Trading by brokerage or otherwise to bring together the supply and demand of securities;

(b) Trading for an intermediary's account, in securities issued or guaranteed by third parties, in respect of which a public offering is made;

(c) Administration and management of securities portfolios which are the property of third parties.

*ARTICLE 5:* All publicity or information directed to the public about securities, or about the services or operations of the brokers and markets for securities, shall be subject to the previous approval of the National Securities Commission, except the information that credit institutions as well as auxiliary credit organizations, seek to dispense about the securities that they issue or guarantee, which will be subject to the applicable legal requirements.

*ARTICLE 8:* The Ministry of Finance and Public Credit shall be the organ competent to interpret, for administrative purposes, the precepts of this Law. . . .

## SECOND CHAPTER

### OF THE NATIONAL REGISTRY OF SECURITIES AND INTERMEDIARIES

*ARTICLE 10:* The National Registry of Securities and Intermediaries shall be public and shall be formed with two Sections, that of Securities and that of Intermediaries, and shall be under the direction of the National Securities Commission, which shall organize it in accordance with this Law and the rules that the Commission dictates.

*ARTICLE 11:* Only documents registered in the Securities Section can be subject to public offering. Public offering in foreign countries of securities issued in Mexico or by Mexican companies shall be subject to registration of the respective securities in a special section [of the Registry]. . . .

*ARTICLE 12:* Intermediaries in the securities market may only be undertaken by corporations registered in the Intermediaries Section. . . .

*ARTICLE 13:* Only documents registered in the Securities Section of

the National Registry of Securities and Intermediaries can be the subject of trading in the securities market.

Excepted from this regulation are operations with securities that, without constituting a public offering, may have as their object the subscription of stocks, the merger or reorganization of corporations, the sale of significant portions of the assets, or the brokering of the documents to which the second paragraph of Article 3 of this Law refers.

*ARTICLE 14:* In order to obtain and maintain the registration of securities in the Securities Section, the issuers must satisfy, in the judgment of the National Securities Commission, the following requirements:

I. That there exists an application from the issuer.

II. That the characteristics of the securities and the terms of their placement permit their circulation which shall be significant and shall not cause prejudice to the market.

III. That the securities shall have or can come to have ample circulation in relation to the magnitude of the market or of the issuing business.

IV. That it is reasonably foreseen that the issuers have solvency and liquidity. . . .

*ARTICLE 16 Bis.:* Persons who, because of their position with respect to corporations issuing securities registered in the National Registry of Securities and Intermediaries, or with respect to the securities market in general, have access to privileged information relative to any of said corporations, shall abstain from transacting in that class of securities issued by such corporations, for his own benefit or for that of third persons, until the information cited is divulged to the investing public. . . .

I. It is understood by 'privileged information' to mean that information relating to a corporation issuing securities registered in the cited Register, that under this Law should be given to the National Securities Commission, to the investing public, and in appropriate cases to the corresponding securities exchange, in conformity with general criteria said Commission may establish, which has not yet been divulged to the investing public and which could influence the prices quoted for the securities issued by said corporation. . . .

### THIRD CHAPTER

#### SECURITIES AGENTS

*ARTICLE 17:* Those corporations wishing to be registered in the National Registry of Securities and Intermediaries should meet, to the satisfaction of the National Securities Commission, the following requirements. . . .

. . . .

## FOURTH CHAPTER

## STOCK EXCHANGES/SECURITIES MARKET

*ARTICLE 29:* The stock exchanges function to facilitate transactions in securities and to promote the development of the market through the following activities:

I. To establish sites, installations and mechanisms that may facilitate transactions between the supply of and demand for securities.

II. To provide and maintain for the public information about securities registered in the securities market, their issuers and the transactions.

III. To make publications about the subjects cited in the clause immediately above.

IV. To watch for the strict adherence to the activities of its members to the provisions that may be applicable to them.

V. To certify quotations on the stock exchange.

VI. To undertake those other activities analogous or complementary to the preceding that the Ministry of Finance and Public Credit may authorize upon the advice of the National Securities Commission. . . .

*ARTICLE 31:* The Stock exchange should be established as corporations with variable capital, in accordance with the General Law of Commercial Companies and the following special rules of application: . . .

VIII. (f) The members of the exchanges shall not trade outside of the exchange the securities registered in them. The Ministry of Finance and Public Credit shall be able to determine the transactions that, without being negotiated on the exchange, shall be considered as undertaken through same. . . .