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Final Report

Integration of Central American Stock Markets

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INTRODUCTION

The present report was prepared by Nathan Associates Inc. for the Regional Office for Central America and Panama (ROCAP), for the Agency for International Development Agency - A.I.D., under contract N° AEP-5451-I-00-2058. The project which is the subject of the present report (N° 596-0147), forms part of the technical assistance which A.I.D. contributes to the Support Program for the Development and Integration of Central America/Central American Monetary Counsel. Annex A presents a copy of the reference terms under which the present report was elaborated.

The purpose of the present report is to analyze the legal, regulatory and operative structures of each stock market of the Central American region, and the manner in which each facilitates or hampers the integration process. Based on this analysis, the measures that could be adopted during short and long term periods in order to eliminate distortions and facilitate the integration are proposed. Throughout the writing of the report, the basic premise of analyzing local markets was maintained, with the purpose of forming a single regional market. The recommendations are focused on this issue.

The writing of this report was divided into three stages. During the first stage, an investigation was performed in regard to the advancements of the stock market integration made by the European Community (EC).

The second stage consisted of analyzing the legal as well as regulatory and operative conditions of the Central American Isthmus countries' stock markets. This analysis involved a document review, mainly of the laws and by-laws that rule the markets. Interviews were held with the main participants of each stock market. Annex B lists studied documents is given, and Annex C lists of the persons interviewed. The third stage consisted in presenting the first draft of the report to a group of selected persons interviewed in each country, in order to obtain their comments and recommendations, and include these in the present report.

Chapter 1 presents background on the formation of a commercial block in the Central American region, as well as the measures adopted up to the present, in order to achieve the integration of all of the region's stock markets.

Chapter 2 describes the experience which the EC has in integrating the stock markets of its member countries. Also, the reasons are demonstrated that motivated the adopted measures to make the integration feasible, since they are applicable to the Central American region.

Chapter 3 demonstrates the main conditions in order to achieve an efficient stock market, on a national as well as a regional level, and the current conditions of the region's markets are analyzed. In the first three chapters a didactical point of view has been used, which will permit the explanation of each one of the arguments and deliberations exposed during the course of the report.

Chapter 4 analyzes each one of the national markets. The analysis covers only the most important aspects of each market. On the other hand, the different laws and regulations have been analyzed exclusively on the operative aspects, and the legal character deliberations are not included. Likewise, the same chapter included some recommendations in order to strengthen the development of each of the markets.

Finally, Chapter 5 is dedicated to conclusions and recommendations. Some measures that will be taken in short and medium terms in order to achieve not only the development of the markets in an individual manner, but also their integration. Likewise, main areas are identified in which the stock markets of the Central American countries need technical assistance in order to facilitate the integration.

TERMS USED

There exist diverse terms for naming the same stock exchange transaction operations or activities. In the following paragraphs some terms used in the present report are defined. Furthermore, the region's countries employ different terminology to designate the main participants or activities in the stock market. Due to the above, the terms that are used in each country will be provided to designate the same activity.

STOCKBROKER OR STOCKBROKER AGENCY: Natural or legal person authorized to perform financial middleman work with titles-securities (stocks) within a stock exchange. In the majority of the region's countries, only the legal persons are authorized. The terms used in the different countries are:

Casa de Bolsa (Stock Firm) Guatemala

Puesto de Bolsa (Stock Station) Costa Rica

Casa Corredora de Bolsa (Brokerage house)¹ El Salvador

FIRM PLACEMENT OR UNDERWRITING: The guarantee that a stockbroker gives to an emitting entity on the placement of all the titles-securities that he issues, committing himself in case the market does not acquire them on its own account. This activity is also performed by the investment banks and is known as *underwriting*.

OPERATED AMOUNT: Amount of the titles-securities that are negotiated. It is calculated when the number of negotiated titles is multiplied by the price to which said negotiation was performed. In all the countries of the region, the term is mistaken with "volume".

INTEGRATION OF STOCK MARKETS: The stock markets are considered integrated when the stock exchange of two or more national markets have immediate access and it is possible to negotiate any title-securities that are registered at any of the stock markets which are integrated simultaneously, in the primary as well as the secondary market. Furthermore, the middlemen who are authorized to operate in any of the stock markets may perform their work in any other integrated markets.

This concept must not be confused with that of the operations performed in virtue of the current technological advances through which it is possible to have access to the most important stock markets of the world from practically any country, since the computer and telecommunication systems permit the immediate knowledge of the operations carried out in these markets. Those elements - linked to the possibility of doing transactions via a phone call, and the multiple quotations of some enterprises in various stock markets - may give way to confusion. Nevertheless, the fundamental difference rests on the fact that the integrated markets act as a single one, and the titles registered in one market do not require additional authorization in order to quote (list) themselves in another.

CAPITAL MARKET: The ample definition of capital market is adopted, where the issuance term is taken into consideration. This market is an integrating part of the stock market. The titles-securities that are negotiated in it are the shares of stock and liabilities or bonds issued on medium and long terms.

¹ The Stock Market Bill calls it "casa corredora de valores" (Stock Exchange Firm).

MONEY MARKET: A market in which titles-securities are negotiated on short term, between one and 360 days. Even though this is not a purely stock exchange transaction, it has great importance among the Latin American stock markets.

STOCK MARKET: The ample definition of stock market is used to refer to those formal markets in which an ample range of titles-securities are negotiated. The term "capital market" is more restrictive, referring exclusively to the negotiation of titles-securities of this sector, mainly shares of stock and bonds or liabilities.

OPERATOR: Natural person authorized by the stock exchange to act as agent of the stockbrokers in order to perform the bargain and sale trading operations of titles-securities on behalf of the stockholder or its clients. The terms used in the different countries are:

Operador de piso (floor operator- stockbroker) - Guatemala

Agente de Bolsa (stockbroker) - Costa Rica, Nicaragua, Panama ²

Agente corredor de bolsa o corredor (stockholder)- Honduras

Agente de casa de corredores³ (stockholder) - El Salvador

VALUE OPERATION SAME DAY: A title-securities bargain and sale trading operation that must be settled on the same day of the operation. In all of the countries that belong to the region, it is known as "operación valor hoy" (today's value operation).

PROMOTOR OR ACCOUNT EXECUTIVE OR INVESTMENT ADVISER: Natural person, empowered by a stockholder in order to perform operations with the investing public. In the Central American countries, this figure does not exist in a formal manner. Frequently, his activity is confused with the the operator's one, or it is indicated that only the operators may perform this activity, even though there does not exist any conflict. When the markets develop, the activities tend to specialize and, therefore, they are performed by different persons. In effect in some markets of the region, the activity has already been defined or separated, even though no authorization or permit is required to act as a promotor. Due to the nature of the activity developed by the promotor, and with the purpose of protecting the investing public's interests, it is necessary to have a permit in those markets with the higher grade of progress.

EMITTING PROSPECTUS OR PROSPECTUS: Document with which the title-securities public offer is announced, and which provides the investing public with all the information relevant to the emitting entity and the title-securities that are being issued.

FIXED INCOME: The sector of the stock market where the title-securities of indebtedness are negotiated, whether a fixed or floating rate of interest is paid, or capital gain is generated, just as in the case of the securities issued at a discount. In Costa Rica, the debt securities issued at a floating or variable rate are not classified within this sector, but rather in the variable income one (defined below). This practice is not used in the developed markets.

² In order to become a stockbroker in Panama, a license or permit of a security selling agent granted by the National Securities Committee is needed.

³ The Stock Market Bill calls it "agente corredor" (stockholder).

VARIABLE INCOME: The stock market sector in which titles-securities offer a variable yield pursuant to the expansion of its emitting entities. The titles which form it are exclusively stock shares.

REPORTO OR BORROWING OF SECURITIES: An operation by which the borrower of securities purchases for a certain amount of money the property of some title-securities, and is obliged to transfer back to the lender of the securities the property of *other equal titles of the same kind* in an agreed upon term, and against the reimbursement of the price he paid for them plus a bonus.

RE-PURCHASE OR PURCHASE OPERATION WITH AN AGREEMENT TO RESELL: Operation by which one of the parties acquires in property some title-securities and is obliged at the end of the agreed upon term to sell the *same* title-securities to the other party, at the price paid for them plus a bonus. However, this operation can be optional, reason for which it is possible, when the agreement is carried out in this manner, to separate the operation into two sections: an underwriting sale and at an optional term.

INVESTMENT PARTNERSHIP OR INVESTMENT FUND: Entity which obtains resources from the public in order to invest them on its behalf in a diversified portfolio of title-securities. When it is formed as a corporation or stock company, it is called an investment partnership. When it has the figure of a limited-liability company, it is called investment fund, although in some countries it is known as fund, even though it is organized as a corporation. Pursuant to the composition of their portfolio, the entities are classified into

- o **Partnerships of common investment or mutual funds**, when they invest in a mixture of securities of variable and fixed income, the first having a greater percentage participation;
- o **Partnerships of fixed income investment**, when they invest in title-securities of indebtedness (these may be of high liquidity)
- o **Investment funds of money market**, when they invest the higher percentage of the portfolio on short term securities
- o **Yielding funds**, when they invest the higher percentage of their portfolio in long term debt securities.

TITLE-SECURITIES OR TITLE: Title which represents a property right, participation or credit and is susceptible to be negotiated in a stock exchange. The ample definition of the term is used and it does not refer exclusively to the titles issued in mass or in series, so that titles such as promissory notes and bank acceptance are included, whether the first are called commercial paper or not.

VOLUME: Number of negotiated titles. This information is especially valuable when it refers to stock shares, since it is used to measure the number of times a company's shares of stock have changed hands, which in turn helps to determine the depth of the secondary market.

EXECUTIVE SUMMARY

The idea of the integration in Central America is not new. During the sixties, the first integration efforts were begun, resulting in the formation of the Central American Common Market. This was a protected market limited to the free trade of certain industrial goods, maintaining the restrictions on the mobility of the factor among the countries - however, the experience was a successful one. The financial and balance of payment crisis of the seventies, together with the political crisis of some of the region's countries, were the negative elements that affected most of the common markets. These elements - together with other internal and external factors, made the market disappear.

The serious economical crisis of the eighties and the change in philosophy of the governments, determined the beginning of the structural adjustment programs. Furthermore, the democratization and peace processes in the region began, and for the first time, the economical politics of the Central American countries coincided in various aspects, and the idea of integrating a trade block that would facilitate the reactivation of their economies was adopted again. "Integration" was then defined as a gradual approximation process to economical politics and complementation in an environment of free competition that would involve the free mobility of goods, services and factors on a regional level.

The unification efforts in the common market during the nineties are different from those of the previous model, since there exists a certain consensus on the manner in which the internal economical politics must be handled. The new outline is open to international competition and to more mobility of goods, services and factors. Under this, the integration of the stock market is contemplated. The new integration endeavors fittingly began in a meeting in Antigua, Guatemala in June, 1990, and ended their first phase in October, 1993, with the signature of the presidents of Guatemala, Costa Rica, Honduras, El Salvador, Nicaragua and Panama on the Central American Economical Integration General Treaty Protocol. Currently, the ratification of those countries' congresses is still pending in the Protocol.

Within this context, the first step to achieve the integration of the financial markets culminated August 27th, 1993, when the presidents of El Salvador, Honduras and Nicaragua signed the Agreement to Facilitate the Financial Integration of the Central American Isthmus Countries. This instrument remained open to the adhesion of Costa Rica and Guatemala, and will be in force when two of the signing countries have fulfilled the pertinent constitutional procedures. For the first time, this agreement exposed clear procedures so that banks and financial institutions of a subscribing country may establish branches in the other subscribing countries. In regard to the integration of the stock markets, the document does not represent great progress in terms of concrete measures, but it does provide the legal framework in order to adopt them. Article 13 of the Agreement establishes that "the competent authorities of the countries that subscribe the present Agreement, will take the necessary actions in order to achieve the regional integration of the stock market, including the review and harmonization of the standards that regulate the stock exchange operations".

As far as it is concerned, the private sector has also shown itself active in the integration process, predominating those who have made the stock exchange in Guatemala, Honduras and El Salvador. Likewise, the creation of the Central American Stock Exchange Association (BOLCEN, by its initials in Spanish) stands out, which was promoted by the Private Federation Entity of Central America and Panama. BOLCEN signed its incorporation papers in the City of Panama in January 1991.

The general objective of BOLCEN is to promote and contribute to the establishment and adequate functioning of the stock exchange in the Central American region, as well as with the

integration process of the stock exchange, among which stand out the initiative of writing out an ethics code for the stockbrokers and the agreement to authorize all of the associated stock markets, the negotiation of titles-securities issued by the governments and central banks of the Central American countries.

In order to place the integration of the Central American stock markets in perspective, it is necessary to analyze the experiences of the other regions. Even though there exist various examples, the most important one is the process followed by the European Community.

The EC sets forth as foundation of its economical unification the following principles:

- o The monetary and economical unification, which implies complete freedom in the mobility of persons, goods, services and capital, requiring types of fixed conversion rates and, eventually, one sole currency.
- o The convergence of the countries' economies. Only this can guarantee free movement of capital in a permanent manner, and can set the foundation in order to count on integrated stock markets where the barriers and separation sources will be eliminated. For this reason, it is essential to insure a close coordination of the monetary, financial and budgetary politics.

In 1986, when the so-called "White Document" was incorporated to the Community Treaty, the internal market was defined, including the free movement of capital. This document explains that the goods common market was already functioning and that it was important to make a similar progress in the service area; within these are included the financial services. The European financial common market is essential for a free cross-border market in Europe, and it is supported not only by the free movement of money and capital of all the citizens, but also by the freedom that the middlemen have to establish and provide financial services.

The integration of the stock markets of the EC acquires more importance with the changes that have been operating throughout the world in the environment where the financial institutions develop: globalization; development of telecommunications and information systems technology; the broad competition among different classes of financial institutions which tends to erase the differences among the banking, insurance, and securities entities; increase of the competition between the European financial institutions and their North American and Japanese counterparts.

The establishment of one sole market of financial services in the European Community is based on three pillars: (1) freedom for all the financial institutions to consolidate their main offices and open branches in any part within the EC, (2) freedom so that they may offer their specific products across the frontiers of the other member nations without need of opening branches there, (3) freedom of capital movement within the EC.

In order to guarantee these liberties, all the countries members of the EC are compelled to insure that (1) their residents have access to the financial systems of other member nations and to all the financial products which are available there, (2) there are no restrictions to capital transfers, and (3) there are no discriminatory measures which impede or distort the free movement of capitals. The main point on which the complete unification outline of the financial markets is based is on the free movement of capitals.

The authorities of the European nations coincide in that it is necessary to achieve the fulfillment of certain requirements before unification of the financial markets. These requirements comprise different areas, namely, monetary political, financial aspects, payment system, and protection to savers and depositors through the harmonization of prudential rules. Generally, the main actions that are adopted may be summarized in four points:

1. Coordination of the registration requirements of titles-securities in the stock exchange.
2. Harmonization on the minimal information that the emitting entities must publish, not only to launch an issue and achieve its registration in the stock markets, but also to provide periodic

information for the investing public. An important step that was given in this sense is the harmonization of the accounting procedures and standards.

3. Measures which tend to eliminate taxative distortions.

4. Agreements on the supervision of middlemen and precautionary steps to promote the transparency of the information, avoid the utilization of privileged information and harmonize the behavior codes of the middlemen in the different countries.

In spite of all the efforts performed in regard to the integration of the financial markets, significant advances have only been achieved in the banking, insurance and reinsurance fields. Although the integration of the stock market is still far off, it is attributed to various reasons, among which the following can be pointed out:

- o Even though various directives have been issued in that respect, they have not achieved the harmonization and effective and perceptive convergence of the legislations and regulations of securities and taxative matters for the participants in the market.

- o An integration based on the electronic bonds of the different markets is being planned. The stock markets of the member countries have begun endeavors in that sense since 1984, but the incompatibility of the systems used, and the struggle so that the system developed by one specific country may be the one that prevails, are elements that have stopped the integration progress.

- o Even though it is a fact that the stock markets of the countries members of the EC are not fully integrated, the technological progress and liberalization of the capital movements permit that any person may invest through their middleman, who by means of correspondents or even branches, may allocate the investment. This element, jointly with the fact that the most important firms quote their titles-securities in various markets, maybe has influenced on that fact that the integration per se is not contemplated as a priority.

The integration of the stock markets of the Central American Isthmus countries must be analyzed, taking into consideration that such integration has two objectives: first the structure of a regional market and, second, the participation of that integrated market of larger size and depth, in the international markets. The integration of the national markets will permit the substantial increase of the number of participants and efficiently direct the regional savings towards the most attractive productive projects. For this reason, the creation of a stronger, deeper and continuous market is sought with the integration, a market that permits an increase of its efficiency and an augment of the advantages that the national market offers all of its participants. In order to achieve a successful integration, it is important that the region's stock markets fulfill their basic function: support the wealth generating activities. Furthermore, the integration implies a minimum degree of harmonization of laws and regulations that rule the stock exchange transactions, so that a transparent and efficient market may be created.

In regard to the second objective, mainly, to actively participate with greater competitive advantages than individually in the international markets, it can be affirmed that this has one sole purpose: attract international savings. Therefore, the characteristics that the so called global investors seek in the developing markets must be present.

The support of the whole market is the confidence that the investors have in the system. Therefore, it is essential for the market to comply with the following minimum requirements:

- o Clear legislation and regulations that promote the development of the market and provide parameters on the degree of freedom to which each one of the participants will be subject to - and at the same time avoid excessive regulation, which could eliminate said freedom, and always having present that the rules that are established must always be applied without exception, so that they may inspire confidence and security in the stock exchange transaction system.

- o Supervision of the way the participants act in the market in order to insure its transparency. Nevertheless, these tasks must be performed basically towards the middlemen, in such a manner that the investors' interests are protected when their honesty and the observance of wholesome uses and practices of the market are guaranteed.
- o Information opening by the emitting entities, which must be ample, clear, standardized, continuous and at the disposition of all the participants at the same time, in such a manner that it may permit the making of rational investment decisions.
- o Processing of efficient and agile clearance and transfer procedures of titles-securities.
- o Promotion of the market participants' training. Consequently, a well qualified middleman will offer his services in a professional manner and a qualified investor will know his rights and obligations.

Unfortunately, the Central American region markets do not comply with those requirements in all their extension. The following aspects should be pointed out:

- o **Legislation and Regulation:** The only country in the region that, to date, has a stock market law is Costa Rica. In Panama there exist diverse legal codes which are dispersed, and regulate the stock market. The rest of the region's countries have laws and decrees that establish some principles on the stock exchange transaction activity. Nevertheless, in Guatemala, Panama and El Salvador, bills have been prepared in regard to this matter. To date, the only project presented to Congress for its approval is the Panamanian one; on the other hand, in September 1993, the writing out of the Stock Market Bill of Honduras was begun.

In the region's markets there practically does not exist legislation nor regulation for investment funds. In Costa Rica, the legislation contemplates it amply, though inadequately, and the regulation is insufficient since it does not cover, for example, portfolio appraisal norms. Currently, the funds that operate in the region are few, even though it must be pointed out that in Costa Rica semi-analogous entities have emerged, which the stockbrokers administer and which are not adequately regulated, since even the clients are guaranteed on the investment's effectiveness. Unfortunately, this practice has been transferred to other countries of the region.

- o **Issuance of general character norms:** The stock markets are very dynamic and it is necessary that the norms which regulate them may rapidly adapt to the changes that they present. Therefore, the laws should establish only the general operation framework; furthermore, it must be taken into consideration that the process which approves a law or its modifications, is complex and takes a lot of time. One cannot depend on the modifications of the law for the stock market to develop - then the role which the norms of general character play is of vital importance, since their modification is simpler and they grant flexibility. In regard to their adaption to the conditions which dominate in the markets. This is important in the case of the Central American countries, where there exists more than one stock exchange and where supervision does not exist or is very weak. If the outline is maintained, it will mean that the supervising entity must execute its authority in a different manner, pursuant to the regulations of each stock exchange. Even though there are some operative restrictions, only in Costa Rica has the supervising entity the express authority to emit general character norms, which permit the regulation of the stock exchange transaction activity. This is probably the most important element of the regulation and supervision tasks.

None of the region's countries has prudential norms issued for middlemen, such as:

- Establishment of minimum capital;
- Special accounting systems;
- Requirements for the presentation of financial information (in those few cases where they have been established, they are deficient);
- Establishment of title-securities assignment systems;

- Documentation on the relation between the stockholder and his clients, by means of a commercial commission contract and the obligation of presenting the clients with statements of account;
- Regulations on the advertising that the stockholders may make on the services they render.

Even though in the region's market it has been established that, in order to operate, the stockholders are required to create a bond in order to guarantee their operations, the amounts are reduced and no operational criteria is applied when they are set.

o **Supervision:** In the region, the majority of the participants intercede so that the stock markets be the ones that perform the supervision and control tasks of the market. In general terms, the supervision that is performed in the stock markets of the region is weak, and does not comprise fundamental aspects, such as the adequate control of the middlemen. This is probably the most important task in order to protect the investing public and the transparency of the market, since precisely the middlemen are those that deal directly with the public. The extreme case of the region is Guatemala, where there does not exist any authority that supervises, directly nor indirectly, the stock markets or the stockholders, and a total self-regulation exists with great deficiencies.

On the other hand, the authorization that permits supervising entities to perform inspection visits to the middlemen are limited, and only exist in Costa Rica and Panama. In none of the region's countries is this entity granted the authority to decree the administrative intervention.

In none of the region's countries has the promotor figure been established; only a reference to the operator is made. Even in some regulations is the figure confused or it is considered as a fact that only the operators will be the promoters. Nevertheless, in almost all of the countries there exist persons that deal directly with the investing public and who do not have to comply with any requirement in order to develop the activity.

o **Information opening by the emitting entities and the standarization:** The efficiency of the stock markets is measured according to the celerity with which they adjust to the information which determines them. Among the stock markets of the six countries that form the Central American Isthmus, it was pointed out that in none of them is found the necessary information in regard to all of the emitting entities which permit the efficiency of the markets. In the few cases where there is information, distribution channels are bad. The Costa Rican market is the only one that requests quarterly information and in which there exists a standardized form of presentation. Nevertheless with the purpose of promoting the market, special norms were emitted for "small issues" that substantially reduce the information requirements.

On the other hand, even though the norms that are in force in the region's markets establish the delivery of information in a periodical manner, the same norm is not applied in all of the markets: some request it quarterly and others semiannually. Furthermore, the regulation is not made effective in all cases.

One of the basic forms of delivery of information is the prospectus on the issuance of title-securities. Nevertheless, from the ones reviewed, it can be said that they are deficient in all of the region and do not present complete information. For example, the notes of the audited financial statements are not always included. The destiny of the funds that are captured with the issue are not either, nor sufficient information on the interest payment and its calculation manner, even though in Costa Rica as well as in Panama, the prospectus were reviewed with a good amount of information.

o **Processing of clearance and transfer procedures of titles-securities:** The clearance systems used in the region are not efficient in all of the cases, but important efforts have been made to improve them, even though there subsist some deficiencies. For example, in all markets it is not possible to perform the clearance in the same day. However, the greatest difficulty is found in the transfer of the title-securities. Even though there is also important progress in this field, and the

majority of the stock markets have begun the creation of guarding, custody and administration mechanisms, currently they are not operating fully. The endorsement figure in administration does not exist and this subtracts fluidity to the operations. Also, the procedures for transfer are hampered at the same time that the dematerialization of the titles becomes difficult.

There exist some elements, besides those of economical politics, and which are not directly related to the stock exchange legislation, that affect the stock markets, and therefore, their integration. The two most important ones are:

- o To date, in Costa Rica only registered shares exist, while in the rest of the countries of the region, there are shares issued to the bearer.
- o There are important differences in the taxative treatment among all the region's countries. For example, in Panama when performing public offer of title-securities in the stock exchange, the interests are exempt from taxes, and in Honduras the interests of the titles negotiated in the stock exchange are subject to a 10% rate, and they are not accumulative for income tax effects.

Besides the aforementioned, there are some characteristics of the stock markets of the region that are pertinent to mention, and are listed below:

1. The majority of the title-securities negotiated in the region's market are those of indebtedness, which are the titles issued by the public sector, except in the case of Panama and Honduras, where the presence of public titles is minimum.
2. Due to the fact that the majority of the negotiated titles pertain to the government, the stock markets of the region partially fulfill their function, since the wealth generating activities that they support are few.
3. In practically none of the countries a deep secondary market has been achieved. In its majority it is represented by borrowing securities operations, or those of repurchase that are used to give clearance to the banking institutions, or as a means for these institutions to invest their temporary surplus. In effect, through these operations the interbanking market has been substituted.
4. The stock market sector that has greatest importance in the region is the money market, which is due in part to the absence of institutional investors, who are those that by nature make long term investments. Pension funds are basically of public character and affront serious clearance problems, and when they can count on resources, the norm specifies that they be invested in public sector titles. Insurance companies affront rigid regulations that basically also limit the investment to governmental titles. In regard to the third most important institutional investor, investment funds, they are practically non-existent and the few that operate make short term investments.
5. The most important operations performed in the stock markets of the region are those of stock exchange transactions. In the majority of the countries operations such as repurchase are performed; in Costa Rica, they are contemplated as such. This operation form limits the versatility of the stock exchange transaction and actually reduces the opportunity of generating profits for the middlemen.
6. With few exceptions, there exists in the region the idea that the supervising entity or the stock exchange must classify the title-securities or the emitting entities, and some legislations and regulations actually establish it.
7. Currently, only in Costa Rica does there exist a securities classifying firm.
8. There exists the practice that evidence of indebtedness pays interests pursuant to the rates expressed according to a commercial year of 360 days, a custom that is generally adopted by markets with a higher degree of development. Nevertheless, in the Central American countries, titles pay only periods of 360 days even though the issue is for a calendar year. That is to say, they do not pay for the days that have effectively elapsed, as is customary in the more developed markets.
9. During the investigation the need to increase the training efforts at all levels was detected, for the stock exchange personnel (the middlemen) as well as for the supervising authorities.

Notwithstanding, all the interviewed persons stated their interest in training and in making the necessary efforts to achieve it at an institutional level.

10. The region's stock exchange is characterized because the majority is of mixed character; that is to say, not all their stockholders are stockbrokers. The stock markets where only the stockbrokers are the stockholders are the National Stock Exchange of Guatemala, the Electronic Stock Exchange of Costa Rica, and it is expected that all the stockholders of the Central American Stock Exchange of Honduras form stockbrokers agencies.

11. The negotiation procedures that are used are not the same in all of the stock markets of the region.

On the other hand, an aspect which is important to consider is the financial situation that the region's stock exchanges confront. With reference to this, it must be pointed out that the stock exchanges of the Central American countries, with three or more years of operations, achieved the break-even point in a term under three years. Nevertheless, at this moment it is difficult to perform a diagnosis of the financial future of the stock markets, in virtue that some of them have recently begun operations (less than 12 months). Furthermore, in countries where a second or third stock exchange has been created, the medium term impact that the putting in motion of a new stock exchange will have on the income of the existing stock exchange, or the financial perspective of the same, is uncertain. Notwithstanding, in general terms it can be affirmed that for the moment, the majority of the region's stock markets have a stable financial situation and that to date they have adequately handled their resources.

In spite of their youth, stock markets of the Central American countries have achieved significant progress that must be strengthened. Part of the process must include the elimination of distortions and obstacles that they currently confront. In this manner the transfer of the distortions from one country to another can be avoided when the integration process begins, especially those distortions of operative character.

Nevertheless, this does not imply that the ideal conditions to begin the process must be achieved. On the contrary, now is the moment to take advantage of the impetus that the governments as well as the private sector entities have given to the integration in order to set solid bases that will permit an integration, benefiting all the countries of the region.

Also, advantage must be taken of the fact that recently, all the region's countries have completely reviewed their legislations and regulations to incorporate into them the mechanisms which permit the development of transparent, agile and solid markets, consistent with international standards. In this manner the integration process will be facilitated and fortified.

For Central America, the European Community experience is very valuable, since its integration process is affected in a similar manner. Nevertheless, the incipient degree of the Central American region markets demands that efforts be greater and requires encompassing areas not foreseen by the EC.

Even though the simultaneous integration of all the stock markets that operate in the region is desirable, this achievement is difficult because not all have the necessary infrastructure. The fact that the stock markets will integrate gradually will not harm the process and, furthermore, they can benefit it as, in theory, it will be easier to come to agreements that will make it feasible.

On the other hand, effective control of changes that impede the performance of transactions among countries, currently do not exist in any of the countries of the region. Therefore, it is feasible that, very soon, the range of instruments that may be negotiated in a multinational manner will be extended. This process will help the familiarization of the procedures by the middlemen and the public.

In order to be successful, integration requires a minimum degree of harmonization of the economical politics, as well as the free movement of capitals and free exchange. But the harmonization of some specific norms of stock exchange material is also essential. Even though the harmonization of all the principles that rule the stock markets is not necessary, there are fundamental aspects that do require it. These can be grouped basically in (1) legal and regulatory, (2) supervision and (3) operative. Without this degree of harmonization, business would tend to establish in the country where the norms or the supervision is weakest. The principles that do require harmonization in each one of the previous categories are listed below.

LEGAL AND REGULATORY

Many of the measures that are to be necessarily adopted in order to eliminate the distortions that the region's markets confront, demand an adequate legal framework, because the processes that approve a law and/or its modifications, are complex and slow. In virtue that many of the problems are common, it is possible to adopt solutions in a joint manner, solutions that will permit the acceleration of the integration process without having to wait for the approval of a law and/or the reforms individually required. A multinational treaty that contemplates those aspects and mends the current deficiencies, will avoid long reform processes of the national laws. Nevertheless, it must be considered that in order for those agreements to have validity, they require the ratification by the Congress of each signing country. This can also be a slow process, above all if it is taken into consideration that during 1994 various countries of the region will change government.

Because of the aforementioned, a short term measure with which the process can be initiated, is the signing of agreements among supervising entities, stock markets and middlemen, so that while the multinational agreement is legalized, the integration process may begin. In this sense, the role of BOLCEN is fundamental since the agglutination of the region's stock markets may facilitate decision taking and act on behalf, and in representation, of its unionized group in order to negotiate the necessary agreements. The endeavors performed will not be temporary nor useless, as the agreements and norms issued will be those that integrate the multinational agreement that will legalize the process.

Below are listed the norms that should be harmonized so that the integration process is successful.

- o Norms so that the stockbrokers may act with one sole license in the region and the issuance of basic prudential norms.
- o Norms to grant licenses or authorizations to the operators and promoters.
- o Norms allowing emitting entities to perform simultaneous public offers in the region's markets, register their titles-securities for their quotation in more than one stock exchange and maintain that registration.
- o Norms for the establishment and operation of investment funds.
- o Harmonization or convergence in taxative matters.

SUPERVISION

The most important part in the functioning of a stock market is to promote its transparency, and with it protect the interests of the investing public. The best way to do this is through an adequate supervision of the middlemen and the operations that are performed. However, in order to achieve this it is necessary to have strong supervising entities. Thus, the governments must grant them their resolute support and adequate resources to carry out their functions; likewise, the efforts to train personnel must be increased.

In order to achieve efficiency and preserve national sovereignty, it is important to keep the supervising functions decentralized. It is suggested that the EC model be adopted, where the supervising entity of a member country is the one in charge of supervising and controlling the middlemen, head offices and branches, whose head office is found domiciled in that country. Likewise, it is of vital importance that, in order to protect the investing public's interests, the supervising entities have the authority to perform inspection visits, and if the case so requires, administratively intervene the middlemen. For the supervision to be effective in an integrated market, the supervising entities of the region's countries must act in perfect coordination.

OPERATIVE SYSTEMS

For the integration to be successful, the harmonization of the operative procedures is required, as well as the ability to count with the basic infrastructure to perform the transactions. If not, the markets' efficiency would be jeopardized and consequently the integration process also. It is necessary to cover the following aspects:

- o Harmonization of the transaction procedures.
- o Establishment of an electronic transaction system which will facilitate the immediate access to all stock markets.
- o Information system of the emitting entities.
- o Efficient clearance and compensation systems.
- o Transfer systems of titles-securities.

TRAINING

In virtue of the qualification needs of the region's markets, and in view of the willingness of the participants to make the necessary efforts to increase it, the creation of a "Central American Stock Exchange Training Institute" is suggested, being this a manner of institutionalizing the training process. The main object of the institute must be to provide adequate training for the stock exchange and stockbroker agency personnel; moreover, it can be extended to members of the supervising entities. Courses for executives of firms, as well as the general public, could also be offered. Therefore, its objective must be ample.

In order for the institute to be successful, it is essential that it be financially self-sufficient. For this purpose it should charge adequate fees for each course that is offered. Probably for some topics it will be necessary to hire instructors from countries outside the Central American region, but in this case, the training of at least one region's instructor should be contemplated as part of its work scope.

A measure that can be taken in a short term, which does not demand the integration of the markets and which could probably help the investing public become familiar with the titles of the region's countries, is the creation of an investment fund of multinational fixed income. Next are given in a diagrammatic manner, the main characteristics of the fund:

- o **Formation:** The fund could be established by the region's stockbrokers, who would contribute the initial resources for its formation, and also would promote it among their clients.
- o **Social Domicile:** It is convenient that the fund be organized in Panama, being the only country of the region that has off-shore characteristics. Notwithstanding, the fund could quote in all the stock markets of the region.
- o **Administration:** The administration of the fund's portfolio must fall upon a group of professionals specifically hired. They would be the people responsible for regulating the purchase or sale of the titles among the stockbrokers; for appraising the portfolio and establishing price

quotas, participations or shares; for transmitting this information to the stockbrokers and stock markets where the fund is quoted.

- o **Portfolio Composition:** It has been proposed that the fund be of fixed income, given the shortage of representative titles of the firms' joint stock in the region's stock markets. It is recommended that a limit for the participation of the governmental titles be established, to avoid it being perceived as an entity created to finance the needs of the region's governments. Likewise, diversification criteria must exist, not only to achieve the nationality of the titles, but also to avoid the concentration of the investment in determined branches of the economical activity.
- o **Clearance of Operations:** Due to the current absence of the infrastructure to perform operations simultaneously from country to country, it is convenient that norms be established for the input-output of the fund; for example, the input would be performed at 24 hours and the output at 48 hours.
- o **Internationalization:** Once the fund's operations are begun, a quotation can be sought in markets with greater degree of development, which would serve as a good index to measure the degree of acceptance of the Central American titles on behalf of the international investors.

Due to the lack of experience in countries of the region, it is possible that technical assistance be required to develop some activities which are necessary, not only to carry out the integration, but also to eliminate some of the distortions that they now confront. On the other hand, there exists the advantage of being able to create scale economies since the same advisor could provide technical assistance to all the region's markets. Furthermore, harmonization would be facilitated. The areas where technical assistance could bring important benefits are listed below:

- o Writing out of prudential norms for the middlemen, and training for the supervising entities in the manner of how to apply them.
- o Assistance for the elaboration of inspection and training handbooks, given to the supervising entities on inspection and supervision procedures for stock exchange middlemen.
- o Establishment of accounting systems for stockbrokers, issuance of an account handbook and norms for its supervision.
- o Development and establishment of a guard, custody and administration system of titles-securities at a regional level.
- o Standardization of the requirements for the delivery of financial information from the emitting entities, annually and quarterly, and the elaboration of formats for their presentation.
- o Supervision of investment funds and the issuance of norms for portfolio appraisal.

CHAPTER 1

BACKGROUND OF THE ECONOMICAL INTEGRATION IN CENTRAL AMERICA

The idea of integration in Central America is not new. During the sixties the first integration efforts were carried out. The first step was taken when it was thought that the obstacle for the development of poor countries was in the size of their markets. The outline stated was one of a development towards the inside, and the Central American Common Market ("Mercomun") was formed. This was a protected market, limited to the free trade of certain industrial goods, keeping the restrictions to the mobility of the factors among the countries. Nevertheless, in some manner, the coordination of the protection levels was achieved and the inter-regional trade obstacles were noticeably reduced.

The pillars that sustained the Central American Common Market were the Common External Tariffs and the monetary convertibility agreement. Based on this last agreement, the Central American Clearing house was created, and during the sixties it functioned adequately. Through it the different payments and compensations originated by the inter-regional trade were efficiently carried out. "Mercomún" contributed to noticeably increase investment, especially in the industrial sector, and all the region's economies showed positive signs.

The financial and balance of payments crisis during the seventies, together with the political crisis in various countries of the region, affected the region even more negatively.

Furthermore, diverse external and internal happenings affected the region's countries. For example, the financial crisis of the external debt, the international depression, and the increase of the interest rates, with the aggravating circumstance that coffee and banana prices fell simultaneously. Each country reacted to the crisis with different external trade politics and different exchange rates.

When the free internal and external currency convertibility of the region deteriorated, the clearing house eventually closed and, finally, "Mercomun" disappeared. As a consequence of the crisis, some countries refused to pay the debts derived from the inter-regional trade, and to date, they still maintain their debit balance.

Notwithstanding, the idea of integration did not disappear, mainly because adequately compete, the world is turning into trade blocks where frontiers are beginning to disappear.

CENTRAL AMERICAN INTEGRATION TODAY

The serious economic crisis of the eighties influenced in that practically all of the Latin American governments analyzed their past measures of economical politics. As a result, each one's philosophy was modified. One of the most important changes was to recognize that the State was a bad promotor and administrator, and that because firms were subsidized, the investment in basic activities, such as education and infrastructure, had been left behind. Likewise, it was recognized that the main source of investment was not the external savings. If this was to be reactivated it was necessary, in the first place, to direct the internal savings towards productive activities in order to attract external savings later on.

These changes have promoted that the governments begin structural adjustment programs. The Central American countries had knowledge of this tendency. Also, the democratization and peace processes were begun, and though to date they are not complete, they have shown a significant progress.

Thus, the economical politics of the Central American countries coincided in various aspects and once begun, the structural adjustment programs have directed their efforts towards the economical

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reactivation, keeping in mind that the competitive advantages must be improved. A way of achieving this improvement is to integrate in a trade block which will allow each country to find its niche in the market, and the economies of the member countries may complement each other in equal conditions. When analyzing the experiences of other countries, the first step has been defining the integration as a gradual approximation process of economical politics and complementation in an environment of free trade, which involves free mobility of goods, services and factors at a regional level.

Because of the above mentioned, the endeavors of unification to a common market during the nineties are different from the previous model, since there exists a certain consensus on the manner in which the internal economical politics must be handled. The new outline is different, open to international competition and to greater mobility of goods, services and factors, reason why the integration of stock markets is contemplated. The decision of Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua to integrate, has proved to be firm, and the invitation made to Panama to integrate the block, as well as its will to do so, has resulted in the making of multilateral agreements in order to achieve this goal.

The new integration efforts fittingly began during the meeting in Antigua, Guatemala, in June, 1990, where the presidents of the five countries of the already mentioned region, with the participation of the president of Panama as an observer, reiterated their resolute support to the regional integration process. Annex 1 summarizes the diverse actions that were recognized as necessary to achieve the integration.

After the meeting in Antigua, others have taken place, in which diverse agreements and decisions have been made which focused towards integration. Annex 2 presents a summary of the most important issues agreed upon in those meetings, and they directly determine the possible integration of the region's stock markets.

In regard to the creation of a new Central American Clearing house, it is opportune to remember that when the projects were again begun in order to achieve the integration of the Central American regional countries, economical help and assistance was requested of the European Community in order to establish a payment compensation system. Notwithstanding, this system required the active participation of the central banks, and the project was abandoned, because the progress achieved with the stabilization processes did not want to be put at risk, nor confront the payment problems, just as the ones that arose when the Central American Common Market disappeared. Thus, all coincided in supporting the creation of a private clearing house, when the exchange politics followed by each one of the countries were not put in danger.

The most recent effort in order to achieve the integration is the Agreement to Facilitate the Financial Integration of the Central American Isthmus Counties, subscribed August 27th, 1993, by the presidents of El Salvador, Honduras and Nicaragua (the instrument also remained open for the adhesion of Costa Rica and Guatemala). The agreement will be in force when two of the signing countries have fulfilled the constitutional procedures in each case. For the first time in this agreement, clear procedures are expounded so that the banks and acceptance houses of a subscribing country may establish branches in the other subscribing countries. In regard to the integration of the stock markets, the document does not represent great progress in terms of concrete measures, but it does provide the legal framework to adopt them. Article 13 of the agreement establishes that "the competent authorities of the subscribing countries to the present Agreement, will take the necessary actions to achieve the regional integration of the stock market, including the review and harmonization of the norms that regulate the stock exchange operations". Likewise, the agreement ratifies that the central banks will not create a clearing house, but will support the establishment of compensation mechanisms of private character.

On the other hand, on September 17th, 1993, the Ministers of the region's countries finished the review of a protocol. Nevertheless, the Costa Rican officers rejected it, disputing that aspects such as free mobility of productive factors, the conformation of customs union and the monetary union, affected its economy and for that reason they presented a different projection. On September 21st, the Economical Cabinet of the Group of Four (CA4) approved practically every proposal from Costa Rica, eliminating the greatest obstacles in order to sign the Protocol according to the foreseen calendar.⁴

Even though diverse political and social problems in the region's countries obstructed the meetings of the presidents, which were scheduled for the foreseen dates, the encounters resumed of the presidents of CA4 (Honduras, Guatemala, Nicaragua and El Salvador). The firm decision of carrying out the process ended in October, 1993, when the presidents of Guatemala, Costa Rica, Honduras, El Salvador, Nicaragua and Panama signed on the foreseen date, the Protocol of the General Treaty of Central American Economical Integration.

The ratification by the respective Congresses is still pending for the formal initiation of the region's integration. Nevertheless, the will that exists to do this, indicates that it will be a simple formality. On the other hand, it is important to point out that the mechanics to make the integration of the stock markets of the Central American region feasible, must be included in the Protocol, although the operative mechanisms will have to be defined in order to make it a reality.

Currently, distortions and incompatibilities exist in the local stock markets, which make its integration in a short term very difficult. In the following chapters, the analysis of each one of the region's markets will be presented; the main obstacles for the integration will be pointed out, and the recommendations will be made for eliminating or attenuating them in such a manner that, when the integration process begins, it may be solid and permanent.

CENTRAL AMERICAN COMMODITY EXCHANGE ASSOCIATION

When mentioning the efforts carried out in the region to integrate the stock markets, it is necessary to review those performed by the private sector, and among them, those that were initiated by the Central

American Commodity Exchange Association (BOLCEN) stand out. This association was created with the support of the Private Entities Federation of Central America and Panama (FEDEPRICAP - initials in Spanish), and its incorporation papers were signed in the City of Panama in January, 1991.

The general objective of BOLCEN is to promote and contribute to the establishment and adequate performance of the commodity exchanges in Central America, including the Republic of Panama, as well as of the integration of their commodity exchanges.

During the General Assembly of October 22, 1992, it was agreed upon to form a commission in order to establish a series of norms and precepts that will rule the staying of the stock exchanges within the association, including a chapter in regard to ethics and disloyal competition. These are of vital importance because currently, the majority of the developed markets has established self-regulation measures in the ethic codes which rule the activities of those professionals involved in the stock market. Other issues dealt with in the Assembly were the following:

⁴ The Protocol was signed by all the presidents of the region, including Panama

- o Authorization to negotiate in all of the associated stock exchanges, the titles-securities emitted by the governments and banks of the Central American countries.
- o Reciprocal politics among the associated stock exchanges in regard to what refers to the ownership of a position in the stock exchange within an associated exchange, on behalf of a position in the stock exchange of another associated exchange; and,
- o A proposed agreement of technical assistance and information interchanging among the members of the stock exchanges.

BOLCEN has admitted among its members the product exchanges, thus supporting the present idea that exists in the region, that because it is related to stock exchanges, they have to unite efforts to solve the problems that affect their development. Nevertheless, given the fact that the nature of the products that are being negotiated in the two types of exchanges is different, there are aspects that are vital for the product exchanges, and which do not absolutely affect the performance and development of the stock exchanges and vice versa. For example, product exchanges will be worried by the existence of general efficient warehouses and of proper warehouses, or those adequately qualified, in order to insure the good condition of the merchandise that will be deposited in them, standardization norms of the products, etc. The difference in interests and, therefore, of priorities, may scatter BOLCEN's endeavors in regard to the work directed toward the stock market. In that sense, two measures can be adopted to avoid it: create a new similar organization that will integrate only product exchanges, or create a division within BOLCEN, dedicated exclusively to these institutions so that each market's activities will not blend.

Since the initiation of its activities, BOLCEN has adopted some initiatives in order to facilitate the integration process, and they are described below:

- o In 1991, a seminar titled "Capital Markets: A New Fundamental Axis for the Central American Integration", was carried out sponsored by BOLCEN, FEDEPRICAP and the Central American Monetary Council. In this seminar, various reports were presented which were directly related to the integration of the stock markets of the region, and some instruments to facilitate it were proposed, such as the creation of Central American deposit receipts, and the creation of regional investment funds.
- o A profound analysis is being performed on the document written out for the Capital Market Program of FEDEPRICAP, "Comparisons of Registration Requirements for the Central American Securities Issues and Harmonization Proposals".
- o It was decided to hire counseling on centralized mechanisms for the custody of securities at a regional level.
- o In the mentioned General Assembly of October 1992, it was agreed upon to develop the following projects in order to set the bases for regional negotiations of registered emitting entities in all the associated exchanges:
 - Minimum rules so that the associated exchanges can recognize centers for the custody of titles-securities in the other exchanges, in order to facilitate the regional negotiation of the registered titles in the associated exchanges. These controls can belong to the exchanges or to independent entities that render services to an exchange member.
 - Electronic information systems on the associated stock markets, in "true time", to which, at least, all the stock exchanges and their brokers would have access to.
 - Requirements to register in the associated exchanges, titles registered in other associated exchanges.

Even though all the proposals and the projects developed by BOLCEN are necessary to initiate the integration process, other aspects that have great importance, have not been dealt with, such as the supervision of the middlemen; harmonization of the requirements to obtain the authorization as

stockbrokers, in such a manner that a broker authorized in a member country can open branches in any other member country; protection for the investing public and harmonization of the operation systems and procedures.

Even though to date BOLCEN's shares have not produced concrete results, the role that that institution can perform in order to accelerate the integration process of the stock markets, and make it feasible, is of vital importance. Through BOLCEN the harmonization will be possible of the norms in consensus which are necessary to achieve the integration. Likewise, it can act as a facilitating entity so that its members can come to agreements in order to establish the operative mechanisms that are required to act on behalf of its representatives in the negotiations necessary to perform with the region's governments, in order to establish necessary norms and mechanisms.

CHAPTER 2

INTEGRATION OF THE CAPITAL MARKETS IN LATIN AMERICA

Currently there exist some experiences on the stock market integration in the world. In Latin America, maybe the most recent examples are the market integration of the countries that are members of the Caribbean Countries Community (CARICOM), of Mexico and Chile due to the signing of a Free Trade Treaty, and the recent signing of an agreement among the supervising authorities of the Venezuelan and Colombian stock markets, with the aim to a possible integration of the same.

For CARICOM, the effort has not been so successful, since the lack of foreign currency, uncertain parities, and the existence of laws controlling exchange in some countries of the region, have impeded the free flow of capital. Additionally, three fundamental aspects have influenced so that the integration of their stock markets has not materialized: (1) lack of harmonization of the different legislations and regulations; (2) lack of adequate regulations in regard to emitting entities and lack of adequate supervision mechanisms; and (3) the immaturity and structural problems of each one of the markets of the countries that are members of CARICOM, among them the lack of information on the emitting entities of titles-securities, and the long time needed to transfer them - in some countries even six months.

In regard to the integration of the markets of Chile and Mexico, it is important to point out that, in theory, it is a vinculation, and to date, the mechanisms which are necessary to achieve this have not begun, even though some measures conducive to it have been taken. Due to the previously stated, the most notable example in regard to the integration efforts of the stock markets, is that of the European Community. Even though to date it has not achieved the complete integration of its stock markets, the measures which tend to eliminate some distortions that impede it have been already taken. Notwithstanding, to date there are significant progresses in regard to the integration of the banking and insurance markets.

INTEGRATION OF CAPITAL MARKETS IN THE EUROPEAN COMMUNITY

The European Community sets forth as the foundation of its economical unification, the following principles:

- o The monetary and economical unification, which implies complete freedom in the mobility of persons, goods, services and capital, requiring fixed exchange types, and eventually, one sole currency.
- o The convergence of the economies of the nations, since only the intimate convergence can guarantee free movement of capital in a permanent manner, and place the foundations in order to have integrated stock markets where the barriers and separation or interruption sources are eliminated. Thus, it is essential to insure an intimate coordination of the monetary, financial and budgetary politics.

In 1986, when the so called "White Document" was incorporated to the Community's Treaty, the internal market was defined, including freedom of capital movement. This document explains that the common goods market was already functioning and that it was important to make a similar progress in the service area.

The financial services are a sector of increasing importance within the EC's economy, approximately 7% of the gross domestic product of the 12 countries as a whole - while in terms of

employment, it provides almost 2% of the total European Common Market. The financial services also provide great input to the community's economy with almost half of the profits obtained by credit and insurance institutions, being plowed back in other industries.

In general terms, the financial flow movement among the community has been slower than that of goods and services. The truth is that long term capital movements among the member countries is 20 times less than the mobility of goods, in terms of value.

The European financial common market is an essential part for a cross-border free market in Europe, and it strengthens not only in the free movement of money and capital of all the citizens, but also in the freedom that the middlemen have of establishing and promoting financial services. Having a common financial market will make Europe more attractive as a financial spot, and will help to direct a greater proportion of savings to European firms and to investment projects. For this reason, to count on one sole market for financial services will mark the integration process culmination. Highly integrated markets already exist in the reinsurance and transportation insurance fields, while many banks of the EC have branches in the main financial centers, and a great number of titles-securities are registered in more than one stock exchange

Up to now, some regulations established in a prudential manner by the member countries have impeded those financial institutions, that wished to establish in other member countries or offer their services there, to do so. The open markets, free competition and efficiency in costs have not always been achieved.

The stock market integration of the EC acquires more importance with the changes that have been operating throughout the world, in the environment where the financial institutions evolve:

- o The market has become global, increasing its integration throughout the world. The financial service enterprises can now rapidly transfer capital from one continent to another.
- o The development of telecommunications and data processing technologies have reinforced the globalization process and have insured a fast expansion of the innovation and new financial products, fundamentally the so called by-products or services. The markets technology and globalization have influenced in an increase of the number of financial transactions.
- o Ample competition among different types of financial institutions tends to erase the differences among the banking, insurance and securities entities.
- o The competition among the European financial institutions and its North American and Japanese counterparts has increased.

With the worldwide financial markets moving towards a continuous negotiation market 24 hours a day, centered in the three main time zones, New York, Europe and Far East, the European market needs to accelerate in order to compete in this new world scenario.

Under this outline, the European Community recognizes that a unified market of financial services offers many advantages. Some of them are the following:

- o National laws do not offer an adequate framework for the future development of the sector any more, particularly taking into consideration the accelerated pace of globalization. If Europe does not want to lose its participation in the market and the employment that this implies, the community has to develop an open and efficient market of financial services.
- o From the consumer's point of view, there are great benefits that can be obtained when having access to an ample range of competitive financial products, independently of their nationality, among which is more freedom for choosing, permitting them access to financial service offers of other member countries, and being able to obtain better terms and conditions.
- o It has benefits for the industry's competitiveness, which will achieve better financial terms in an open market.

o When completing the internal market, it will benefit enormously eliminating the additional costs of the barriers that affect the financial services; furthermore, there will be an increase in the negotiations.

The establishment of one sole financial service market in the EC, rests on three pillars:

1. Freedom in all the financial institutions to establish their head office, and open branches, in any place within the EC.
2. Freedom in the financial institutions to offer the specific products, across frontiers, in other member countries, without needing to open offices there.
3. Freedom in capital movement within the community.

In order to guarantee these liberties in all of the countries which are members of the Community, they are obliged to insure that (1) its residents have access to the financial systems of the other member countries, and to the financial products that are available there, (2) there are no restrictions in capital transfer, and (3) there are no discriminating measures that will impede or distort the free movement of capitals.

The issue on which the whole unification plan of the financial markets is based upon is the free movement of capital. During the sixties, the first steps for liberating the direct investment and the portfolio investment in registered shares were given. By 1986, the European Council had adopted a directrix, expanding the list of liberated transactions in order to include long term loans, non-registered titles-securities, and the issue of foreign titles-securities in domestic markets. In 1988, another directrix was approved, liberating all the other transactions: short term monetary instruments, operations of check and deposit accounts, financial loans and credits.

Notwithstanding, the liberalization of capital movements is not sufficient, per se, to insure an effective financial freedom. Even after lifting all the restrictions on the capital mobilization, diverse national regulations can impose barriers, restricting the freedom of establishment and impeding financial service trade freedom. Furthermore, without common laws for the supervision of the financial institutions, business will have to migrate towards a more relaxed supervision, and it is necessary that ample equivalent standards exist for the protection of the investor.

The "White Document" established the general strategy to attain the elimination of barriers. This can be summarized in three issues:

1. Harmonization of the basic standards for the supervision of financial entities and protection for the investor;
2. Mutual recognition of the supervising authorities of the member countries, on the manner that those standards will be applied; and
3. Based on the first two elements, "national control and supervision" in the country where the head office of the financial entity is located, covering all the operations throughout the community, whether through branches or with direct cross-border services.

In regard to banking and middlemen in the stock market, the main element is the issue of one sole license by the member country where the head office of the institution is located. This licence will permit it to offer its services in another place within the EC, through branches or directly, as long as it is permitted to offer the same services in its native country.

Basic Requirements for a European Common Financial Market

The authorities of the European countries coincide in the fact that it is necessary that certain requirements be attained before achieving the unification of the financial markets. These comprise different areas and are discussed below.

Monetary Politics

The capital flows are much more inconstant than the goods, and they are subject to the monetary and financial politics of a country. For this reason, the stability is fundamental in the exchange rates and the free movement of capital. On the other hand, even though the monetary union has also been promoted, due to the most recent happenings in the European financial markets, it has been concluded that it is not fundamental, at least immediately, for a common market with no frontiers for goods, services and capital. An aspect that has been clearly established is that free movement of capital requires high grade of monetary cooperation among member countries, since the liberalization increases capital flow, particularly those of speculative character, reduces the scope of the monetary politics and has influence on the exchange stability.

Financial Aspects

Without a minimum of harmonization or convergence in regard to taxative matters in an unregulated financial area, distortions will occur in the relation between savings capital and investments. The seriousness of the problem was demonstrated in 1988 in the Federal Republic of Germany, when the mere announcement of the introduction of a law for automatic deduction - withholding - of the prepayment of the income tax on capital investment, resulted in an important capital drain.

Other Requirements

The economical and social cohesion of the member countries is necessary. The countries with least progress can only unite if they abide the strong solidarity of the EC.

Due to the importance that the distortions may have on the market integration, since these can create different taxative systems, the following section is dedicated to describing the main actions adopted by the EC in that sense.

The Role of Taxes in an Only Market

In June 1985, at Milan, the "White Document" was approved, and in it is defined the internal market as "an area without internal frontiers where the free mobility of goods, persons, services and capital is insured". According to this document, the majority of the decisions in the EC may be adopted by simple majority, minus the taxative part, which has to be unanimously approved. One of the three main chapters of this document, which lists the measures that are considered necessary to create the internal market, is dedicated to taxes. The measures contemplated in this chapter refer exclusively to indirect taxes since this is the area that gives rise to reviews on the frontiers of the member countries. One of the main reason that gives rise to these reviews is the need to monitor the added value tax (IVA, initials in Spanish), and the specific taxes (as those on liquor and tobacco). While considerable differences persist among those taxes, the member countries would be obligated to perform these frontier reviews to insure their tax income, and avoid fiscal defrauding. The elimination of frontier taxes has been a key element to achieve an internal market.

The direct taxes (tax on the firms' profits, income tax, etc.) do not require frontier reviews. However, the internal regulations impose invisible frontiers that avoid cooperation among firms of

the different member countries, particularly, the system of double taxation, which impedes mergings. For this reason, the elimination of the system of double taxation is a constituent part of the program to achieve the internal market.

The tax burdens, between direct and indirect (excise) taxes, vary in an important manner from country to country, and this evidently affects the taxative harmonization. Even though the aspect of excise taxes is important for a common market, in this document only the aspect of direct taxes will be dealt with, since the first affect goods and services but not the capital flow, while the second directly influence on it.

Legal Bases for Taxative Harmonization

In order to achieve integration, harmonization of taxes is of vital importance. This will avoid the creation of distortions in the trade due to different tariffs. In the first treaties of the EC, reference was made only to taxes on products. The legal base for the taxative harmonization is found in Article 100 of the European Economical Community Treaty, which points out that "the Congress, acting in a unanimous manner to a Commission's proposal, should emit directrices for the approximation of such measures pointed out by Law, regulations or administrative actions of the member countries, when directly affecting the establishment or performance of a common market."

It is this concept of "direct effect" that specifically, until now, has limited the scope of action of the Commission. Therefore, the emphasis has been placed on the harmonization and approximation of excise taxes, since these are the ones that visibly affect trade among the member countries, and can distort the competition. Even though less visible, direct taxes on profits of firms, capital, etc., are also important for the competitiveness. Being aware of the situation, the Commission has promoted a series of initiatives to harmonize, or at least approximate the tax structures to the firms, even though its not clear up to what point the harmonization or approximation is necessary.

Taxative Problems in the Unified Stock Market

In order to avoid distortions in an integrated stock market, the European Community reviewed and analyzed the following aspects:

- o Harmonization of taxes on enterprises (corporative);
- o Tax evasion;
- o Discriminatory provisions in national taxative systems, which provide an incentive so that individuals invest in nacional titles-securities; and
- o Restrictions on investment of pension funds.

Next, the attained conclusiones are briefly expounded.

Harmonization of Taxes on Firms (Corporative)

The benefits of the liberalization will not be completely attained if the investment decisions are distorted by significant differences in liens to firms of the member countries. These decisions include, not only where to establish the head office and where to make business, but also decisions made by the stockholders and investors on where to place their funds. These distortions will be significantly reduced to the extent that there is an approximation of the taxative systems (taxative base, tax rates, etc.). It is important to explain, however, that in taxative matters, the coordination and alignment of national politics are seeked more than the systematic resource of the harmonization, and the subsidiary principle established in the Delors Report is reinforced.

There exist three proposals for directrices which refer to the taxative treatment of the firms which are involved in cross-border operations. These proposals were designed fundamentally to

avoid the double system of taxation. Many controversies were created but, finally, in July 1990, an agreement was attained.

1. Common Taxative System Applicable to Head Offices and Branches of Different Member Countries (January 15th, 1969). It is clear that the decision that a firm makes of opening a branch in another member country, gets complicated by the fact that the dividends that the head office will receive, will be subject to taxes on the profits of the firms in the country where the head office has its domicile, and the irretrievable withholding of taxes, in the country where the branch is domiciled.

To guarantee the taxative impartiality in regard to the investment decisions, the abolition of the double system of taxation on the dividends distributed by a branch to the head office, was proposed, in those cases in which the head office has an important participation in the branch's capital. The issue on the participation has been the source of many disagreements among the member countries.

To avoid double system of taxation, the country where the head office is found may choose any one of two methods: exonerate the dividends of the corporative tax, or accept the deduction on the local tax of those taxes paid by the branch in the country where it is domiciled.

2. Common Taxative System Applicable to Mergers, Divisions and Contributions of Assets that Involve Different Firms of the Member Countries (January 16th, 1969) The scope of this proposal has extended to cover share interchanges. In order to achieve the taxative impartiality, EC's solution is based on the principle of deferring the taxes of any capital profit which results from a merging, until this is effectively performed. In case of a merger by absorption, the absorbed firm will become an establishment of the firm that absorbed it.

3. Arbitrage Process (December 27th, 1977). It provides an arbitrage process designed to eliminate the double system taxation, which occurs when the financial authority of one of the member countries makes an adjustment to the firm's profits, and this adjustment is not accompanied by the corresponding adjustment to the profits of the associated firm in another member country.

There exist other initiatives in regard de taxes. One of them refers to the possibility that the firms have of deducting the losses of the establishments and branches established in another member country. This proposal is of great benefit for promoting the cooperation among firms in the international market, when profits as well as losses are taken into consideration. Another proposal foresees the abolition of tax withholding on interests and royalties paid to a firm by those enterprises that belong to the same group, and established in different member countries.

Tax Evasion

The final stage of the liberalization of capital movement, brings with it the risk of a growing tax evasion. This is due to the fact that the investors from all the member countries will be able to have income proceeding from investments paid in bank accounts in countries other than the one where they have their residence, and this will increase the risk that this income is not declared in the country where they do have their residence. The European Commission sustains that an increasing tax evasion will be an issue of serious preoccupation, because of the loss of budgetary income and the danger of hindering the taxative equity; therefore, practical measures must be taken to minimize the risk.

For this reason, the creation of a common European financial area resulted in the reviewing of taxes on savings. Under Article 6(5) of the Directrix 88/361/EEC of June 24th, 1988, on the liberalization of capital markets, it was required from the European Commission a presentation

before Congress of the proposals directed to eliminate or reduce distortion risks, as well as tax evasion, linked to the diversity of taxative systems on tax savings. The proposal presented on February 8th, 1989, foresees the introduction of a common system of tax withholding (minimum rate of 15%) over interests paid to residents and non-residents, and the fortifying of cooperation among the financial authorities. The withholding proposal was designed to achieve two objectives:

- o Avoid "taxative competition" among the member countries who will want to attract to their respective markets, the savings generated in the European financial area, after the liberalization of the capital movement, and
- o Prevent capital drain from the European market, permitting the member countries the option of not applying the withholding to interests paid to residents of third countries.

In virtue that this proposal was not successful, another one was presented, in which the member countries will retain the power of choosing between withholding the tax, liberating the taxpayer from all responsibility, and making the payment on account of the income tax. In this last case, the withheld tax could be deducted from the total income tax to be paid.

This proposal did not have a political success either, since there has been opposition from the member countries. Some want to have a direct and close control over the interests paid to their residents, and intercede in favor of providing information on the interests received by the communities' residents, to the financial authorities by the banks. On the other hand, other countries do not want to accept any of the proposals, disputing that both would provoke capital drain.

In the light of these difficulties, the European Commission has opted for a third solution. This solution consists in fortifying the cooperation among the financial authorities of the member countries in order to avoid the possible tax evasion, and thus eliminate taxative distortions in the distribution of savings. Emphasis has been placed on the measures to induce the taxpayer to declare the income that proceeds from his savings. In the member countries, there is the tendency to reduce withholdings in order to avoid evasion when capital movement is completely liberated.

The risk of evasion is less in the case of income that proceeds from dividends than from the one that proceeds from bond or bank deposit interests. In the first case, in the majority of the member countries, the greater part of the tax owed by the stockholder is deducted at the source, generally through withholdings in the firms that pay them.

Discriminatory Provisions

There has been a tendency among the countries that are members of the EC, to grant financial incentives with the purchase of national titles-securities, basically shares and bonds. These measures can be seen as discriminatory and may lead to distortions. For this reason, it is proposed that they take the form of a deductible from the encumbered income, until a determined cap and/or the exemption. The European Commission opines that these distortions must be eliminated in a gradual manner - one can opt for the elimination of the incentive or make it extensive to titles-securities issued in other member countries.

Restrictions to the Pension Fund Investment

Some members of the EC do not permit that pension funds be invested in foreign title-securities, or restrict their scope to do this. Therefore, the free flow of capital is prevented for those that maybe are the most important institutional investors which the EC has. The European Commission is aware that this is due to prudential norms, but it thinks that they are excessive and seeks to eliminate them.

Payment System

Another fundamental aspect for the integration of the financial markets, in general, and of the stock markets, in particular, is the payment system. For example, the fact that interests or profits from an investment are not received on the foreseen time, will substantially alter the output. One of the basic elements to achieve efficiency in the payment system is the free convertibility and movement of currencies. Otherwise, any system would result inefficient.

Currently, to make payments in any of the countries that are members of the European Community is a swift and easy process which is performed through electronic transfers, checks or credit card. Nevertheless, individuals and firms that transfer small amounts still confront problems. The different measures that were adopted to improve the payment system are:

- o In 1987 the European Commission recommended the incorporation of a behavior code for relations between banks and retailers in regard to the electronic transfer of funds to the place of business.
- o In 1988, it was recommended that minimum terms and conditions should be established for credit card holders.
- o Finally, in 1990 it was recommended that in regard to the banking transfers, the consumer should be given all the necessary information on the costs, including the exchange cost, transfer time, etc.

Protection to the Savers and Depositors: Harmonization of Prudential Rules

The objective of the European Community is that the liberalization be given under a setting that will insure a satisfactory protection level for the investors; high opening standards of information for the investor and stockholder; equal competing conditions in the financial markets; and financial standing and stability of the middlemen. This implies, fundamentally, protection for the investor, and for this to occur, the only possible way is the harmonization of the supervising prudential rules of the financial institutions. Likewise, the Treaty permits equal scope for the adoption of extraordinary protection measures when diverse circumstances are given, such as the disorganization of the stock markets in any one of the member countries, or present difficulties with the balance of payment.

Annex 3 presents a summary of the main issued directives, and their modifications, which directly affect the integration of the European Community stock markets. At the same time, they show in a clear manner, the steps that have been taken to date, in order to make the integration feasible. In a general manner, the main actions adopted can be summarized in four points:

1. Coordination of the requirements for the registration of titles-securities in the stock exchange.
2. Harmonization on the minimum information that the emitting entities must publish, to launch an issue to market and attain its registration in the stock exchange as well as for the periodic information for the investing public.
3. Measures which tend to eliminate taxative distortions.
4. Agreements on the supervision of middlemen and precautionary measures to promote the transparency of the information, avoid the utilization of privileged information and harmonize the behavior codes of the middlemen from the different countries.

It is important to emphasize that, even though the progress in the mobility of goods has been successful, in regard to the financial market integration, significant progress has been made only in the banking, insurance and reinsurance fields, while the integration of the stock markets is still far away. This is due to various reasons, among which the following can be pointed out:

- o In spite of having emitted various directives in this sense, harmonization and convergence have been attained in an effective and perceptible manner for those participating in the markets, the legislations and regulations on securities in regard to taxative matters.
- o An integration based on electronic links of the different markets is being planned. The stock exchanges of the member countries began efforts in this sense as of 1984, but the incompatibility of the systems used, and the struggle so that a system developed by one specific country be the one that will prevail, are elements that have stopped the integration progress.
- o Even though the stock markets of the countries members of the European Community are not completely integrated, the technological progresses and the liberalization of capital movement, permit that any person may invest through a middleman, who, through correspondents or, moreover, branches, can place the investment. This element and the quoting of titles-securities of the most important firms in various markets, maybe have influenced in that fact that the integration, per se, is not contemplated as a priority. Even though the transactions that are being performed now can be easily confused with integration, this has not been achieved, since the markets maintain their autonomy and do not act as a whole. Even though the market of one country can be seen affected by what is happening at another in the region, its interrelation does not differ significantly from the one that exists between the North American and Japanese markets, or between the North American and the British ones. The fundamental reason is the globalization process and the amount of titles that are being quoted simultaneously in those markets, whether directly or through "American Deposit Receipts" (ADR) or "Ordinary Participation Certificates" (OPC).

On the other hand, it must be kept in mind that the European experience is of great value for the Central American markets, in virtue that every market is affected by the same factors, even though they can vary in degree and incidence. That is why the actions taken by the countries of the EC must be adopted by the Central American countries as a previous step to the integration of its stock markets. However, there exists a vital difference in both regions: the European markets are the oldest in the world and, therefore, are structured. From way back they have been institutionalized and they are highly sophisticated, not only in regard to the technology they use, but also in regard to the operations they perform. In this manner they differ significantly from the Central American markets and, therefore, in order to integrate the latter, it is necessary to adopt additional measures.

CHAPTER 3

INTEGRATION OF CENTRAL AMERICAN STOCK MARKETS

The integration of stock markets of the Central American Isthmus countries must be analyzed keeping in mind that such integration has two objectives: first, the formation of a regional market and, second, the participation of that integrated market, of greater size and depth, in the international markets.

The integration of the national markets in a regional one, permits the substantial increase in the number of participants and the efficient canalization of the regional savings to the most attractive productive projects. It is true that national markets are small and shallow, due in part to the fact that they are of recent formation. For this reason, the integration seeks the creation of a stronger, deeper and continuous market which will permit the raising of its efficiency and the increasing of the advantages that the national markets offer to all of its participants - investors, emitting entities and middlemen. To achieve a successful integration, it is important that the stock markets of the region fulfill their basic function: support the wealth generating activities. Likewise, at the moment of creating the infrastructure necessary to make the integration feasible, it is necessary to keep in mind the differences between the stock exchange transaction system and the banking system. Annex 4 gives a brief description of the functions of the financial markets. The integration implies a minimum degree of harmonization of the laws and regulations that rule the stock exchange transactions, in such a way that a transparent and efficient market can be created.

In regard to the second objective, that is, actively participating with greater competitive advantages than individually in the international markets, it can be affirmed that this has one sole purpose: attract international savings.

Because of the aforementioned, some of the characteristics that the so called global investors look for in the developing markets must be kept in mind. First of all, it is evident that any market, national or regional, will attract international resources if the yield offered by the titles-securities is sufficiently attractive. But, this is only one of the necessary conditions: the output is affected by diverse macroeconomic variables and even of political character. When taking decisions there are other elements that are to be taken into consideration.

In the lecture, Strengthening of Latin American Capital Markets, sponsored by the Institute for the Americas and by the Organization of American Nations, carried out in December, 1992, experts listed some of the elements that international or global investors consider in order to direct their investment towards markets of developing countries. Below is a summary of the most important ones:

o The main risks that will be assessed are: (1) political risk; (2) economical risk; (3) structural risk⁵; (4) rules that hinder capital flow, such as exchange controls and the possibility of "repatriation" of capitals; and (5) taxative risks, since there are less incentives to invest in a market that taxes capital gains and dividends, mainly when some institutional investors, such as pension funds, are exempt in their native countries.

⁵ It means that if the stock market infrastructure is sufficiently advanced for the handling of global investors. It must be remembered that those investors handle funds of important amounts and that their participation in small markets would affect in an important manner, the formation of the prices of titles-securities.

- o Specifically, in regard to macroeconomical politics, the aspects to consider can be summarized, in a general sense, in three: (1) responsible financial politics in the country, to which the resources will be directed; (2) governmental politics which favor the formation of internal savings and the efficient placement of the resources; and (3) elimination of restrictions and capital formation, including free currency convertability, free capital flow and no restrictions on the possession of property. To the aforementioned, the search of stable democratic governments must be added. That is to say briefly, in the case of Latin America, the structural adjustment programs in progress should be successful.
- o The existence of an adequate legal framework, which is clear and provides protection to the investors and promotes the existence of a stock exchange infrastructure in agreement with the needs of the investors.
- o That the financial information which is provided by the emitting firms be in agreement with the generally accepted accounting principles at an international level. In some Latin American countries, the quality of the financial statements of the firms is questionable, and these principles are not always followed. On the other hand, it is important to keep in mind that in some Latin American countries the effect of inflation on the accounting was introduced, and that currently, due to the success of the structural adjustment programs, such adjustments are not necessary in many of them.

In the same lecture, Rudolf Van Der Bijl, of the Capital Market Division of the International Financial Corporation, pointed out that there are six obstacles, in the Latin American countries, to attract global investors, "besides the fundamental requirements of political stability and good economical performance": (1) lack of liquidity in the market - purchase and sale of important share blocks implies affecting their prices; (2) inconstancy of the markets - due to the high inflation rates, devaluations and speculation, the Latin American market is relatively changeable; (3) restrictions on investment and taxative barriers in some countries; (4) the regulation systems are underdeveloped, and the registration and transfer for the clearance of operations are inefficient; (5) standards that are inferior to the international ones in regard to the requirements of information disclosure and protection for the investor; and (6) the political risk.

To achieve the integration of the region's stock markets, poses, per se, the need to mend some of the deficiencies and eliminate distortions that national markets present. On the other hand, it is evident that the formation of a regional trade area implies the previous harmonization of the economical politics (financial, monetary, credit and exchange) and the harmonization of the legislations and regulations in various areas. Even though many of these elements are necessary to achieve the stock market integration, reference will be made in the present report only on those directly related to those markets, since currently other studies are being carried out on the need of harmonization of the economical politics.

Likewise, even under the current conditions, the most sophisticated investors of the region already negotiate titles-securities in a multinational manner, within, as well as out of, the region. When seeking to increase their output and diversify their portfolios, as well as other titles issued by the regional governments, it is possible to negotiate them in a multinational manner. For example, through the stock exchange of El Salvador, it is possible to acquire the titles issued by the Guatemalan Bank. Notwithstanding, the integration at this very moment, given the distortions that each one of the local markets presents, could lead to failure at a medium or long term. For this reason, it is proposed that, first of all, those distortions be eliminated before formally beginning the integration.

MINIMUM REQUIREMENTS TO MAINTAIN AN EFFICIENT STOCK MARKET

From what was expressed in the previous section, one of the most important conclusions for the stock market can be inferred: the support of the whole market is the confidence that the investors have in the system. For that reason, it results convenient to remember the minimum requirements so that a stock market, national or regional, may function and develop efficiently and may fulfill the basic requirement of granting confidence. Briefly, stable stock exchange transactions are needed which will be permit a transparent and just market for all its participants. This basically involves the following aspects:

- o Clear legislations and regulations that promote the development of the market and provide parameters on the degree of freedom to which each one of the participants will be subject, avoiding at the same time the over-regulation that could eliminate said freedom, and always keeping in mind that the rules that are established must always be applied, without exception, in such a manner that they inspire confidence and security in the stock exchange system. The regulation includes negotiating procedures to avoid manipulation on the prices of the negotiated titles-securities. The complete application of the legislation and regulations must be supervised in such a manner that the market can have stability.
- o Supervision of the performance of all the participants in the market, in order to insure its transparency. However, these tasks must be carried out particularly on the middlemen, in such a way, that with the guarantee of their honesty and the observance of wholesome market uses and practices, the interests of the investors are protected.
- o The opening of information by the emitting entities, which must be ample, clear, standarized and continuous, and must be available at the same time to all the participantes, in such a manner that rational investment decisions can be made.
- o Agile and efficient clearance and transfer procedures of titles-securities must exist.
- o The training of the participants in the market must be promoted. An adequately qualified middleman will offer his services in a professional manner, and a qualified investor will know his rights and obligations.

To fulfill these conditions and establish a regional stock market, it is important that they be fulfilled in the national markets first. Later on it will be necessary to harmonize some legal and regulatory aspects. In the following sections, aspects on which there exist gaps in regard to the fulfillment of these requirements in the region's markets will be pointed out. In the present chapter, only a general global analysis of the stock markets of the countries that form the Central American region will be made. In Chapter 4, a more detailed analysis, country by country, is presented.

Legislation, Regulation and Supervision Aspects

It is difficult to maintain the legislation and regulation areas separated from the supervision, since the laws provide the general background in which the stock exchange transaction activity will be developed. Consequently, they establish which institution will be in charge of supervising that the norms be executed, and then the functions of the supervisor are defined. Furthermore, the supervisor must be in charge of emitting those regulations that control the specific aspects of the market, which permit its operation within the general setting established by the law. At this moment it is important to emphasize the importance that the function of supervising those entities that act within the stock market has. In the first place, these are entities that perform financial intermediation functions, and in second place, they administer the public's resources. For this reason, the entities must adjust to the norms and practices established in such a manner, that order

and security on their shares exist. In the world of today, it would be unthinkable that banks could act without any supervision, and the arguments and considerations applicable to them could be transferred to the entities of the stock exchange transaction sector, particularly to the middlemen.

The only country of the region which, to date, has a stock market law, is Costa Rica. In Panama there exist diverse and dispersed legal ordinances (*mandamus*), which regulate the stock market. In the other countries of the region, some laws and decrees establish some principles on the stock exchange transaction activity - such is the case of the Credit Institutions and Assistant Organizations Law of El Salvador - but these, at the most, make reference to partial aspects of the stock market, and are generally regulated only for the stock exchange. Nevertheless, in Guatemala, Panama and El Salvador, bills on the subject have been prepared. To date, the only project presented for its approval to Congress is that of Panama; on the other hand, in September, 1993, the writing of the Stock Market Bill of Honduras was begun. In the following sections, some of the aspects which need to be considered in regard to these issues are dealt with, in such a manner that an orderly development of the stock markets be promoted.

Importance of the General Character Norms

The stock markets are very dynamic and it is necessary that the norms that regulate them, be able to rapidly adapt to the changes that occur. For this reason, the laws must establish only the general operation setting. Also, it must be taken into consideration that the approval processes of a law or its modifications are complicated and take a lot of time. One cannot depend on the modifications of the laws so that the stock market can develop. Therefore, the role that the general character norms play is vital, since their modifications are simpler and they grant flexibility in regard to the adaptation to the conditions that dominate in the market.

On the other hand, when general character norms exist, the supervision tasks are easier and a more orderly, and transparent market is attained since all of the participants will act under the same "rules of the game". This is important in the case of the Central American countries, where there exists more than one stock exchange and where the supervision does not exist or it is very weak. If the outline is maintained, this will mean that the superior being must execute its powers in a different manner, according to the regulations of each stock exchange. In the practice, this harms the participants, since it is difficult to apply different criteria to the same problem, and at the same time, due to obvious reasons, distortions are created. Currently, in the region there exist ten stock exchanges authorized to operate, three of them in Guatemala, two in Honduras, two in Costa Rica and one in each one of the other countries.

Even though with some operative restrictions, only in the case of Costa Rica the supervising entity has the express authority to emit general character norms, which permit the regulation of the stock exchange transaction activity. This is maybe the most important element of the regulating and supervision tasks.

Self-Regulation

In Central America, the majority of the participants intercede so that the stock exchanges be the ones that perform the supervision and control tasks of the market, that is to say, they request a total self-regulation. Nevertheless, there exist arguments against this, because if the stock exchanges are going to perform all the supervision tasks, it is very difficult that, in case of problems, above all with the investors, there could exist legal security on the determinations that are taken. Because they are entities of the private sector and in absence of special laws, such as in the case of Guatemala, they are regulated by common law, and these determinations do not have the power that could be given to a governmental entity. On the other hand, it is important that an impartial entity exist, where

there do not exist conflicts of interest which could influence their decisions. In effect, this is the reason why in some markets with a higher degree of development than those of the Central American region, the supervising entity acts as an arbitrator in case of conflict, once the instances that the stock exchange offers have worn out.

The arguments that have been used in favor of the self-regulation system are that the majority of the markets in the world were born as self-regulated ones, and that an excessive governmental regulation can attempt against the development of the market. Nevertheless, the governmental supervision was born with the fundamental objective of preserving the interests of the investing public and was presented more as a need than as a desire of the governments to intervene.

It is true that, worldwide, the so called deregulation movement of the financial markets has been presented, but this has not implied, in any case, the disappearance of the supervising entity. This deregulation has implied that the regulations be clearer and that, above all, the prudential norms prevail.

On the other hand, all the stock markets are self-regulated up to a certain point, since all the participants are interested in promoting the transparency of the market and its good performance. In effect, the exchanges watch over their middlemen and these, at the same time, over their agents, representatives and employees. However, this has not been proven sufficient in any market. A clear example is that not only the North American but also the Japanese markets, maybe the more advanced ones, would not have discovered, or hindered, by themselves, the transactions that were carried out using privileged information in recent years, if it would not have been for the supervising entities and the mechanisms that they use to perform their controlling functions.

The dominating situation in the region illustrates the philosophy of the decree that regulates the stock exchange transaction activity in Nicaragua, since it contemplates that the supervision, controlling and regulation functions be performed by the supervising entity in an indirect manner, through the stock exchange, and that these functions be directly executed exclusively in regard to the last. On the other hand, the Bills of Guatemala, Panama and El Salvador maintain this spirit. To establish this system would be like determining that the Bank Superintendency supervise, control and regulate the activities of the bank association, while the latter be the one in charge of supervising, controlling and regulating all the bank activities, including the power to emit prudential norms, inspection visits, etc. Maybe at first sight, the examples seems extreme, but in the practice, it means exactly the same. The stock exchanges are only lenders of services in order to facilitate the transactions of titles-securities in an organized manner and do not perform any type of intermediation; they will only require supervision to insure that their services are rendered adequately.

On the other hand, when the regulation and supervision are left to the stock exchange, there is the danger that due to surviving motives, it will emit soft rules and that these are not always applied. In regard to this there are various examples in the region, but maybe the one that illustrates the situation in a clear way is that not all the enterprises registered in the Honduran Stock Exchange deliver their financial information quarterly, just as is established by their Internal Bylaws, and they limit themselves to filing their audited financial statements once a year.

In the region all the stock exchange regulations contemplate preventive self-regulation measures which are adopted in advanced markets. However, they are vague since clear rules for their application do not exist. One of the most important measures is to temporarily suspend the quotation of a title-security when movements that alienated from the market are present. The region's regulations empower the General Manager or the Director of the Negotiation Circle to adopt it according to his criteria and for periods that will not go beyond the meeting where these movements are presented. The principle is adequate; notwithstanding, it is necessary that rules be

established to do this. The rule could be established in different ways, but it must be clear. An example:

The negotiation of a share will be suspended during ten minutes when its price varies 15% in regard to the previous last close; if after reinitiated its negotiation it would again present an equal variation, it would be suspended for twenty minutes, and if the variations continue, it will be suspended once more for another twenty minutes, and if the variations present themselves again, it will be suspended for the rest of the meeting, to open the following day with the price of the last transaction that was performed, and which will be the base to apply, in its case, the measure of the following day. Each time a negotiation of a share is suspended, the fact will be informed aloud to the operators.

Even though this norm is applied basically to the negotiation of shares, it is possible to make an adaptation for all the titles-securities.

It is important to keep in mind that one of the best ways to self-regulate the market is to promote the training of the middlemen, their representatives and the stock exchange personnel. In this manner, errors are avoided by lack of knowledge, and when completely qualified, all the implications of performing forbidding acts, or those that are outside the wholesome uses and practices of the stock market, are perfectly known. In all of the region's countries the lack of training and qualification was detected, reason why all the initiatives directed to raise it must be promoted.

Supervision and the Supervising Entity

In general terms, the supervision carried out in the region's stock markets is very weak, and it does not comprise fundamental aspects, such as the adequate control over the middlemen. In later sections, the supervision aspects to these entities will be dealt with in more detail.

In the region there exists the controversy if the supervising entity should be an independent entity of the other entities that supervise the financial system. To this respect there are not many arguments in favor nor against, since in the advanced markets both systems are used without any difficulty. For example, in Japan the Treasury Department supervises all the financial entities, while in the United States of America they are separate entities. This last model is the one adopted by the majority of the Latin American countries.

What is really important is not who performs the supervision but that it be done adequately. One must always keep in mind that the stock market is part of the financial system, but that the operations and the intermediation forms are totally different to those of the other institutions. For example, the banking system performs indirect intermediation, while the stockbrokers intermediate in a direct manner. Only in Costa Rica and Panama have institutions been especially created to supervise the stock market. In Guatemala, no entity performs this function and in the rest of the countries, this task has been given to the Bank Superintendency.

It is also important that norms of prudential character be applied to the members of the supervising entity. In the majority of the markets, the law prohibits revealing the information that is being processed, with exception of that of public character, since it has a privileged character. To reveal it could impair third party interests. Another norm that is applied in developed markets is that no member of the supervising entity can acquire by himself, or through an intermediary agent, shares of firms which are quoted in the stock exchange or are object of public offer. Normally, the purchase of shares through investing companies are an exception. Likewise, these norms are accompanied by sanctions for whom transgress them.

So the supervising entity can adequately carry out its functions, it must have the ability to give legal force to its mandates, including the possibility to use public force if necessary. Otherwise, it will exclusively become a bureaucratic entity of administrative character; that is to say, it must be the maximum authority in regard to the stock market.

An aspect that is important to emphasize is that in order to adequately perform the supervising tasks, it is vital that the entity which performs it, is formed by highly qualified professionals, that is, an exclusively technical body which is removed from politics. Likewise, the professionals must receive a remuneration which is adequate to their quality of specialized technicians. Otherwise, they will have to move to the private sector, or in the worst case, corruption problems may arise.

The New Role of the Supervising Entity

Today the role of the supervisor has changed. Not only does he function as supervisor, but also as a market promotor whose main function is to protect the investor, insuring that the rules are obeyed and that the public receives sufficient information on the risks involved in the stock market transactions. Thus, the majority of the norms that are emitted are of prudential character. In markets like the Chilean and the Mexican ones, the supervising entity dedicates great part of its effort to dictate lectures that divulge the benefits that the stock market can offer. Furthermore, departments have been established to develop new products for the market. For example, by permitting the participation of the private sector in the construction of highways, the National Stock Commission of Mexico developed the instrument by which it is possible to finance it.

On the other hand, currently the majority of the supervising entities work closely with the market participants and with the entities of the private sector, such as entrepreneurs associations. Frequently, all of them directly participate and cooperate with the supervising entity through Consulting Councils.

It is relevant to point out that the participation of the supervised entities is only at a consulting level and they never take part in the decision taking process - because to do this, there would be an evident conflict of interests. This conflict currently exists in Costa Rica, since the law establishes that representatives of the supervised entities will participate in the Board of Directors of the National Stock Commission, which has generated that many initiatives, mainly of prudential character, be not emitted. In the Stock Market Bill of Panama, very similar dispositions to those of Costa Rica in that aspect, are established.

Another measure that has been adopted with great success in many countries is to establish that, before the supervising entity emits a new norm, it be circulated among the participants in the market, the stock exchange, and the stockbrokers associations, so that their comments can be made known. In this manner, their point of view will be known. It is relevant to point out that also in some countries, the same participants are the ones that request from the supervising entity the emission of new norms, or the modification of the existing ones.

Institutionalization of the Stock Market

In the measure that the stock market is institutionalized, the investing public will increase its confidence in regard to the entities that form it. An important step to achieve it is that the stockbrokers organize in chartered companies or corporations, but it is also important that the prudential norm of diversifying the share tendency be applied, just as is done in the banking system. This is, to limit per person the possession to a determined percentage. These percentages that are established in other countries go from 5 to 15 percent. Additionally, in order to retain that maximum percentage, the need to obtain authorization from the supervising entity has been established, while any inferior percentage is freely negotiated, since in many markets the stockbrokers quote the shares representative of their capital. It is relevant to remember that in some countries of the region, natural persons are permitted to act as stockbrokers. In the same manner, the institutionalization of other entities should be sought, with an active participation in the market. The clearest example are the investment funds.

The Middlemen

The supervision of the middlemen as well as their adequate regulation, are probably the most important tasks in order to protect the investing public and the transparency of the market, due to the fact that, precisely, they are the ones that deal directly with the public.

In none of the region' countries is performed an adequate supervision of the stockbrokers and prudential norms have not been emitted for its functioning. This is because in the majority of the region' markets, the stock exchange is in charge of performing this function. Next are some aspects related to the middlemen which are necessary to regulate and control.

Minimum Capital

To date, a minimum amount of capital has not been established for the stockbrokers in the region. At the most, there exist norms for the stock exchange in this respect, but in all cases they are deficient. It is important to remember that this is one of the aspects on which great attention has been given in the European Community. An adequate capitalization will permit the efficient performance of their intermediation tasks and will insure that they have the sufficient support on the operations that they carry out.

The above has greater importance when the stockbrokers can perform operations on their own account. They are permitted to do this in all the markets; nevertheless, they do it without the existence of any limit and these limits must be established in regard to their capital. An example which clearly illustrates the need to establish said limits is the borrowing of securities operations. When these are performed on own account, it represents a contingent for the stockbroker. For example, in Mexico limits per instrument are established in order to perform borrowing of securities operations. The current one for the Federation's Treasury Certificates is 50 times its global capital.

It is opportune to point out that in spite of the need to establish limits for the operations on own account, it is vital that these be permitted for the development of the market. Thus, the stockbrokers may perform placements in the underwriting modality, grant liquidity to the market, handle the surplus resources of the firms' treasuries, etc.

Accounting Systems

In all the region's countries, the stockbrokers carry out their accounting, applying the generally accepted accounting principles for all the stock companies. For this reason, there are no account and system handbooks designed especially for them. It is important that this be incorporated because the activities that they perform are not the same as those of any stock company or corporation. It must be considered that they are financial entities that administer the public's resources as well as the titles-securities entrusted to them by their clients; also, they perform operations on their own account. All these activities must be clearly reflected in the accounting system they use, and, therefore, in their financial statements. Costa Rica is the only country in which the measure has been partially taken.

Presentation of Financial Information and Inspection Authority

Not only is it important that the stockbrokers' accounting be performed with adequate systems, but also that the supervising entity have access to them, the same as for the banking system and other financial entities. In the majority of the developed markets, the supervising entity requests that the financial statements of the stockbrokers be presented monthly. To do it in another way would avoid that the supervision tasks be performed adequately, since it would not be possible to opportunely detect any irregularity. In none of the region's countries has this measure been established, although in Costa Rica quarterly financial information must be presented. In the rest of the countries, the audited financial statements are requested once a year, at the most.

On the other hand, only in Panama does the supervising entity have the authority to perform inspection visits to the stockbrokers, including audits. This measure is considered fundamental for the supervision to be effective, as well as for the adequate control of the fulfillment of the norms that regulate the market. In the majority of the region's markets, this is jurisdiction of the stock exchange.

Sanctions and Interventions

In all the region's markets activities which go against the wholesome development of the stock market have been typified, and sanctions have been established for this purpose. However, their applications are not clear, since the same will be applied discretionally. It is important that the faults be coded, as well as the corresponding sanctions, according to the seriousness, so that the same fault will be penalized with the same sanction. This will give transparency to the market.

On the other hand, in all the region's countries, the stock exchanges are the ones that have the most ample authority to sanction the stockbrokers with measures that include suspension or cancellation of their concession. In regard to the powers of the supervising authorities, these are very limited.

Although its true that these sanctions are used in the majority of the stock markets, it is also true that in these markets any serious fault is punished with the intervention as a precautionary measure, parallel to the suspension but before cancelling its authorization. The reasons are easy to understand, because in case a stockbroker commits a serious fault it is necessary, above all, to protect the interests of those investors who have entrusted their resources. The administrative intervention is the ideal mechanism: if the sanction is directly used, the stockbroker can make use of the titles-securities that he has in his custody and administration on account of the clients, and can also settle his assets without any procedure. In none of the region's markets exist mechanisms that can avoid the above.

The intervention not only avoids the stockbroker from infringing the assets which he has at his disposition, his own as well as those belonging to third parties, but it is also a precautionary measure, and in case the committed fault is due to poor administration, the errors can be corrected and the stockbroker can be rehabilitated. This is a measure fully used by the supervising entities of the banking system and all the arguments that are valid for them to justify it, are applicable to the middlemen of the stock exchange transactions, including stock exchange.

Therefore, the intervention is one of the most important measures that should be contemplated by any legislation of the stock market. Costa Rica is the only country in which the intervention measure is contemplated. However, the supervising entity cannot carry it out directly, since it has to follow a process before the central bank. This reduces effectiveness since it cannot be executed at due opportunity.

Allocation Systems

In none of the region's countries have systems been established for the allotment of titles-securities. Those systems are directed to protect the interests of the investors, particularly the small and medium ones. For example, when there is an excessive demand of titles-securities and only part of the total purchase orders of the clients are executed, without this type of systems there is the tendency to allot all the acquired titles to the biggest clients, or to own account, not caring if a small client requested the purchase first. The system most commonly used is first come-first go; that is to say, the titles-securities will be allocated according to the order in which the purchase or sale applications arrive. The Stock Market Bill of El Salvador is the only one in which the allotment system is referred to. This type of systems must be incorporated as part of the operative system of the stockbrokers.

The Commercial Commission Contract and the Statements of Account

An element that protects the client, but also the middleman, is that the relation between both be documented by means of a commercial commission contract. In this manner, the client will be completely aware of the contractual relationship and his rights and obligations. This is vital because, due to the type of intermediation which is performed in the stock market, the stockbroker never assumes any risk. The investor is the one that does, even in those cases of the discretionary type accounts.

In this contract, the rights and obligations of both parties are specified, as well as the operation modalities that are to be performed, among them: if the client's account is discretionary or discretionary limited, on which accounts should the stockbroker make the deposits for the client; if the stockbroker administers the titles-securities, the names and general data of the beneficiaries of the client, etc. The use of this legal instrument is not divulged in the region's markets. It is important that the necessary steps be taken in order to incorporate in an obligatory manner, the use of the same.

Each time a client performs an operation in the region's markets, the stockbroker has the obligation of giving him a copy of the transaction that was performed in the stock exchange. The measure is little practical from the operative point of view, since in more active markets, the orders of various clients are executed in the same operation. Furthermore, when a good opportunity of buying a block of titles presents itself, it could be wasted when requesting its fractionization. The obligation of fulfilling this requirement can lead to increasing the administrative costs of the stockbroker, which will necessarily be transferred to the client. In markets with greater degree of development, the stockbroker is obliged to give an operation voucher to which the law grants all the necessary juridic force.

The stockbrokers do not have the obligation, in any of the region's markets, to present their clients monthly statements of account. This practice is common in the stock markets, since the statements of account are a way of proving all the operations that a client has performed during the month, and jointly with the operation voucher, they are a form of protecting the middlemen from any action that the client could take, arguing lack of fulfillment of his orders.

Advertising

Another aspect that is not regulated is the advertising that the stockbrokers can perform on the services they render. This is very important since it was observed that in some countries, terms such as security, or even, output guarantee are used, which goes against the nature of the type of intermediation that is carried out, and of the stock market, where the prices of the titles-securities are determined in virtue of the free supply and demand game. A publicity that distorts the stock market's activities is dangerous for the stockbroker, because he binds himself into offering something on which he has no control but, above all, he harms the investing public when he gives it erroneous information on what it can obtain through the stock market. The argument that has been used in favor of this practice is that currently, the majority of the transactions are performed with fixed income titles. However, in a eventual increase of the interest rate, and with the need of selling determined title, the probability of losing is very high.

Contingent Fund

Even though in the region's markets it has become an operation requirement that stockbrokers create a bond in order to guarantee their operations, and that the same can be used in case the stockbroker, or his representatives or agents, perform undue acts, to indemnify the investors that result harmed, the amounts are reduced and no operational criteria is applied to set them. That is to

say, that their amount is in function of the amounts operated by the stockbroker. Therefore, the bonds are inadequate, and in case of problems, they result insufficient.

The mechanism that has been employed in other markets is to form, with resources contributed by all the stockbrokers, a trust in favor of the investing public. The sum each stockbroker contributes is in function of the operations he performs. Generally, the resources of this fund are administered by the stock exchange and they are invested to maintain, and increase, their value with the passing of time.

Information of the Stockbroker's Operations

An aspect of vital importance to perform an effective supervision, is that the stockbrokers inform of their operations to the supervising entity. This must be done daily since it is the only way to detect the irregularities on time. In the region's markets it is contemplated that this information be given to the stock exchange only when this entity request it.

The ideal is that the information be received daily by the supervising entity, or if feasible, electronic methods be used through which information can be obtained directly. To receive this information, as well as its processing, it is basic to establish the so called "opportune alarm systems". An example that clearly illustrates this situation is that in markets with higher grade of development, it is possible that the stockbroker perform borrowing securities operations with titles from his own portfolio, and that generally such transactions are not carried out in the stock exchange. If the supervising authority does not have the information opportunely, it would be imposible for it to adequately perform its tasks, and detect irregularities such as operations with non-existing titles, prompt sales, etc. Even though it is true that these operations are currently not performed in the region, given the conditions of the markets, it is probable that in short they will be begun. Furthermore, the regulations of some stock exchanges contemplate the possibility of performing them, and this is only one of the many operations that can be carried out in the stock market.

Periodically, the supervising entity has to have information that will permit it to elaborate trustworthy market statistics, in order to perform a profound analysis of the same. Normally, the stock exchanges do not have this information. Among the information that must be available is the following: number of the stockbrokers' clients, separated by their status of natural or legal person; amount of the resources invested by the clients; nationality of the client; etc. Because this is confidential information that belongs to the stockbroker, but important to analyze the market in a global manner, it is convenient that it be strengthened and in this way be known to the general public. With the existence of more than one stock exchange, even though it is requested, only a partial vision would be had, but also due to its confidentiality the supervising entity is the one that should handle it. If the stock exchange does it, this confidentiality would be lost, especially of it is taken into consideration that some of the members of the Board or of the Administration Council are also stockbrokers and, therefore, would have access to the information.

Operators and Promotors

Even though the activities of the operator, as well as of the promotor, can be performed by the same person, particularly in small markets or of recent creation, once the first stage is surpassed, it is frequent that new personnel be integrated to perform promotion tasks. No promotor figure has been established in the region's countries, and they only make reference to the operator. In some regulations the figure is even confused, or it is taken for granted that only the operators will be promotors. Nevertheless, in almost all the countries, there exist persons that directly deal with the investing public and who do not have to fulfill any requirement to develop the activity.

This situation goes against the wholesome development of the market, and it is an element on which attention should be placed. It is important that the promotor figure be created, and that he, as well as the operator, must require the supervising entity's authorization in order to develop his activity, and that one of the requirements to obtain this authorization would be to pass an exam on which his knowledge in stock exchange transactions could be certified. In the developed markets, this measure is considered as one of the best prudential norms that are in force, to protect the interests of the investing public.

In the region, the previous requirements are only partially fulfilled, since only in Panama the operators require the authorization of the supervising entity, who is in charge of applying the exam. In the rest of the markets not all the regulations of the stock exchange urge the exam as part of the requirements that are to be covered in order to obtain authorization to act as operators. In some countries, such as Mexico, the supervising entity is the one who applies the exam, while in other countries, such as the United States of America, the entity in charge of doing it is the stockbrokers association, and no argument exists against the fact that the stock exchange perform this task. What is really important is that the areas comprised are established by the supervising entity, by means of general character norms, and the importance that the fact has of requiring the supervisor's authorization in order to act as operator or promotor, be reiterated.

Investment Funds

In the region's markets there practically does not exist legislation nor regulation for the investment funds. In Costa Rica the legislation contemplates them in an ample, even though inadequate, manner, and the regulation is insufficient since, for example, it does not cover portfolio assessment norms.

Currently, few are the funds that operate in the region, even though it has to be emphasized that in Costa Rica semi-analogous entities have surged, which the stockbrokers administer and that are not adequately regulated. The investment funds are the entities that facilitate the participation of the small and medium investors in the stock market, and due to the resources that are handled, they are considered one of the most important institutional investors of any market.

Because they capture resources from the public, they must be authorized by the supervising entity and be under its control, and in order to function adequately, it is vital that they operate under clear rules that permit the protection of the investor. The norm should comprise various aspects, among which are found the following: they must publish a placement prospectus, in which is given clear information in regard to its operating manner; fund type according to the titles-securities that will integrate their portfolio; rules to enter and leave the fund; clearance terms; manner in which the value of the shares that represent their joint stock will be determined; parameters for the assessment of the portfolio. There must exist the obligation of informing periodically, or when the client requests it, on the composition of the investment portfolios, its diversification grade, etc.

An aspect that is worth seeing into is the assessment of the portfolio. This activity should be done daily, following clear principles that tend to protect the interests of the public. Once the assessment is performed, the value that corresponds to the shares, in the case of investment companies, or quotas in the case of investment funds, should be divulged, in such a way that the public is permanently informed on the development of its investment. A poor assessment can create important distortions of under or overvaluation, which will damage the investing public. For example, it is suffice to point out that in 1992, some fixed income investment companies in Mexico, when applying erroneous assessment criteria, overvaluated their shares, and when the supervising entity made them correct the error, losses for various thousands of millions of dollars were presented.

There exist other elements, besides those of economical politics, not directly related to the stock exchange transaction legislation, which affect the stock markets and, therefore, its integration. Two of great importance are:

- o To date, in Costa Rica there only exist registered shares, while in the rest of the countries of the region, there are bearer shares. Facing integration, this implies a barrier, since in this country only registered shares issued in the other countries could be negotiated.
- o There exist important differences in the taxative treatment among all the countries of the region. For example, when performing a public offer of titles-securities in the stock exchange in Panama, interests are exempt from taxes, and in Honduras, the interests on the titles negotiated in the stock exchange are subject to a 10% rate, and they are not cumulative for income tax effect. That is why it is important that before the integration, a harmonization of the taxative systems be performed, to avoid distortions that can damage it. In regard to the taxative systems, all and each one of the conclusions of the European Economical Community can be applied. Furthermore, there exist distortions that impede the development of the market that pertains to capital stock. The most important one is that in all the countries there exists double taxation on the dividends.

Opening of Information by the Emitting Entities and the Standarization

The efficiency of the stock markets is measured according to the swiftness with which they adjust to the information that determines them. Thus, for example, on the first level of efficiency, which is a weak test, the swiftness of adjustment to the changes in the macroeconomical and financial variables of the economy is measured. The clearest example is the response of these markets to the variations in the interest rates. This is the hardest test to pass, since this information is available to all the public, without hardly any procedure and because it is frequently published by the different newspapers of each country.

On the second level, a semi-strong test, the swiftness with which they adjust to new information of the firms that quote their titles-securities in them is measured. The classic examples of this type of information are the variations in the profits/losses, expansions, or changes in the capital stock tendency which influence the right to vote, etc., that is to say, it refers to any information that can modify the future flow expectations and, therefore, modify the price of the title-securities. In the case of shares, the information will permit the evaluation of the possibilities of an increase in capital gains, or the possibility of an increase in dividends receivable. In the case of indebtness emissions, the information will permit the evaluation of the emitting entity's ability to pay, in order to fulfill the acquired obligations.

The third level of efficiency, a strong test, measures the fact that all of the information is available at the same time, to all the participants, and that nobody uses it in advance for his own benefit, which has been called utilization of privileged information, or "insider trading". This is the most difficult test and it requires a very close supervision of the operations that are being performed in the stock markets.

Therefore, the flow of information that the participants receive in a stock market is essential for the latter to function efficiently.

Based on the analysis performed in the stock markets of the six countries that form the Central American Isthmus, it was detected that none of them have the necessary information in regard to all the emitting entities, which will permit the efficiency of the markets; and in the few cases where there is information, the distribution channels are poor. The Costa Rican market is the only one that requests information quarterly, and in which exists a standarized form of presentation. Nevertheless, with the purpose of promoting the market, special norms were emitted for "small emissions", which substancially reduce the information requirements. This, far from helping, causes damage, since the size of the emission is not important. What is important is that the investor can count on the

necessary elements to make decisions. Furthermore, in regard to the investment funds or its semi-analogous, such as the "Securities Administration Account" (CAV - initials in Spanish), the available information is little, because if the portfolios are not adequately assessed, there does not exist an evaluation of the participations. There are other examples which illustrate the lack of adequate information in the region, suffice to mention one: One of the most important data is the destiny that will be given to the resources obtained through the emission of titles-securities, and in very few markets is this information requested, or if given it is very deficient. For example, in Guatemala some emitting entities issue titles for a term longer than two years and they only indicate in the prospectus that the funds will be used for the customary activities of the firm, that is, for working capital, which is inadequate information.

On the other hand, even though the norms in force in the region's markets establish the delivery of information periodically, the same norm is not applied in all the markets, that is, some request it quarterly and others semi-annually. Additionally, the regulation is not made effective in all of the cases, just as was mentioned. The best example that illustrates this is the one of the Honduran Stock Exchange, whose regulation establishes the delivery of quarterly information, but none of the emitting entities fulfill the requirement.

One of the basic forms of delivering information is the bill on title-securities emission. However, those reviewed, in a general manner, are deficient and do not present complete information. For example, the notes on the audited financial statements, the destiny of the funds obtained from the emission, and sufficient information on the payment of interests and their calculation form, are not always included, even though in Costa Rica and Panama the bills were reviewed with good quality information. There exist examples that illustrate the region's situation: in Guatemala the National Stock Exchange norms the request that audited financial statements of the three last administrations be included. But in two of the bills that were reviewed, only information of two years was included, in spite that more time had elapsed since the firms had been organized. In Honduras there do not exist bills on emission, and in El Salvador they are very plain and resemble more the leaflets that firms emit in advanced markets to maintain the public informed of its quarterly development.

The analysis performed in the region on the emitting entities and their titles-securities is very small, not only on behalf of the stock exchanges but also on behalf of the middlemen. One of the reasons is that there is no adequate information, and another is the lack of training.

The analysis capacity of the market is very important, since the analysis is the only activity that permits the detection of the best bills, that is, the creators of wealth. In effect, in the sophisticated markets exist firms that dedicate themselves exclusively to performing that activity. In other important markets, the middlemen have formed departments exclusively dedicated to analysis tasks in all of the branches: fundamental, economical, stock exchange transactions and technical.

Due to the aforementioned, the information on which the markets can count on is a key element for their development. Another parallel element is the standarization of its presentation. This not only implies the utilization of a format, but most importantly, that the firms apply the same accounting norms. To adequately affront the integration of the Central American stock markets, not only is it necessary to harmonize the information requirements that are asked of the emitting entities, but also the standarization of the accounting systems used. With this the distortions that can be generated when employing different accounting systems will be eliminated, and an adequate analysis of the emitting entities can be performed, using the same parameters. An example that can illustrate the situation is the evaluation of inventories, since depending on the system used, the results will vary.

The standarization of the information promotes the transparency of the information, and therefore, of the market. This is one of the elements that has been taken into consideration by the European Economical Community.

On the other hand, it is important to supervise the emitting entities, so that they may deliver information in the manner, and at the moment, that are established. Additionally, it must be kept in mind that at the moment the markets are integrated, the information must be available at the same time in all the countries, in order to avoid distortions.

Previous to the harmonization of the information requirements, an intense study of the currently requested requirements must be made. This study performed by FEDEPRICAP on the subject, and to which Chapter 1 makes reference, must be updated. In this manner the current deficiencies will mend, and the harmonization will be possible at the same time its presentation is standarized.

The study that is suggested must also serve to eliminate those excessive requirements, or those that do not provide important elements for the investment decision taking.

In none of the region's markets exist adequate supervision systems to avoid the utilization of privileged information, although it is true that the majority contemplates some type of norm in that respect. However, when they do it, it is only for prohibition and there does not exist an adequate sanction system.

Clearance and Transfer Procedures of Titles-Securities

The clearance systems in the region are not efficient in all cases, but important efforts have been made to improve them, although some deficiencies still subside. For example, in all the markets it is not possible to perform the clearance on the same day, and this undoubtedly affects the output of the titles. Notwithstanding, the greatest difficulty is found in the transfer of the titles-securities, although there are also important progresses in this field, and the majority of the stock exchanges have begun the creation of protection, custody and administration mechanisms. Currently, they are not found in complete operation; additionally, the figure of endorsement in the administration does not exist and this reduces the fluidity of the operations. The transfer procedures are hampered at the same that the dematerialization of the titles becomes difficult.

To adequately affront the regional integration, it will be necessary to count with efficient mechanisms for capital transfers through a clearing house, whether it be private or public, which will guarantee that the operations performed with titles-securities can be cleared on time, pursuant to the manner they were agreed upon. In this respect, it must be pointed out that the central banks do not want to become involved in the compensation mechanisms, maybe as a response to previous experiences, although they will support any initiative of the private sector in this sense. To date, some commercial banks have shown interest in providing this service.

Notwithstanding the aforementioned, it is important to remember that there does not exist complete security on the exchange freedom nor on the capital flow in all the countries; that is to say, it is not abandoned to the free supply and demand game. If a bank, or a group of private commercial banks perform the fund transparency task, it will be necessary for them to purchase an insurance or establish a regulation that will protect them against the eventuality of not being able to perform the fund transfer, and against the possibility of not being able to change currency. This will evidently increase the cost of the transactions. The clearance system that is to be implemented has to be efficient and must grant the ease to perform value operations on the same day.

In regard to the transfer of the title-securities, it is important that the creation of a regional protection, custody and administration system be contemplated, which will include the figure of the so called endorsement in administration, and which will avoid the mobilization of the titles from one country to another, and at the same time, it will grant security to the investor on the possession of the same. In this manner, the titles can be dematerialized and the emission cost will decrease, although

it must be pointed out that it will be necessary to perform an educational task with the investing public, who is currently accustomed to obtain the physical title that it purchases. For the expounded reasons, it is important that the entity formed to perform this task, be controlled by a competent authority and that it will act under clear norms and criteria, such, that the security will be granted to the investor.

Because of the expounded in the previous sections, it can be deducted that it is important to carry out the harmonization of the rules and regulations that direct this stock exchange transaction and those that directly affect it, such as taxative systems. In the previous chapter, when describing the European Economical Community's experience, reasons have been given for it, and the same are applicable to the Central American market in all its extension.

MAIN CHARACTERISTICS OF THE STOCK MARKETS OF THE REGION

Besides the characteristics already exposed in the previous sections, there are others which are worthwhile mentioning, and that will be listed below:

1. The majority of the titles-securities negotiated in the region's markets are those of indebtness, and they are titles emitted by the public sector, except in the case of Panama and Honduras, markets where the presence of public titles is minimal. The reduced presence of shares in the Central American markets is due to reasons that are common in the other Latin American countries' markets. Some are:

- o Fear of the entrepreneur that they will lose control of the firm, in spite that the majority of the Commercial Codes point out that at least 20% of the votes are required in order to assign a member of the Board or Administration Council.
- o Lack of qualification in the firms' owners and directors, to assess the benefits of financing their needs with the emission of capital. This is also linked to the low presence of indebtness titles issued by the private sector firms, since the knowledge on the advantages of diversifying the credit and on the financing forms that the stock market offers is little. Another reason linked to the previous situations is the little promotion which the middlemen make on these products, in part motivated because, to date, they have obtained important profits with the mere intermediation of public titles in the money market sector.
- o Many enterprise groups have interests in institutions of the banking system and easily obtain the credits that they require, in spite that on occasions, the amounts of the credits granted to the so called entailed firms, represent a risk for the bank. This is one of the reasons why it is important that the bank supervising entities emit adequate regulations on entailed credits.
- o Fear of the entrepreneurs of not placing their shares among the public, a thing that has direct relationship to the fact that there exist few institutions that perform the activity of investment bank. In the case of middlemen of the stock exchange transaction sector, it is due in part to the fact that they do not have the necessary resources to make underwriting placements.
- o That in some countries the procedures to obtain the authorization to perform emissions are slow, and it is faster to obtain resources from the banking sector, in spite that in the majority of the countries, the cost is superior to that of emissions.

Due to the aforementioned, the same as for many of the Latin American countries, the greatest challenge of the stock markets is to achieve that the private sector firms quote those shares, which are representative of their joint stocks, in the stock exchange. In the case of Central America, one of the first steps could be to initiate the quotation of banking institution shares, since its financial information is already of public character, through diverse publications of the entities that supervise such matters, and also there exists confidence in these institutions.

2. Because the majority of the negotiated titles are governmental, the stock markets of the region partially fulfill their function, since the wealth generating activities that support them are few.

3. In practically none of the countries has an intense secondary market been developed. In its majority it is represented by operations of borrowing of securities, or repurchase, that are used to give liquidity to the banking institutions as a means for these to invest their temporary surplus. In effect, through these operations the interbanking market has been substituted. The reasons that have originated this situation are various, and they are linked to the characteristics that are proper of each particular market. Some of them are:

- o The existence of sole titles emitted according to the investor or emitting entity.

- o The fact that to obtain financial benefits for the buyer, the only requirement is that the titles be placed through the stock exchange, and once the placement is performed, it is not necessary for the subsequent transactions to be performed within the stock exchange. When doing it outside the stock exchange, the payment of the respective commission is avoided. This is true, although in all the region's countries the stock exchange has regulations against this practice.

- o It is related to money markets, that is, that the majority of the titles are emitted for short terms, and the majority of the investors only invest at very short terms, which is very common in all the financial markets. It is suffice to observe that the securing of the banking system has an average term of 180 days. Even though this is due to various reasons, the most important one in Latin America, in general, and particularly in Central America, is maybe the lack of confidence that the public has in that the structural adjustment processes are of permanent character. There exists fear that the economical situation can be inverted. Additionally, it has to be taken into consideration that some countries of the Central American region still affront political character problems, and on the other hand, that the majority of stock markets in the region are very young. This youth, even though in itself does not represent an obstacle for the development of a stock market, the little experience and knowledge on the stock exchange negotiations, is.

4. That the money market in Central America has developed is also due, to a great extent, to the absence of institutional investors who, by nature, are the ones that invest at long terms and grant liquidity to those titles. The pension funds are greatly of public character and they affront serious clearance problems, and when they have resources, the norm specifies that they be invested in public sector titles. The insurance companies affront rigid regulations that also greatly limit the investment to governmental titles. In regard to the third important institutional investor, investment funds, they are practically inexistent and the few that operate make short term investments.

5. In spite that the operations of greater importance that are performed in the region's stock markets are those of borrowing of securities, in the majority of the countries they are performed as repurchase operations. It must be pointed out that in Costa Rica they are contemplated as such. This form of operation limits the versatility of the borrowing of securities and actually reduces the opportunity of generating profits for the middlemen. For example, the established guarantee systems impede the sale of titles acquired through the borrowing of securities operations.

6. With few exceptions, in the region exists the idea that the supervising entity of the stock exchange must classify titles-securities or emitting entities, and some legislations and regulations actually establish it. For example, in El Salvador, the Credit Institution and Assisting Organizations Law points out that it is an obligation of the stock exchange. This is an erroneous idea, since the

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responsibility of the supervising entity, as well as that of the stock exchange, is exclusively to verify that the emitting entities fulfill the requirements established for the emission, and that all the information necessary to take the investing decisions is available opportunely for all the participants in the market. For this reason the classifying firms have been created, so that they can perform this function.

7. Currently, only in Costa Rica exists a securities classifying firm. Notwithstanding, in the rest of the markets is perceived the absence of these institutions as one of the key elements which has impeded the development of the stock markets. As previously mentioned, the classifying activity is left in the hands of the stock market in some countries.

Notwithstanding, the absence of the classifying firms is not determining for the development of the stock market. The majority of the Latin American markets created them until a very recent date. What is important is that the information on the emitting entities and titles-securities has quality and is available to all the participants in an efficient manner. It is precisely in this aspect that the Central American markets fail. On the other hand, having classifying firms in this development stage of the Central American markets, can inhibit even more that the firms may become open ones, since the obligatory classification of the emitting entities and their titles-securities, implies increasing the cost of intermediation.

8. There exists the practice that the indebtedness titles pay interests according to the rates expressed on a commercial year of 360 days, a custom generally accepted by markets with a greater degree of development. However, in the Central American countries, the titles pay only periods of 360 days, even though the emission is of a calendar year, that is to say, they do not pay for the days effectively elapsed, just as is the custom in the more developed markets. This custom is the habitual practice, not only in the stock market, but also in the banking system. In effect the markets adjust to these practices when making the evaluations of the interest rates. However, for many of the operations that are performed in the stock market, they are harmful. The clearest example is: the borrowing of securities operations in which it is necessary to calculate the bonus, according to the days that effectively elapsed. It is relevant to clarify that the Central American markets have recognized this, and these operations are performed in this manner. But the practice can generate distortions, since, for example, in a month with 31 days, if the negotiated titles are those that pay monthly coupons, the calculation will be difficult. This practice affects the appraisal of the shares of the investment companies, since these must be assessed daily under clear rules, and this practice makes the appraisal and supervision of the same difficult, a vital aspect in the development of any stock market.

9. During the investigation, the need to increase the efforts for the qualification at all levels was detected. This training would be for the stock exchange personnel as well as for the middlemen and for the supervising authorities, notwithstanding that all the interviewed persons declared their interest in training and making the necessary efforts to achieve an institutional level. The stock exchange contemplates, within its plans, the action of performing qualification efforts directed towards their personnel as well as towards the stockbrokers. It is probable that the lack of training is one of the motives why a higher development of the stock market has not been acquired, since there is a series of services that are not offered, in spite that they could have great acceptance, such as the administration of the treasuries of the firms, the development of investment companies, counselling in financial engineering for the firms, placing of accounts receivable within the stock exchange transactions, etc.

10. The region's stock exchanges are distinguished because in their majority, they are of mixed character, that is, not all their shareholders are stockbrokers. The stock exchanges where only the stockbrokers are shareholders are the National Stock Exchange of Guatemala, the Electronic Stock

Exchange of Costa Rica and it is expected that all the shareholders of the Central American Stock Exchange of Honduras form stockbroker agencies.

Even though there exist examples in other stock exchanges with mixed capital stock, the ones that have developed the most are held exclusively by stockholders or are governmental institutions, such as the case of the stock exchange of Paris. This is because stock exchanges are exclusively lenders of services, whose ultimate purpose is to facilitate the transactions with titles-securities, therefore, they are not considered profit generators, even though many of them produce it. But due to the fact that they focus themselves on rendering better services, they have frequently reinvested the profits in order to develop the technology. If the shareholders of a stock exchange seek, above all, to improve their services, the institution could develop adequately, but if they seek to have output on the invested capital, interest conflicts could arise, given that the main source of income for the stock exchange is the commission charged by the transactions that are performed in it. For the sake of obtaining profits the intermediation costs could go up for the primary market as well as for the secondary one, and the investment in technology could be reduced to a minimum, which is vital for a stock exchange in the world of today.

11. The negotiation procedures that are used are not the same in all the stock exchanges of the region. This is another area in which the harmonization will be necessary. Even though it is true that in the majority of stock exchanges the bidding system is used, it is not used in all of them and the negotiation by minimum lots has not been defined in any market. And although in some cases isolated references are made, special procedures for the negotiation of the so called "odds" (when the titles-securities to be negotiated are not sufficient to form a lot) do not exist either. The problem becomes worse if it is considered that in Costa Rica as well as in Honduras, the majority of the negotiated titles are sole ones, that is to say, emitted according to the emitting entity or the investor, one of the elements that influences in that the secondary market has not been developed, but that makes the standardized negotiation difficult. On the other hand, it is important to point out that the electronic negotiation systems that exist are not compatible among themselves, and this would make the integration difficult, even though it is relevant to mention that the National Stock Exchange of Guatemala, the Stock Exchange of Honduras, the one of El Salvador and the Nicaraguan have begun formal talks to obtain the system developed by the first.

Annex 5 presents a matrix that summarizes the main characteristics of the stock markets in Central America. On the other hand, an aspect that is important to consider is the financial situation that the region's stock markets affront. To this respect, it must be pointed out that in the majority of the cases, the creation of a stock exchange is a project of long maturation in which, if the equilibrium point is attained, on the third year it could be considered a success. Emphasize must be made on the fact that the stock exchanges of the Central American countries with three or more years of operation, attained the equilibrium point in a shorter term. However, at this precise moment it is difficult to give a diagnose on the financial point of the stock exchanges, in virtue that some of them have recently initiated operations, with less than 12 months of operation, and on the date on which the study was carried out, they did not have the financial statements yet. Furthermore, in the countries where a second or third stock exchange has been created, the impact that the initiation of a new one, or the financial perspectives of the same, will have at medium term on the income of the existing stock exchanges, cannot be foreseen with precision. However, in general terms, it can be affirmed that for the moment, the majority of the region's stock exchanges have a stable financial situation and that, to date, they have adequately handled their resources. Notwithstanding it is evident that in the future, they must increase their efforts to augment their income, or the sources of them, since the entrance of new stock exchanges in the market, that per se are small, and the little participation of the firms in them, indicate that there will be a strong competition. For this reason is

probable that some of the stock exchanges may disappear when it cannot adequately affront this competition.

Notwithstanding the above, the perspectives of the stock markets of the region's countries are good, since they have opened a door to new financial services and, to date, the resources negotiated through them are of importance within the size of the region's economies and the youth of the markets, since the progress achieved is significant. It is relevant to point out that the importance of the stock markets must be measured in regard to the size of their economy, and that it would be incorrect to compare them in an absolute manner with markets whose economies are of larger size. Likewise, it must be taken into consideration that currently, all the countries of the region are under programs of structural adjustment and the confidence in their success is not complete on behalf of all the sectors of the economy.

Finally, even though it is not directly related to the stock exchange transaction activity, it is important to point out that in various countries of the region, there exist financial entities that are not regulated, which at the most, like in the case of Honduras, require a registration with the Bank Superintendency. These financial entities perform financial intermediation, offering the public payment of high interests for their resources. Some of these institutions offer in Guatemala up to 7% each month. These institutions represent a disloyal competition for all the financial system entities, and jeopardize the confidence of the public in the system's integrity. For this reason, it is necessary that the supervision activities be reinforced, and these institutions be regulated in an effective manner. It is relevant to clarify that currently the first steps to eliminate that distortion factor have been taken.

CHAPTER 4

STOCKMARKETS OF THE CENTRAL AMERICAN ISTHMUS AND PANAMA COUNTRIES

In this section a brief analysis of each one of the stock markets that integrate the region will be made. It is convenient to clarify that, even though the main virtues will be pointed out, emphasis will be made on the problems that each one of them affronts in a local manner as well as facing integration. Likewise, in each case specific recommendations that can collaborate to its strengthening, and that will prepare it for a solid and lasting integration will be made.

The Stock Market in Guatemala

In order to establish a stock exchange, the authorization of the Treasury Department, that does not perform supervision tasks, is required. This power is granted to the Department by Article 16, fragment 13 of the Executive Body Law, which establishes: "The authorization, registration and control of exchanges, markets, stock exchanges, and industry and commerce chamber, as well as its organization when it were convenient or necessary, (are the functions of the Treasury Department)" The first problem found with the Guatemalan legislation is that it mixes an activity of financial nature with commercial activities and with the negotiation of assets with titles-securities, as is the case of exchanges and stock exchange.

In the stock market of Guatemala there currently function three stock exchanges: Bolsa de Valores Nacional, S.A., (National Stock Exchange), Bolsa Agrícola Nacional, S.A. (National Agricultural Stock Exchange), and the Bolsa de Valores Global, S.A. (Global Stock Exchange).

The National Agricultural Stock Exchange, besides having the authorization to act as a stock exchange, also has it to act as a commodity exchange, even though to date only titles-securities are negotiated. The stock markets and the commodity exchange are of different nature. For this reason, in the developed markets, they are supervised by different institutions, have different norms, and in no case are both types of products negotiated simultaneously. In effect, there does not exist in the whole world a successful example of such simultaneous negotiation. To achieve the development of each one of these markets it requires endeavors in the various activity areas, and to try to carry them out at the same time would necessarily harm one, or both, activities, since it would be very hard to concentrate efforts.

Stock Exchanges were created with different mentalities, while the Bolsa de Valores Nacional, S.A. (National Stock Exchange) is integrated exclusively by stockbrokers [speaking within capital stock], while the other two have a mixed participation, that is, stockbrokers and persons that are not linked to the stock exchange transaction business.

The Guatemalan market is the only one of the region over which the governmental authorities do not perform supervising tasks on their participants, reason why it is considered a totally self-regulated market. There does not exist regulation emanated from the authorities. It must be mentioned that the only control on behalf of the governmental authorities to which stock exchange, and the middlemen that act in it, are subject, is the same as for any commercial company. It is opportune to remember the concepts exposed in the previous chapter on the importance that the supervision of the stock exchange transaction sector has. The regulation that rules stock exchange transaction activity is the one emitted by the stock exchange. It must be clarified that the regulation of the three stock exchanges is very similar, even though it presents some important differences.

A Stock Market Bill has been prepared with the participation of the stock exchanges and the authorities, which will be presented to Congress in the near future. This Bill must be perfectly

reviewed, since it has some deficiencies that, far from supporting the market's development at a medium term, could have the contrary effect. Annex 6 presents an analysis of the same. It is important to mention that one of the reasons that impelled the preparation of the Bill was to fulfill the conditions in order to obtain credit disbursements of the Interamerican Development Bank.

In general, the stock exchanges as well as the stockbrokers advocate for a total self-regulation. In effect, this criteria prevails in the Bill. Some of the interviewed persons expressed that they would prefer if the supervising entity did not exist, since it would imply creating another bureaucratic entity and would impede the development of the market. They also openly declared themselves against the fact that the Bank Superintendency would be the one to perform these functions, arguing that it does not have the technical qualification and that the task that it performs with the banking system is deficient.

The stock exchanges have not emitted any kind of prudential norms for the stockbrokers, and the only thing that is requested is a bond, even though it should be clarified that the stock exchange regulations contemplate sanctions for the stockbrokers. The same are focused on cases of noncompliance of the performed operations, which results normal in every market. Strictly speaking, there do not exist prudential norms, since, for example, no norm establishes operation margins.

The lack of supervision is one of the market's problems, since the protection offered to the investor is minimum and questionable. There isn't any complete legal security in regard to some of the decisions that, in case of conflict between a stockbroker and an investor, the stock exchange could make, but this situation also implies that the stockbrokers as well as the same stock exchanges, are unprotected. Notwithstanding, it is convenient to clarify that the stock exchange transaction operations are ruled by the civil and commercial law, but there does not exist a special regulation, nor is the mercantil commission agreement used to document the relationship between the investor and the stockbroker. Due to the nature of the transactions that are performed in the stock market, it is necessary that they be regulated by special norms that grant complete legal security.

Some of the persons interviewed by the public, as well as the private sector, pointed out that there exists a Securities Commission, and that its members are the ones in charge of preparing the Stock Market Bill. Notwithstanding, this Commission is only an entity of the central bank, whose function is to administer the Securities Regulation Fund. Annex 7 transcribes the articles of the Guatemalan Bank Organic Law, where its creation and functions are established. The main functions that the Securities Commission has developed within the stock market have been to set the rates of the bonds placed by the Treasury Department. Recently, the mentioned Securities Regulation Fund has played an important role, since it has given liquidity to the titles emitted by the central bank when actively participating in the borrowing of securities operations. However, it is relevant to clarify that the Securities Commission played a very important role in the process of writing out the Stock Market Bill.

Under the current system, the regulating entity of the financial system is the Monetary Board of the Guatemalan Bank. Within this function, the Bank Superintendency has limited powers. For example, it emitted a regulation on the classification of the banks' portfolios. Through their association, they guarded against it with the argument that the emission of such norms is not the Superintendency's competence, but the Monetary Board's. The regulation is in force since almost a year ago, and the norm has not been able to be applied. The initiative of the Bank Superintendency to establish within its bosom a risk center has not prospered either. It is vital that, if a stock market supervising entity is to be created, it should be done in such a manner that its determinations are forceful and that it will not affront problems such as the one described in this paragraph.

On the other hand, the regulation emitted by the stock exchange is deficient, since it practically does not regulate the activities of the middlemen because it does not contemplate prudential norms.

even though, as it has been already expressed, the regulation of the exchanges is very similar, although there still persist some important differences. For example, the National Exchange requests that the emitting entities present financial information twice a year, while the Agricultural one requests its quarterly.

Currently, there are 90 stockbrokers authorized by the stock exchange. However, not all are operating and the figure is not exact, due to the fact that because the National Stock Exchange does not permit that its stockbrokers act in other exchanges, some of them have created parallel firms in order to participate in the other exchanges. The lack of exact information on the stockbrokers illustrates the absence of statistics at a global level. On the other hand, the majority of the banking institutions have interests in the stock exchange agencies.

The managers of the three stock exchanges declared that currently, they require that the operators pass an exam in order to obtain their authorization. It is important to mention that this is only an optional requirement, since the Regulations of the Global and National Stock Exchanges contemplate the option but there is no mention of the exam in the Agricultural one. On Article 21 of the Internal Regulation of the National Stock Exchange is established that: "(...) If the Council considers it opportune, before granting the respective authorization, it can decide that the proposed delegate be examined in regard to the Regulation, functioning and practices of the Stock Exchange."

On the other hand, in the Guatemalan market a promotor figure does not exist, in spite that there are persons in the stockbrokers agencies that perform this activity without the need of fulfilling any requirement.

To insure the qualification of the persons that intervene in the stock market is one way of self-regulation. When promoting the system's professionalization, a lack of qualification was detected in the market. For example, the concept of equivalent rate is not used, which is fundamental for performing the money market operations. The analysis capacity is very limited and few are the persons that can carry out financial engineering tasks. It is important to mention that all the interviewed persons agreed on the need to increase the grade of qualification in the market. To achieve this is one of the objectives of the Stock Exchange House Guild.

The presentation of the financial statements of the emitting entities has not been standardized, and because of this, uniform accounting systems are not employed either. That is why the information that the market has is deficient. In the previous chapter were already mentioned some of them, but it is important to remember that the quality of the prospectus is poor, and for this reason they move away from the international standards when not providing sufficient information that permits performing an analysis directed on making investing decisions. For example, a firm emitted promissory notes with the purpose of substituting banking credits with resources captured by this means. In the prospectus is not indicated which of the credits will be substituted, nor do notes in regard to the financial statements, nor the conditions in which said credits were agreed upon, nor the entities that granted them appear, in spite that the auditing firm is well known internationally.

Particularly, the information that the prospectus contains in regard to the destiny of the captured funds is insufficient. There are emissions for two years or more, in which it is explained that the resources will be used for the normal activities of the firm, that is to say, working capital. In effect, in the regulations it is not expressly requested that ample information be included in the prospectus on this subject. This information is vital to perform an adequate analysis of the emitting entity and of the effects that the emission will have on the generation of future flows. In general, emphasis is made on the delivery of the financial information and very little is asked in relation to the investment, extension and development projects, which is another key part for the analysis. Currently, the Agricultural Stock Exchange regulation is the one that requests the greatest amount of information.

It can be concluded that the norms on the delivery of information are not poor, but incomplete. For the same reasons, the information of continuous character which the emitting entities present is

also deficient, and as has been already expressed, the stock exchange rules in regard to the periodicity with which it must be delivered, are different.

In Guatemala the concept of multiple banking does not exist, and many of the activities that the banks perform in markets with a higher grade of development are prohibited for the Guatemalan commercial banks. Due to the aforementioned, the same banks have created separate firms to render some of these services, such as the emission of credit cards, money exchange offices, acceptance houses, financial leasing and factoring firms. These institutions are not regulated and supervising activities are not executed on them either. Firms that offer investment fund services, without being that, have also been created.

The modernization of the financial system in Guatemala is necessary, reason why international organizations, such as the World Bank and the Interamerican Development Bank have conditioned the credit disbursement granted to the country, the modernization of this system. However, it seems that it comprises the whole financial system.

The Bank Law which is in force authorizes these entities to acquire titles-securities pursuant to the limits that are set by the Monetary Board. Annex 8 transcribes the articles of the mentioned law which deal on that issue. It is important to mention that the investments will be made according to the classification of the securities that the Monetary Board will make, therefore, it is dangerous for a governmental entity to classify the goodness of the title-securities. For example, what would happen if a title is classified as apt for the banking system to invest in it, and the emitting entity does not pay. Obviously, the bank could argue that it invested because of the classification which the Monetary Board performed. Furthermore, the classification of the emitting entities and of the titles that are emitted, is a complicated task which requires the cooperation of professionals which are specialists in diverse areas, in order to be carried out. Notwithstanding, the authority that the banking system has to invest in the titles-securities, could permit the development of investment banking activities in regard to the underwriting placement of titles.

In the Guatemalan market are negotiated titles-securities emitted by the public sector as well as by the private one, the first having a greater participation in the market. The majority of the private titles are emitted in form of promissory notes with terms that go up to two years. And even though titles have been emitted for five years, the promissory notes are short term instruments emitted for not more than a year. Therefore, the funds that are captured will be destined to the working capital. It is probable that the familiarization of the public with the instrument is one of the reasons why the firms emit them to facilitate their placement. Another reason can be that when emitting this instrument it is suffice to say that the funds will be used for working capital. It is important that this type of emissions be performed adopting the form that they actually have, that is, that they be emitted as bonds or debentures. The market pertaining to capital stock is practically inexistent, therefore it is vital that the necessary efforts be performed to strengthen it. During 1992, the title negotiation of the private sector, primary and secondary markets, represented 17% of the total amount operated and 52 promissory note emissions were authorized.

An important example to take into consideration is that, with the exception of the titles emitted by the public sector, the same titles cannot be registered in the three stock exchanges, and therefore, a negotiation cannot be performed simultaneously in the three institutions. This is due to form of the Bolsa de Valores Nacional (National Stock Exchange). It is relevant to clarify that among the Agricultural and the Global stock exchanges there exists an agreement so that the titles-securities registered in one of them can be negotiated in the other. However, given the proportion of the market that they have to date, this fact is not very significant. Even though this avoids the execution of arbitration operations, which is not completely negative because these operations, if not adequately supervised, can generate problems like performing short term operations which cannot be covered, it limits the market and commercialization of the titles.

The most important public instruments are the Certificates Representative of Securities Investment (CENIVACUS - initials in Spanish), emitted by the central bank and placed through auctions in the stock exchange. This is the instrument that is used for the monetary control, notwithstanding that it is not clear if it is also used to finance the government's needs. Another instrument that the central bank emits is the Guatemalan Bank Deposit Certificates (CD - initials in Spanish), which are not placed by means of an auction and their emission mechanism is deficient. In effect, one of the conditions that the Interamerican Bank of Development demands is that this mechanism be improved and the instruments be placed through the stock market. During 1992, the Treasury Department emitted and placed in the stock exchange CERTIBONOS (Certibonds).

The secondary market is mainly represented by borrowing of securities operations. A great number of these operations are performed by the banks because they have been the way of substituting interbank credits. In 1992, the amount operated by means of the borrowing of securities increased 60%. In this market, the regulation of this operation is more liberal, even though there is a standard contract to document them. The secondary direct sales market represented only 12% of the total negotiated.

In August, 1992, the National Stock Exchange began the negotiation of exchange covers (quetzal/US dollar) and currently an electronic negotiation system of Central American currency is being developed.

Due to the competition among the stock exchange, as of now the Nacional Stock Exchange is not applying title-securities registration tariffs, and the commission for operations is reduced, pursuant to the region's standards. If the registration is not charged, it could be a bad precedent, since the firms will get used to this and when, later on, the charging is necessary, they will resist this payment. Furthermore, in order to survive, the stock exchange will have to obtain resources from other sources and most probably, the commissions will increase. With this the transaction costs will go up and the output will be substantially affected.

In Guatemala, the private pension funds do not exist and the insurance companies do not participate actively. Of the first, the most important one is the governmental Guatemalan Institute of Social Security, which by law, cannot make investments in the stock market. To date, two investment funds operate, but there does not exist any regulation for them. The existence of institutional investors is important to achieve the development of stock markets. The easiest step is to promote the creation of investment funds, at the same time that a change in legislation for long range forecast funds is promoted, and the investment rules for state funds and insurance companies are modified.

Currently, all the clearances are not performed in the stock exchanges, even though the three have taken important steps in establishing security funds that will permit them to do it, and initiate protection, custody and administration procedures of the securities. The clearance and transfer systems are not very efficient, in great part due to the fact that the banking system is not efficient either in regard to the handling of checks. There is a collection reserve of 24 hours until the funds are verified, and even though the so called cashier's or registered check are used, the efficiency is not achieved. This is an important aspect that must be improved.

On the other hand, the three stock exchanges have different electronic negotiation systems, and even the operation procedures are different. It is important that before initiating the integration with the rest of the region's markets, an integration of the national market be achieved first.

Next are some suggestions to strengthen the stock market in Guatemala:

- o Review the Stock Market Bill, and once this is done, present it to Congress for its approval.
- o Initiate supervision tasks on the participants of the market, particularly the stockholders and their operators and promoters.
- o Emission of prudential norms for the middlemen.

- o Expansion of the information requirements that the firms must turn in with titles-securites placed in public offer.
- o Standardize the accounting systems and the form of presentation and periodicity in the delivery of information from the emitting entities to the the investing public.
- o Harmonize the norms and transaction and operation systems of the three stock exchanges in order to achieve a homogenous national market that will act under the same rules. In this manner, the confidence in the market will be increased.
- o Improve the liquidation systems.
- o Increase the qualification efforts.

Stock Market in Costa Rica

The stock market in Costa Rica is the oldest in the region; the only one that, to date, has a Stock Market Law and is the most structured.

The first stock exchange that began operations is the Bolsa Nacional de Valores, S.A. (National Stock Exchange), which was established in 1976. It was born with the support of the government, and in July of the current year, the latter sold 40% of the capital that it still illegally kept. Recently a second stock exchange has begun operations: The Bolsa Electrónica de Valores de Costa Rica, S.A. (Electronic Stock Exchange of Costa Rica). The difference in regard to its structure pertaining to stock exchange, is that in the latter only stockholders participate. It is relevant to point out that the Electronic Stock Exchange purchased its operation system from the electronic stock exchange of Chile. In effect, the administration of the operations is processed daily in that country.

The Stock Market Regulating Law was proclaimed in 1990. In spite of being so new it maintains some old concepts. The Law creates the National Securities Commission as a body of maximum de-concentration from the Central Bank of Costa Rica, reason why it depends budgetarily on it, even though it is administratively autonomous. Likewise, it grants it the power of dictating general character norms and establishes that it will be the entity in charge of supervising the market and its participants. Notwithstanding the authority to dictate general character norms, it does not have complete power in many aspects, but it shares this authority with, and is even subordinated to, the stock exchanges, as in the case of the public offer authorizations.

Furthermore, the National Securities Commission is a second instance entity with a limited investigation capacity. For example, if any problem arises among the stockholders or between the stockholders and the clients, the stock exchange will carry out the investigation and will impose the sanction. The Commission will only act in case any of the parties appeal. The Law does not grant this supervising entity the power to perform inspection visits; it can order interventions but not perform them directly. Annex 9 presents a brief analysis of the Stock Market Regulating Law. It is relevant to mention that currently, the National Securities Commission is preparing an initiative to modify the Law and strengthen its functions as a supervising and controlling entity.

The National Securities Commission, as well as the stock exchanges have emitted great amount of rules for the activities. However, up to date prudential character norms for the stockholders have not been emitted, since only the establishment of minimum capital requirements exists on behalf of the stock exchanges. The operations on own account have not been established; an accounting system especially for them has not be established either, even though the National Securities Commission has standardized the quarterly delivery of the financial information. Through these formats the position of the agent is known, separated by types of titles and maturity terms, loans and accounts receivable, etc. The detail of the titles of clients in custody and the operations they perform must be incorporated in order accounts, and it is important that these be integrated to the balance sheet.

The figure of the operator is defined and the authorization of the stock exchange is needed. To obtain it, it is necessary to pass an exam; notwithstanding, the figure is confused with that of a promotor, and even though there exist persons called "resource capturing promotors" that perform the function, the figure has not been created and no authorization is required. It is important that the promotor's activity be defined and established the requirements necessary to obtain the authorization of the National Securities Commission, for the operator as well as for the promotor.

The Costa Rican market is made up mainly by indebtedness titles. The share transactions do not reach 1% of the total amount operated. Within the negotiated titles the governmental ones are those that have greater participation and they are generally placed through the auction system in the stock exchange.

The public title emitting entities are basically the Treasury Department, the Central Bank of Costa Rica and the governmental banks. The emissions of the central bank have as sole object the control of the liquidity. It daily emits two kinds of titles: short term investment system (3 to 28 days), and monetary stabilization bonds (30 to 180) days; it places them in the stock exchange through auctions. The authorities seek that the titles emitted between 3 and 28 days pay the same rate. This politics promotes investments at very short terms. The argument used to justify this is that the only interest of the bank is to control the liquidity and that its qualification goals be set based on amounts and not rates. Even though the central bank performs these operations of open market, they are only in one direction, since the bank cannot repurchase its titles, although it can perform operations of borrowing of securities. The government, through the National Treasury, places titles in the stock exchange to finance its needs. This is an interesting aspect because in many Latin American countries there is the tendency to merge the monetary control and financing emissions.

The majority of the titles-securities that are emitted by the private sector are investment certificates, reason why they are short term titles, in spite that in many occasions the funds are used to finance long range need. This is due to the fact that there is fear of not achieving placements at medium or long term, and that to do this the interest rates would have to be substantially raised and the financing costs would increase. This practice can result dangerous if at a determined moment the firms do not attain the placement of their titles in a revolving manner, because they would find themselves in a situation of illiquidity in order to affront the overdue titles and their investment projects would be harmed.

On the other hand, one of the reasons why the firms do not finance more frequently through the emission of shares, is that the capital increases imply high costs for the payment of registration rights and lawyers fees; additionally, there are financial advantages that promote the emission of indebtedness titles, because the emission expenses and the interests paid are deductible, whereas the dividends are subject to double taxation. If the cost of capital increases and the elimination of the taxative distortions are achieved, it is highly probable that the development of the market pertaining to stock exchange is encouraged.

An element that must be taken into consideration when analyzing the Costa Rican market, is that the largest banks are those that belong to the government, and that they also possess a preferential treatment to perform their operations, since they are the only ones permitted to offer some services. These entities participate in the stock market in a very active way, since they act as investors, emitting entities and middlemen. The amount of resources they administer places in disadvantage the rest of the securities middlemen.

One of the characteristics that distinguish the Costa Rican market is that the titles-securities have not been standardized and they are emitted according to the investors needs. This is facilitated because of the short term of the market, which means that when performing title emissions they will be emitted in amounts that are in agreement with the amount that each investor is willing to dedicate to that specific emission. Furthermore the considerations made in Chapter 3 on the preference of

the investors of maintaining their resources invested at very short terms, the non-standardization of the titles is another one of the elements that make the creation of the secondary market difficult, because when the titles cannot be divided, an investor who is willing to make a purchase for exactly the same value of each title, is necessarily needed. In view of the uncertainty on the liquidity needs, the investor prefers to acquire short term titles and insure their liquidity. On the contrary, if standardized titles existed, it would be easier to place them in the secondary market, because a restriction would be eliminated. The situation is evident when reviewing the negotiated amounts because in the period from May 1992 to June 1993, the primary market represented 84% of the total amount negotiated in the National Stock Exchange.

The National Securities Commission is carrying out convincing efforts before the emitting entities, so that the titles are standardized. As of August 20th of the current year, the National Treasury began the emission of titles in a standardized manner, and has obtained good acceptance in the market. Because the use of the emission of norms, in order to oblige the emitting entities to standardize their emissions, is not wanted, it would be convenient to carry out seminars to explain the advantages of the standardization.

Another aspect that is typical of the Costa Rican market is that the indebtedness titles, emitted with a variable or floating interest rates, have been defined as belonging to the variable income sector. In all of the developed markets, they are classified within the fixed income sector because, in spite that the interest may vary, there exists the certainty that it will be received, while in the variable income sector, where only shares are found, there is no certainty of receiving a dividend or obtaining a capital gain. Even though this aspect is more of semantics, because the regulations perfectly explain the nature of the titles, it is convenient that the internationally used term be modified and adopted and be congruent with the market's theory.

The Stock Market Regulation Law creates the figure of investment companies. However, these institutions have not been created. Currently, there exist two investment funds. This is due to the inadequacy of the legal dispositions. Maybe this is one of the reasons why the stockbrokers have not developed these types of companies and have directed their efforts to creating the semi-analogous mechanisms that the stockbrokers of the two authorized stock exchanges currently operate. However, due to this fact, important distortions are present in the Costa Rican markets. Next, in a schematic manner, is presented a brief analysis of these entities. It is convenient to clarify that by the characteristics of the Costa Rican market, these entities are fixed income funds, and because of this the analysis will only compare them with these funds:

- o The created semi-analogous entities of the investment funds are called "Securities Administration Account" (CAV - initials in Spanish), which are operated by the National Securities Stock Exchange brokers, and the "Money Market Operations" (OMED - initials in Spanish) which are operated by the Electronic Stock Exchange brokers. It must be pointed out that the first have been operating in the country for nine years and that, therefore, they appeared before the promulgation of the Stock Market Regulation Law and the creation of the National Securities Commission. The second ones were created during the current year and their regulation is the same as that of the first. For this reason, in the present report the analysis is focused on the CAV. These entities are basically regulated by the stock exchanges, and even though there exist norms emitted by the National Securities Commission, they are weak and do not cover fundamental aspects, such as the establishment of norms for the appraisal of the portfolio. The current regulation defines the CAV's as: the administration of a title-securities portfolio, in which the investing clients are part-owners of said portfolio in an aliquote part of the amount of their investment in regard to the total amount of the portfolio. In this report, they have been listed as semi-analogous entities because, in spite that the definition used is the same as for the investment fund, its operating forms are different. Later on reference will be made on those aspects.

- o To operate a CAV the stockbrokers do not need to obtain authorization from the National Securities Commission, nor are they subject to its supervision. This last one is the stock exchange's faculty. Not requiring the authorization is probably one of the elements that have favored its development, even though this fact goes against the interests of the investing public and the supervision of the stock exchange is not adequate. Otherwise, the distortions would have been eliminated. However, it must be clarified that the regulations emitted by the stock exchanges in order to norm these entities, must be approved by the supervising entity.
- o The National stock exchange has dictated norms in regard to its operation manner, those that are common to the investment funds: the obligation of the stockholders to subscribe a contract with their clients, pursuant to a standard format; fulfill the portfolio diversification dispositions; obligation of emitting a placement prospectus to capture resources from the public; and the obligation of monthly delivering to the supervising entity, in this case the stock exchange, information on the structure of portfolio maturities and their composition. Portfolio active percentage of titles invested in firms related to the stockbroker.
- o The essential differences in its operation forms are:
 - They do not emit standardized quotas.
 - They are not obliged to daily appraise the portfolio, which jointly with the non-existence of standardized quotes, impedes that investors monitor the development of their investment.
 - Norms for the appraisal of portfolio have not been established, which is essential so that subappraisal or overappraisal of the portfolio will not exist. In Chapter 3, the importance of this measure has already been explained.
 - In each investment order, the client must notify the term in which he wants to perform his investment. Even though it is true that in this respect, some investment funds establish restrictions in regard to the investment term or the clearance form, they are always of general character and in no case are they individualized by client or by investment. This element harms the fund because it is evident that the stockbroker will purchase the titles according to the foreseen investment term of the client. However, not all the participants of the CAV will necessarily have the same liquidity needs and there does not exist any protection for them because the portfolio's structure, in regard to the term, could frequently change and its interests could be attempted against. In the countries where funds have been developed, what has been done to cover the different needs of the clients, is create diverse structural funds, in such a way that they can be differentiated and the client makes a decision, knowing that it will be administered in the same way. Thus, for example, funds of high liquidity have been created, where the portfolio is mainly composed of short term titles; of high performance where the portfolio is integrated by high risk titles; of medium liquidity funds, etc.
 - Maybe the most important difference is that the client is guaranteed a performance on his investment, pursuant to his term, just as was explained in preceding chapters. The intermediation nature impedes that this be done, but also it is dangerous for the investor as well as for the middleman. For the first, because it is not clarified that he is assuming a risk and could lose; for the second because when guaranteeing the performance, and its attainment not being under his control, it is an important risk. Likewise, when documenting the transaction by means of a contract, he can be compelled by judicial means to fulfilled what was offered. This practice always breaks the principles and the nature of the stock market, but also with the absence of prudential norms, it represents a great risk for the investors. Thus, for example, the stockbrokers administer by this means important amounts and they do not constitute any reserve to protect themselves in the eventuality of changes in the market that could avoid the attainment of the offered performance.

The National Securities Commission has been preoccupied by this fact and has requested the stock exchange that it modify the regulation so that the performance is not guaranteed. The stock

exchange has prepared a regulation project. Notwithstanding, the distortion is not eliminated since Article 8 establishes that:

At the moment of celebrating the contract, or when the successive fund investment orders are granted, the position will suit the estimated performance modality of its investment, whether as an estimated fixed rate, or at an arranged interval rate, or as a variable estimated rate, and in this last case, if said variation will agree with the investment term or with another type of modality agreed upon by the parties. In all cases in which the estimated performance is variable, the position must clearly define with its client, the conditions in which that variation will be applied, as well as the causes that they previously agree upon in order to consider the contractual relationship ended. Without detriment to the position's retribution, the investor will receive at the end of the real or agreed upon term, the effective returns produced by his investment, which will come from the securities portfolio administered by the stock exchange position, being able to voluntarily add resources from other sources. In the event that the investor requires the invested resources before the agreed upon term on the respective investment order, the stock exchange position will act according to one of the following suppositions, which must be expressly accepted by the investing client at the moment of performing the fund clearance:

a) The stock exchange position does not have any obligation to cancel said investment; however, if the sale of the titles, or their reassignment were possible, the investor expressly assumes all the discounts, costs and risks related to said negotiation, and releases the stock market position from all type of responsibility.

b) The stock exchange position, in those cases where the estimated return modality merits it, will agree upon a scale of estimated returns which will be applied in case the client requests the withdrawal of his investment before the maturity of the agreed upon term. The determination of this scale will not imply the obligation, on behalf of the position, to liquidate the client's investment before the agreed upon term.

In the contracts, the situation of the investments, whose terms have matured and have not been recuperated by the client, must be arranged.

The money that the client has given to the position for its investment, will generate the return as of the next work day after it is given to the position, except in case both parties would have agreed upon a different moment, bearing in mind the special conditions of the requested investment.

As can be observed, the writing up of the article is very complex, but it incorporates elements that still maintain in an indirect manner, the principle of guaranteeing the returns, since at the moment of agreeing upon each investment, an "expected return" implies responsibilities. This, jointly with the fact that in effect an expected return is agreed upon in the contract that documents the relationship, makes the total elimination of the guarantee improbable. The eighth clause of the mentioned contract says: "The estimated return of the respective investment will be calculated, at the latest, as of the next day of its delivery to the Position, except when both parties would have agreed upon a different manner in the respective investment order, keeping in mind the special conditions of the requested investment." The logical question is, How is it possible to begin the calculation of an estimated interest?

Unfortunately, the CAV is not the only operation in which a return is guaranteed. This is also done in the so called "Administration of Operations Pertaining to the Stock Exchange (OPAB - initials in Spanish)", which is defined as: "the administration of a title-securities portfolio which is property of a client". These operations, as well as the CAV, are regulated by the stock exchange and their supervision is also performed by it.

The most important task of the stockbrokers is the administration of the investment portfolios of their clients, whether it be done in a discretionary manner or not, an option which is also contemplated by the OPAB. However, the return is never guaranteed. This is the only important difference that

exists between the manner in which it is operated in the developed stock markets and that of Costa Rica. However, this difference is essential and creates distortions as well as the same dangers for the client and the middleman as does CAV, above all because this operation is the one on which the greater part of the stockbrokers' activities is based upon and the resources that they administer are of great amount. As in the previous case, there do not exist prudential norms. Due to the aforementioned, the same considerations made in regard to the CAV are valid for this operation. As in the case of CAV, a regulation project has been elaborated, which is identical to that of the CAV, and the distortion is not completely eliminated.

In regard to the information requirements, the Costa Rican market is the most complete one and, in general terms, it adheres to the international standards. Even the presentation of the financial information has been standardized, and the National Securities Commission has written an account handbook.

Notwithstanding the above, the information requirements are not applied in an equal manner to all the emitting entities. With the purpose of promoting the market, the National Securities Commission authorized the reduction of requirements for the registration of small indebtedness title emissions. For example, the publication of its audited financial statements, or of the certification by the authorized public accountant of the quarterly reports is not urged. Furthermore the publication of the notice on the new emission approval is not required either.

In order to make an investment decision, it is required to have all the relevant information. Although it is true that the risk may decrease when a big firm emits small amounts, in reality it will depend on its financial position. Furthermore, what for one firm is a small amount, for another it may represent an important increase in its appeasement ratios. Due to the aforementioned, the risk is not measured in function of the size of the emission, but in the financial position of the firm, in order to affront its liabilities, reason why all the information is needed to evaluate the emitting entity. Because of the above, it is important that this disposition be eliminated and the same information requirements be requested.

However, some of the information requirements are not very important and could be eliminated in a general manner for all of the emissions. Among them are: résumé of the general manager and division managers; detail of inventories; separation of treasury investments and certification of the corresponding entities, where it is specified that the tax payment is updated.

On the other hand, the majority of the firms that emit investment certificates, do it in a revolving manner, in part because, as was explained before, some dedicate the resources to the financment of medium and long term projects. This practice is common in all the developed markets. when it is in regard to commercial paper. However, in those markets are authorized annual lines, and the emitting entity may emit titles in terms of 1 to 360 days, as long as the amount of the titles in circulation does not exceed the authorized amount on the line. Once the term of the authorization is concluded, the emitting entity must obtain another in order to renew, or even, increase it. However, in Costa Rica this authorization is not necessary and the only requirement that is asked is an updating of the prospectus that is linked to the year end closing of the firm, and not to the date on which the authorization of the emission is initiated, just as is the custom in more developed markets.

The clearance process of the operations performed in the stock exchange is very efficient. The National Securities Stock Exchange has created, within its organizational structure, a Securities Center (CEVAL- initials in Spanish), to perform the protection, custody and administration of the titles-securities. All the operations that are performed in that stock exchange are liquidated through CEVAL.

Finally, it is important to emphasize the little presence of institutional investors, since the provident or emergency funds are administrated by the State, and they can only invest in governmental titles, or those backed up by the Housing Mortgage Bank and by the Costa Rican

Cooperative Bank. It is important to mention that recently, the so called complementary pension funds have surged. However, because they are not regulated, the fiscal advantages with which those institutions count on cannot be granted, a situation that evidently does not favor its development. There also exist the so called Solidary Associations, but because there do not exist norms on its investment politics, they normally dedicate the resources to real estate investments, or even, to productive activities. In regard to the investment funds, although the resources that are administered in the CAV's are of important amount, because of their nature they dedicate themselves to the short term titles investment.

Below some suggestions are given to strengthen the Costa Rican stock market:

- o Review the Stock Market Regulation Law; propose its modification to Congress.
- o Strengthen the National Securities Commission's faculties, above all in regard to the emission of general character norms and its investigation capacity.
- o Emit prudential character norms for the stockbrokers.
- o Create a promotor figure and urge that, in order to act as such, they require the authorization of the National Securities Commission.
- o Completely eliminate the possibility that the stockbrokers may guarantee returns in any modality.
- o Induce the stockbrokers to institutionalize the CAV and form investment funds. Notwithstanding, they must be immediately urged to daily appraise their portfolios, pursuant to the general character norms that the National Securities Commission must emit, and standarize the quotas or participations.
- o Eliminate the fiscal distortions that promote the emission of indebtness titles, and reduce the cost of capital increase.
- o Review the information requirements for the emitting entities; eliminate the disposition related to small emissions, and eliminate, in a general manner, some of the requirements that are not indispensable.
- o Strive the standarization of titles-securities.
- o Promote the development of institutional investors.

Stock Market in Panama

By means of the Cabinet Decree N° 247 of the 16th day of July, 1970, the National Securities Commission is created in Panama, to regulate, authorize and supervise the public offer of the titles-securities, and likewise, authorize and supervise the middlemen, stockbrokers. On the same date, the Cabinet Decree N° 248 was emitted to regulate the functioning of the mutual funds, its distributors and selling agents. On Executive Decree N° 44 of the 31st day of May, 1988, the activity of the stock exchange is normed, but it is not until 1990 that the Bolsa de Valores de Panamá, S.A. (Stock Exchange of Panama) is formed, beginning its operations on June 16th of that same year. Because of the aforementioned, Panama is the only country of the region in which the supervising entity was created before a stock exchange existed. In spite that the National Securities Commission performs its functions within the financial ambit, it functions within the Commerce and Industrial Department.

Besides the mentioned Rights and its modifications, there are others that regulate the stock market activities, that is, the legislation of the matter is found disperse in different mandamus. With the purpose of agglutinating all the dispositions related to the securities and modernizing the existing ones, a Stock Market Bill has been presented to Congress for its approval. Annex 10 gives a brief analysis of the version of August 16th of the current year, which was the only available one at the moment of carrying out the present investigation.

Based on Article 49 of the referred to Decree N° 247, the National Securities Commission is authorized to set in the administrative ambit, the interpretation and scope of the dispositions in regard to securities and mutual funds. Through resolutions, general character norms have been emitted for the emitting entities of titles-securities. Notwithstanding, due to the limitation that the article establishes, there does not exist complete legal security on the validity of such resolutions.

Stockbrokers perform the double function of operators and promoters. To perform their functions they require authorization from the National Securities Commission, and among the established requirements is the presentation of an exam before this institution on basic knowledge of securities and mutual funds, legal dispositions that are in force, and securities and mutual funds matters, and general concepts on the economical system and stock exchange operations.

Likewise, the National Securities Commission is the one in charge of supervising the stockbrokers. The authorization is granted by the stock exchange and one of its faculties is to preform inspection visits. Notwithstanding, prudential norms have not been emitted and they do not present financial information to this Commission. The only requirement is the minimum capital established by the stock exchange. It is important to point out that, because the market is new, the majority of the stockbrokers do not dedicate themselves exclusively to the intermediation of titles-securities, but they consider this activity as a complementary one.

The majority of the titles that are negotiated in the stock exchange, are emitted by the private sector at medium and long terms. This is the main difference in this market with the rest of the region's. The public sector emits very few titles and when it does, it is to finance specific activities. The total amount that was negotiated during 1992, was 85.3% and it corresponded to titles of private firms, even though only 1.2% corresponded to shares.

The fiscal incentives that are in force are focused to favor the emission of indebtness titles, but they also favor the investment in them, since double taxation is applied on the dividends. Even though there are no taxes on capital gains, the interests perceived through indebtness titles placed in the stock exchange are exempt from tax payment.

An aspect that has inhibited the development of the securities in Panama, is that the National Securities Commission authorizes emissions, and each time a firm wants to perform a new emission, it must carry out the complete procedure, that is, there does not exist an emitting entity registration. The firms that request a voluntary registration are exempt from these dispositions. The problem is that to obtain it, at least 25 stockholders are required and given the familiar structures of the firms, only few can fulfill this. Due to the aforementioned, the stock exchange presented a proposal so that the procedure for the commercial paper emission could be abbreviated. However, the same has not prospered. Combined to the above, it is necessary to consider that the banking system is very efficient and it has excess liquidity, reason why credit obtention is easy.

The secondary formal market is practically inexistent in Panama. One of the reasons is that in order for the titleholders to be exempt of taxes on interests, the only requirement is that the titles be placed in the primary offer within the stock exchange, and in view of the easiness to negotiate them outside the stock market and avoid the payment of the corresponding commission, the formation of the secondary market is not incentivated, in spite of the prohibition of the Stock Exchange Internal Regulation.

A way of developing the secondary market could be the development of new products, such as the administration of the firms' treasuries, a market that up to now, has not been exploited and which has great possibilities of growth, above all if it is considered that there do not exist check accounts which pay interests, and that 80% of the country's economy corresponds to the service sector, which by nature has excess liquidity because of short terms. Additionally, this is one of the activities which has proven to be the most income-producing for the stockholders.

In regard to the institutional investors, there exist some investment funds and complementary pension funds, but they are of recent creation and have not achieved their development.

The information requirements of the emitting entities, to perform the public offer, are very complete and the prospectus have good quality. However, some could be eliminated. For example: activities of the directors and executives during the last three years, and the power of the lawyer that will demand the authorization before the Commission, since this could be done by the legal representative of the firm. It is relevant to point out that through the Executive Decree N° 10, dated the 9th day of March, 1972, a regulation on the manner and contents of the financial statements was emitted.

Notwithstanding the above, continuous information is practically not delivered. The National Securities Commission has not emitted any norm in that respect and, even though the Stock Exchange Internal Regulation, in its Article 3.3 subclause f), establishes that "(The firms registered, or that have a specific securities emission registered, in the stock exchange will be obliged to a)... Provide to the stock exchange, within the month following the end of each quarter, the financial information of the previous period, delivered on the formats and in agreement with the instructives that for such effect are used by the stock exchange". The firms, at the most, deliver information semi-annually.

Finally, because the stock exchange does not have the necessary means to do it, the operations' clearances are made outside the stock exchange, and it is the stockbrokers responsibility to intervene in the transaction.

Next, some suggestions are given to strengthen the stock market of Panama:

- o That the National Securities Commission be the one in charge of granting the authorization to the stockbrokers.
- o Emit prudential character norms for the stockbrokers.
- o Initiate the registration of the emitting entities, without restrictions on the capital distribution, in such a manner that the same emitting entity may perform various emissions without need to perform the complete procedure, that is, it would only have to request the respective authorization and present the corresponding prospectus.
- o Emit norms so that the firms may deliver financial information quarterly and that they inform on relevant matters.
- o In order to promote the secondary market, carry out promotion tasks so that the stockholders will not perform operations outside the stock exchange, and emit norms in regard to when they can do it.
- o Motivate the stockbrokers so that they may develop new products and markets. At a short term the most feasible one is investment of the firms's liquidity surplus. The stock exchange can perform studies on making the accounts receivable related to the stock exchange and the creation of other derived products.

The Stock Market in Honduras

The Commerce Code of Honduras establishes that the stock exchanges are auxiliary credit institutions. Based on this, in 1988 the Presidential Agreement N° 115 was emitted, where these institutions are regulated. Annex 11 gives a brief analysis of the same. With the support of USAID/Honduras, last September was begun the writing out of the Stock Market Bill.

The Bolsa Hondureña de Valores, S.A. (Honduran Stock Exchange) was organized in March, 1990, and in September of that same year, it begun operations. In the current year the Bolsa Centroamericana de Valores, S.A. (Central American Stock Exchange) has been authorized, which at the moment of making the present report, had not begun operations. The supervision and vigilance of the stock exchange is in the hands of the Bank Superintendency, who only has the

authority to dictate norms on accounting rules, even though it does not have the power to impose sanctions. The middlemen as well as the emitting entities will be supervised by the stock exchange according to what is established in its Internal Regulation.

The modifications to the Internal Regulation of a stock exchange must be authorized, previous to the opinion of the Central Bank of Honduras. However, it results interesting to note that when the stock exchange is authorized to operate, its regulation does not need any authorization.

The regulations of the two stock exchanges are very similar. However, there are two differences that are of great importance. The first is that the regulation of the Honduran Stock Exchange limits the performance of borrowing of securities operations at a maximum term of two days, which eliminates the possibility of carrying out the administration of firms' treasuries, a limitation that has been eliminated from the Central American Stock Exchange. The second difference is that the Central American Stock Exchange regulation authorizes the stockbrokers to emit titles-securities, notwithstanding that the objectives of such emissions are not specified and no limit is established. The measure can be dangerous, since there will not exist protection for the investor, above all with the absence of minimum capital requirements. The executives of the entity expressed that they included the measure so that the stockbrokers could perform operations similar to the "Securities Administration Account" (CAV- initials in Spanish), and to the "Administration of Operations Pertaining to the Stock Exchange" (OPAB - initials in Spanish), which are performed in Costa Rica. In any case, if this disposition is maintained, it should be regulated.

The stock exchange will be the one in charge of authorizing the stockbrokers, pursuant to the requirements of its internal regulation. Currently, the supervision of the middlemen is inexistent and the stock exchanges have not emitted any prudential norm. The only obligation imposed is to present their annual audited financial statements.

There exists the figure of operators, who are authorized by the stock exchange, pursuant to the requirements established by its regulation. None of the regulations contemplate the need to take an exam. The figure is mistaken with the promotor's, and the same as the rest of the region's markets, there exist persons who are dedicated to the activity. These are known as business or trade promoters and they do not require any authorization.

The stock exchanges can descretely sanction the stockbrokers as well as its operators. It is important to establish a sanction code in such a way that the same sanction will be always be applied to the same fault.

The greatest bottle neck for the development of the stock market in Honduras is that Article 45 of the Presidential Agreement N° 115 establishes that the title emissions in series by the declaration of will, must be approved by the Executive Power. The request must be presented before the Treasury and Public Credit Department, who will again send it to the stock exchange so that it can emit its opinion, and once this is done, the Executive Power wil decide on the requested authorization. During the interviews, the middlemen stated that the procedure lasts between 6 and 8 months. This is one of the reasons why the majority of the emissions in the Honduran market are promissory notes that do not require this authorization.

Additionally, the Presidential Agreement establishes that the stock exchange must classify the emission, although it is pertinent to point out that the internal regulations of both stock exchanges also establish it. This function does not correspond to a stock exchange, and furthermore, it can harm it, since even though there is no juridic responsibility, there will be a moral responsibility when the emitting entity does not comply with what is established in the emission. The perception will be that the stock exchange performed a poor evaluation and it is probable that the confidence of the investing public will be harmed.

The same as in the Panamenian market, the presence of governmental titles is reduced. During 1992, none of these titles was negotiated, and the period between January and June, 1993, they

participated with 12.14% of the total amount operated. This, in spite that the government performs important emission to finance itself through the Central Bank of Honduras, it basically emits bonds and treasury bills, and the regulation so that the central bank may emit monetary absorption certificates has been approved with the purpose of controlling liquidity, even though to date, its emission has not begun.

The reasons for the scarce presence of the governmental titles in the market, are three:

- o The bonds are emitted through a closed envelope auction, performed in the central bank.
- o The physical title is not emitted and the persons to whom it is awarded receive a custody certificate. The problem is that this is not negotiable. The titles that are not awarded go the stock exchange who sells them directly.
- o The central bank is obliged to repurchase the titles at any moment, paying the accrued interests up to the operation date. This means that the repurchases are not made according to the market rates and a secondary market is not needed to obtain liquidity.

The emission process as well as the obligatory repurchase of the central bank, restrict the presence of the government titles in the stock exchange, in the primary as well as the secondary markets. The measures, so that its negotiation can be incorporated, are simple and do not require additional infrastructure, since the central bank can award the titles through the stock exchange, and can modify its regulation so that the custody certificates are negotiable. In this manner, it would have the power to decide, according to its programs, if it repurchases or not the titles, and would do it at the market rates. The control systems are also easy to introduce if the primary placement is performed only between financial entities and stockbrokers. The investors would buy the titles through them, since the central bank would only have to keep control on the awardings and its modifications, according to the operations that are performed in the secondary market of the stock exchange. This system was introduced in Bolivia with great success.

As was already mentioned, the majority of the titles negotiated in the Honduran market, are promissory notes. The firms emit them without any restriction and they are non-standardized titles. Generally they are emitted in very high amounts, according to the need of the emitting entity. This practice is limited to the formation of the secondary market, and since the titles cannot be separated, an investor who is willing to make a purchase for the exact value of each title is required. All this eliminates the possibility of selling only part of what was purchased.

The information requirements for emissions which are established in the Regulations of the stock exchange, are adequate, and some can even be considered excessive. The problem rests on the fact that its presentation is not obligatory. For example, to date not one firm has emitted a placement prospectus, reason why there does not exist the possibility of performing an adequate analysis of the emissions. Additionally, there does not exist a standardization for the presentation of the financial statements.

There is no regulation on investment funds and currently, a stockbroker has formed a firm to offer a semi-analogous product with the same characteristics as the CAV's. With this the client would be guaranteed a return on his investment, according to his term. As was explained in previous chapters, the nature of the intermediation impedes that this can be done and it represents a risk for the investor as well as for the middleman.

Currently, there do not exist private pension funds. Notwithstanding, there exist five governmental ones, but they all have a poor financial position and the majority of their resources are used to give credits, mainly for housing, to their affiliates, at rates substantially lower than the ones in the market. Even though many of the investments performed are in real estate, because of the mentioned credits for housing, when there is a surplus, it is placed in governmental titles.

The clearance operation is not performed in the stock exchange. The stockbrokers must cover their engagements with agreements among them. On the other hand, the stockbrokers currently do not have the qualification to freely establish their commissions and forcefully must apply those stipulated by the stock exchange. If this is liberated, the intermediation costs will go down.

Next, some suggestions are given to strengthen the Honduras Stock Market:

- o Make the necessary efforts so that in the least time possible it can have an adequate regulatory system that will promote an effective supervision of the participants of the market, with the purpose of protecting the investing public's interests.
- o In a short term, promote the modification of Article 45 of the Presidential Agreement N° 115, reduce the authorization procedure and eliminate the obligation that the stock exchange has of classifying the emitting entity.
- o Modify the Internal Regulation of both stock exchanges so that the obligation of classifying emitting entities and titles-securities will be eliminated.
- o Modify the emission manner of the governmental bonds so that they can be placed and negotiated through the stock exchange.
- o Make the regulatory norms effective in regard to the delivery of information to the emitting entities and oblige the presentation of prospectus, without discriminating due to the type of title-securities that is emitted.
- o Modify the Honduran Stock Exchange Regulation to eliminate the limiting factors of the borrowing of securities operations.
- o Standardize the titles-securities that are emitted.
- o Liberalize the commission collection of the stockbrokers.

Stock Market in Nicaragua

Nicaragua is the only country that, to date, does not have a stock exchange in operation. Notwithstanding, the Bolsa de Valores de Nicaragua, S.A. (Nicaraguan Stock Exchange) has been authorized, and in a near future it will begin operations.

The Bank and Other Financial Institutions Law, in its Title IV, Chapter 2, defines the stock exchanges and grants to the Bank Superintendency the power to supervise them. The stock exchange activity is regulated by the General Regulation on Stock Exchanges, which is made official by means of the Decree 33-93 dated the 21st day of June of the current year. Annex 12 presents a brief analysis of the same.

Pursuant to the mentioned Decree, the Bank Superintendency will directly supervise the stock exchanges, and this one will supervise the emitting entities, stockbrokers and operators. But due to the fact that the Superintendency must approve the regulations emitted by the stock exchange, it will perform indirect supervision tasks over those entities.

The Internal Regulation of the Stock Exchange, on the date that the present report was made, had not been authorized yet by the Bank Superintendency. Next are given some comments on its contents:

- o The Regulation is adhered in all of its extension, to the dispositions of the Decree 33-93. The same Regulation contemplates that general character norms will be emitted to regulate some of its dispositions. This is a very correct measure because it would be difficult and unpractical to include them all in the internal regulation.
- o Article 3 establishes that operations with merchandise representative titles can be performed. It is important that the negotiation of titles-securities is not mixed with merchandises, even when the disposition refers exclusively to notes issued for loans against goods in warehouses. Its negotiation can result dangerous, above all during the first operation stage of the stock exchange, since it would be necessary to be sure of the capacity of the general deposit warehouses and the negotiation of

merchandises is very speculative. In regard to this, it is important to point out that, given the conditions of the economy, it is probable that some firms will require financing, and they only have merchandises to back them up. To do this, it is suggested that emissions be performed, guaranteed by notes issued for loans, but that these are not negotiated directly.

- o The Regulation contemplates the possibility of negotiating titles-securities of foreign emitting entities, even though it does not establish any provision so that the registration requirements are eliminated, in case they are registered in the stock exchange of their native country. This disposition would facilitate the integration process of the region's markets.

- o Article 11, subclause j), establishes that the stockbrokers must adjust to the tariffs and commissions, as well as other margins of profit that the stock exchange authorizes. It is convenient that the commissions be liberalized. It has been proved that this system reduces the intermediation costs when it creates competitiveness among the stockbrokers. On the other hand, if the borrowing of securities operations are begun with titles of the stockbrokers own position, it would imply that the margin or spread that the stockbroker could obtain would be regulated by the stock exchange, and this, taken to an extreme, would be as much as determining the market rates.

- o It is convenient that the figure of promotor be created, and that in order to grant them authorization, the same requirements be established as for the operators (Article 17).

- o It is vital that among the requirements for the information that the emitting entities must deliver, those referred to the characteristics of the titles-securities be included.

- o In Article 35, the infringements are classified and it is established that the Board of Directors will determine the sanctions and fines in a discretionary manner, depending on the seriousness of the fault. It is important that a complementary regulation be emitted that will eliminate the discretionality.

- o In Article 45, the types of operations are established. It is convenient that they be ordered pursuant to the international custom: regular cash, cash today, instalment, future, optional and giveaway.

It is projected that the operations begin with the negotiation of governmental instruments. Currently there exist three in the market, that could be incorporate:

1. Bonds for Indemnity Payment: they are bonds emitted by the government in order to indemnify the persons whose assets were taken unduly by the government. They were emitted at a fixed annual interest rate of 3%, and the first series has a term of 20 years. Its main quality is that they can be used to purchase assets of the State that are sold as part of the privatization process which will begin in the near future. The bonds will be accepted as cash, including their face value, and the accrued interests to the transaction date. Due to the term of the bonds, and to the low rate that they pay, it is highly probable that its holders will be willing to sell them at a discount and, obviously, the persons that are interested in buying State assets as their natural market.

2. The Central Bank of Nicaragua emitted negotiable bonds designate^d in dollars of the United States of America at a fixed rate and for a term of three months. At the beginning they were placed among the commercial banks, but later they were placed at the disposition of the general public. For the moment these emission have been suspended, but it is projected that they will be emitted again, and even the possibility of placing them through auction at market rates has been contemplated.

3. Tax Bond Certificates: Currently this instrument is circulating in the market.

Additionally, the regulation for the emission of the Monetary Stabilization Bills has been put to consideration of the Board of Directors of the Central Bank of Nicaragua, whose objective is the monetary control. It is set forth that the placement be performed by auction; that they be negotiable; that their emission term will not exceed 120 days; that they will be emitted at a discount and that

they will be redeemed at a face value, corrected to the exchange rate at the date of maturity. The title's characteristics can make it very attractive for negotiation in the stock exchange. On the other hand, some firms have approached the stock exchange to declare their interest in emitting.

Given the conditions of the economy in Nicaragua, it is probable that the stock exchange and its stockbrokers may develop the money market in first instance, that is, negotiation of short term titles. Even though its development is not the goal that should be pursued, the stock exchange is probably the best step for Nicaragua, in order to win the confidence of the investing public and introduce its products and services.

Finally, it is convenient that the writing up of a Stock Market Law be initiated, which will permit an adequate legal framework to propitiate its development.

Stock Market in El Salvador

The stock exchange activity is regulated by the Credit Institutions and Auxiliary Organizations Law, and Article 2 of the Organic Law of the Financial System Superintendency grants this institution the power to supervise its activities. However, it does not have authority over the middlemen, the emitting entities or to emit general character norms. The authorization of the functioning of the stock exchanges corresponds to the Economy Department. The Central Reserve Bank of El Salvador must approve the regulations of the stock exchange, as well as the resolution of the Board of Directors of the stock exchanges where the registration of the emitting entities and titles-securities is directed.

The Central Reserve Bank has written up a draft of the Stock Market Law which currently is being discussed by the different stockbrokers that participate in the market. Annex 13 presents a brief analysis of this draft.

Currently, there operates one sole stock exchange called Mercado de Valores de El Salvador, S.A. (Stock Market of El Salvador), organized on the 7th day of September, 1989 and began operations on the 27th day of April, 1992. In spite of its recent creation the stock exchange has revealed excellent results, having negotiated from January to August of the present year, the equivalent to more than 332 million dollars of the United States of America.

There are currently 19 authorized stockbrokers.; the stock exchange has set its minimum capital and they have the obligation of presenting audited financial statements, but prudential norms do not exist. The operator figure is defined and the authorization of the stock exchange is needed to perform it. One of the requirements is the passing of an exam on the functioning and practices of the stock exchange, the market pertaining to stock exchange in general, and the laws and regulations applicable in the matter. Currently there are 49 authorized operators. On the other hand, the promotor figure has not been defined.

Practically the totality of the titles that are negotiated in the Salvadoran market are of indebtedness; only one firm has registered shares and the greatest percentage corresponds to governmental titles, and among these the majority are short term. The behavior is logical since the operations were begun with the registration of five State emissions and three from the Central Bank. The titles with higher presence are the Monetary Stabilization Certificates emitted by the Central Bank, which are emitted daily and are placed through the stock exchange and the bank windows. At the beginning, the operations in the stock exchange were placed by means of auctions, but the system was modified and currently the Bank sets the rate according to the average of the passive rates of the banking system. This is a rate that comes close to the market rate because it is calculated based on a simple average and not on the equilibrium one.

In regard to private sector emissions, to date only six are quoted, but in virtue of the little time that the stock exchange has, the figure acquires a dimension of greater importance.

It is important to mention that, in spite the youth of the stock exchange, to date 21 emitting entities, 6 banks, 5 acceptance houses, 1 carrier, and 9 firms have been registered, reason why it is probable that in a short term more emissions will be performed. This figure is indicative of the promotion task that the stock exchange, as well as its stockbrokers have carried out, even though it is undoubtful that this effort has to be continued.

Due to the aforementioned, the operations that are carried out belong to the money market. The secondary market is constituted by the borrowing of securities operations, and since the direct operations are very few, this operation has substituted the interbanking credit market. It is relevant to clarify that they are called "borrowing of securities", but in reality they are repurchase operations.

The commissions that the stockbrokers charge, as well as their margins of profit are established freely by them, which is the manner in which it is done in the developed markets. However, the stock exchange Regulation establishes that the commission as well as the margins of profit must adjust to that approved by the stock exchange, reason why it is recommended that the mentioned regulation be modified. On the contrary, the signal emitted to the market is erroneous because it can give the idea that it is not adequately applied.

To date there does not exist any legislation nor regulation on the investment funds, even though some semi-analogous entities have sprung up that guarantee the client a return on his investment, according to his term. Throughout this report, emphasis has been made on how harmful this practice can be for the market, and how it attempts against the market's nature due to the type of intermediation that is made in it, and that the stockbroker assumes an unnecessary risk.

There exist five pension funds of governmental character which affront financial problems and do not contemplate the investments of their resources through the stock exchange. On the other hand, two private funds exist as well as various solidary associations, but that also do not contemplate the investment of their resource through the stock exchange, reason why it is important that promotion tasks be performed for the modification of their investment politics. Article 226 of the Credit Institutions and Auxiliary Organizations Law, establishes that:

In the stock exchanges only credit titles or share representative titles, or participations in capital companies which were emitted in numerical series, can be negotiated, as long as they have been previously classified and registered by the stock exchange board of directors.

The classification and registration of the securities will also be subject to the approval of the Central Bank, as well as the instructives that this latter one may dictate on the particular.

As has been mentioned throughout the report, the classification of the emitting entities or of titles-securities, is not a task that corresponds to the stock exchange, because with this the stock exchange assumes at a given moment, a moral responsibility before the investors, and there exists the danger of hurting the confidence of the public.

The information requirements on the emitting entities are contained on the Instructive for the Classification and Registration of the Stock Exchange. This establishes different requirements according to the type of titles-securities that are emitted. Thus, for example, only the annual accounts of the firm are requested in the case of share emission. Even though in general terms, the requested information is adequate, the fact of the differentiation implies that the same information will not be given to all the firms, and therefore, an adequate analysis will not always be made.

In regard to the requirements of periodic financial information, it is established that the balance sheets and the gain and loss statements, authorized by the External Auditor, be delivered semi-annually. However, two very important elements are omitted in order to carry out an adequate analysis: the notes that accompany the financial statements and the condition of the use and application of the resources. Furthermore, the presentation form has not been standardized.

The prospectus that are emitted do not contain the necessary information to carry out an analysis, since they only contain a summary of the last balance sheet and result statement. One of the prospectus does not even include the latter. The rest of the information is also presented in a summarized manner.

The clearance of the borrowing of securities operations is efficient, and the stock exchange acts as a clearing house.

Next, some suggestions are presented to strengthen the stock market of El Salvador:

- o Promote soon the approval of a law that regulates the activities pertaining to the stock exchange transactions.
- o Strengthen the supervision activities of the middlemen and emit prudential norms.
- o Create the promotor figure and establish that they comply with the same requirements that the operators have to obtain their authorization.
- o Because of the absence of legal dispositions, regulate the functioning of the investment funds, including norms that appraise the portfolio.
- o Given the market's characteristics, promote mechanisms which will permit the administration of the surplus resources of the firms' treasuries.
- o Modify the Instructive for the Classification and Registration of Securities in the Stock Market, to homogenize the information requirements and establish clear norms for the emission of the prospectus, in such a way, that all the necessary information to carry out the analysis directed on the investment decision making is included.
- o Eliminate from the market all practices focused on guaranteeing returns.
- o Promote the modification of the legislation for the pension funds.

CHAPTER 5

CONCLUSIONS AND RECOMMENDATIONS

In spite of their youth, the stock markets of the Central American countries have achieved significant progress which is necessary to consolidate, and it is vital that part of this process include the elimination of the distortions and obstacles that it currently affronts.

It is undoubtful that to integrate the stock markets of the region into one will substantially improve its development opportunities. However, the integration under the current circumstances may jeopardize its success in a medium and long term, above all because there exists the probability of transferring the distortions from one country to the other, specially those of operative character.

Notwithstanding, this does not imply that the ideal conditions should be attained to initiate the process. Otherwise, now is the moment to take advantage of the momentum that governments, as well as the private sector, have given the integration, in order to establish solid bases that will permit an integration which will benefit all the region's countries. Additionally, this same momentum will help to facilitate the process of eliminating the distortions.

Advantage must be taken that, recently, all of the countries from the region have performed a complete review of their legislations and regulations to incorporate in them the mechanisms that will permit the development of transparent, agile and solid markets, consistent with the international standards. In this way, the integration process will be facilitated and strengthened.

For Central America, the experience of the European Economical Community (EEC) is very valuable since its integration process is similarly affected. However, the incipient degree of the Central American region's markets demands that the effort should be greater and requires the embracement of areas not foreseen by the EEC. It is important to remember that, because the majority of the developed markets were born without regulation, what could be called non-written or common stock exchange law is very important. For this motive, its norm speaks of "stock exchange transaction uses and practices", referring to all those mechanisms established in the practice with the passing of time. In many occasions these norms or principles are not incorporated in the regulatory process in an explicit manner; nevertheless, in the case of the Central American markets, it will be necessary to explicitly incorporate them. Additionally, so that the process is successful, mainly facing the participation of the integrated market within the so called globalization of the financial markets, it will be necessary to incorporate internationally accepted systems and practices.

Undoubtedly, the Central American markets must resolve similar problems to those of the EEC. Among them stand out the clear definition of the role of the national supervising entities; harmonization of the requirements to carry out the public offer; standarization of information that the emitting entities must present to the investors, not only to perform the public offer but also the continous character one; and eliminate the distrotions that the different taxative outlines can generate.

Even though the simultaneous intregation of all the stock exchanges that operate in the region is desirable, it is difficult for this to be achieved, since not all of them have the necessary infrastructure. The fact that the stock markets will integrate gradually will not harm the process; in fact it could benefit it because, in principle, it will be easier to come to agreements that will make it feasible. In effect, the stock exchanges of the countries that integrate the so called north triangle, the National Stock Exchange of Guatemala, Honduras and El Salvador, have taken the first steps tending to their integration, and for this reason, maybe they will initiate the process.

On the other hand, currently in none of the region's countries does effective exchange control exist, which impedes the performing of cross-border transactions. This means that any person may

invest in another market. To date, the most sophisticated investors perform these types of operations, not only in the region's markets but also in more developed ones, such as the North American. Because of the aforementioned, it is feasible that in a short term, the range of instruments that can be negotiated in a multinational manner will be extended. It must be remembered that currently, some indebtedness emissions of the region's governments are already operating in this manner. This process will help the familiarization of the middlemen and the public on the procedures.

So that the integration process is successful, a minimum grade of harmonization of the economical politics is required, and the free capital movement as well as the exchange freedom are indispensable. But the harmonization of some of the norms which are specific of the stock market transactions is also indispensable, and even though the harmonization of all the principles that regulate the stock markets is not necessary, there are fundamental aspects that do require it. These can be grouped basically into legal and regulatory; of supervision and operative. It is important to remember that without this minimum degree of harmonization, the trade will tend to establish in the country where the regulation or supervision is weakest. Next are listed the principles that do require harmonization from each one of the previous categories:

Legal and Regulatory

Many of the measures that are necessary to adopt in order to eliminate the distortions that the region's markets affront, require an adequate legal framework. Because the processes that approve a law and/or its modifications are complex and slow, and in virtue that many of the problems are common, it is possible that, in a joint manner, solutions, which will permit the acceleration of the integration process, without having to wait for the approval of a required law and/or its amendments, be adopted. A multinational treaty that contemplates these aspects and mends the current deficiencies, will avoid long reform processes of the national laws. However, it must be taken into consideration that, for these agreements to have validity, their ratification by the Congress of each subscribing country is required. This can also be a slow process, above all if it is considered that next year various of the region's countries will change governments.

Due to the above, a short term measure with which the process can be initiated, is the signing of agreements among supervising entities, stock exchanges and middlemen, so that while the multinational agreement is legalized, the integration process can be initiated. In this sense, the role of BOLCEN is fundamental, since the agglutination of the region's stock exchanges can facilitate the decision making and act on behalf and in representation of its members, to negotiate the necessary agreements. Additionally, the efforts that are carried out will not be temporary or fruitless, since the agreements and norms that are emitted will be the ones that integrate the multinational agreement that will legalize the process.

The norms that are important to harmonize so that the integration process is successful are:

A. Norms so that the stockbrokers can act with a sole permit in the region: In order for the sole permit or license to be emitted it is important that common parameters exist, which will insure its good functioning. The most important ones are:

1. Return guarantee: The soonest possible, it must be eliminated from the region's markets, the possibility that a stockbroker may , guarantee returns due to any motive or in any manner. The norm must be severe and the authorization must be cancelled to whom so ever transgresses it.

2. Minimum capital requirement for the stockbrokers: The minimum capital requirements must be harmonized for the stockbrokers, in such a way that they can be assured a solid financial position, and therefore, solvency. To facilitate that the majority of stockbrokers, that currently operate in the region, may attain the qualification grade that is set as minimum, goals can be established by stages, that is, at the moment the norm is in force, the amount to be achieved at the

end of the next two years is established. An intermediate limit can be established, for example, that at the end of the first year the stockbroker must have covered 75% of the set amount. So that the integration process is not hampered, it could be established that the stockbrokers that wish to open branches in a member country, which is not their native one, will have the minimum capital that is established in that country.

3. Special accounting systems for the stockbrokers: Establish a special accounting system for the stockbrokers, that will reflect the result of their activities. A minimum harmonization must be attained in regard to the accounting norms that are applied, as well as the periodicity of the delivery of this financial information, whether audited or not, to the supervising entity that corresponds to the stockbroker. It is important that the steps to establish the system as soon as possible, be initiated. Once the norm is dictated, a period of six months could be established so that the stockbrokers can adjust to it.

4. Prudential norms: It is vital that prudential norms be emitted. Particularly there must be harmonization on the operation margins, that is, the amount of operations that the stockbrokers can perform on their own account, in function of their capital by instrument and type of operation. In this way, the investing public's interested would be protected. This norm will permit that the stockbrokers that act in a multinational manner, may count on uniform operation lineaments.

Likewise, prudential norms must exist that avoid, and in its case, sanction the unduly use of privileged information. This is one of the props so that the stock market may function transparently and, even though the recommendation has been placed in the middlemen's articles, it is vital to remember that the norms must also be applicable to the operators, promoters, members of the supervising entities and general public. Currently, the region's countries' legislations and/or regulations in force that pertain to the stock exchange, discuss this aspect but not in an ample manner and in some cases, in an inadequate manner. For example it must be remembered that the Decree 33-93 of Nicaragua, which regulates the stock exchange activity, even though it prohibits the use of privileged information, does not establish sanctions for those who transgress the norm.

5. Promulgate an ethic code that will regulate the performance of the region's stockbrokers. To do this, the stock exchanges must include sanctions in their internal regulations, including the authority cancellation for who so ever transgresses it. In this sense, BOLCEN has already given its first steps to elaborate it. This is why the necessary efforts to finish the writing must be carried out, as well as promote that it be in force during the next six months.

B. Norms so the operators and promoters can act in various markets: It is not recommendable that a sole permit be emitted, since in order to perform these activities, it is fundamental that all the aspects that norm the activity pertaining to the stock exchange transactions be known, legal as well as technical and operative. When there is no total harmonization of the norms, it is not convenient that an authorized person who acts as operator and/or promoter in a specific country, may perform as such in another. However, it is possible to establish some minimum common requirements that insure their professionalism and that facilitate the mobility of these persons in the region. The most important are:

1. Permit or license: Establish in all the countries the need to have an authorization or a permit given by the supervising authority, in order to carry out the functions of operator and/or promoter.

2. Exam: One of the basic requirements to act as operator and/or promoter must be the presentation of knowledge exams that must comprise the legal, operational and stock exchange pertaining areas, as well as technical, such as financial mathematics, finances, analysis techniques, etc. if this requirement is established, not only is the professionalism of the operators and promoters assured, but also their mobility will be facilitated, because in order to revalidate the permit in a different county than the one where it was initially given, exams on the technical areas can be obviated, since these areas are common to all the stock markets.

3. Promulgate in an ethic code, which regulates all of the region, the performance of the operators and/or promoters.

C. Norms so that the emitting entities can perform a simultaneous public offer in the region's markets, register their titles-securities for their quotation in more than one stock exchange, and maintain this registration: So that an emitting firm may offer and quote its titles in an integrated market, it is necessary that, at least, the following norms be harmonized:

1. Minimum requirements to authorize the public offer: These must cover at least, the areas of legal and financial information, as well as the emitting entity's activities, and a brief summary of the emitting entity's background. Likewise, the minimum information that the placement prospectus must contain has to be harmonized. In regard to the information contents of the placement prospectus, the definition process can be begun with the study performed by FEDEPRICAP, "Comparison of the Registration Requirements of Securities Emissions in the Central American Stock Markets, and Harmonization Proposals". Notwithstanding, it is necessary to update it, since, for example, in the case of the indebtedness emissions, the referred to document does not include the calculation form of the interests.

2. Registration requirements in the stock exchange: It is important that, in a minimum grade, the requirements that must cover the emitting entities in order to register its titles in a stock exchange for their quotation, be harmonized. In this manner, simultaneous registrations can be made in various stock exchanges, without the need of additional procedures in each country. The role of BOLCEN in this matter, is also very important, since it can facilitate the concretion of the agreements.

3. Harmonize the minimum requirements for the delivery of continuous information in order to maintain the registration of emission in the stock exchanges. To perform this task, the study of FEDEPRICAP, mentioned in the previous subclause 1, can be used as a starting point, even though it is necessary to update it because, for example, it does not contemplate the presentation of the use condition and resource application. Likewise, the presentation form of the information has to be standardized. A very important aspect is that the obligation of delivering financial information, including banks and other financial entities, is not revealed to any of the emitting entities of the region, and the public requires all the analysis elements in order to make an investment decision. This has more importance when it is considered that the titles can be negotiated in all the countries of the region, and even though it is true that in the case of the financial institutions, the majority of the Bank Superintendencies publish their financial information. It is also true that this information is not available outside the native country. It is indispensable, not only that the class and quantity of information that the emitting entities must present, be harmonized but it is also vital that in all the region's markets the same periodicity for delivery be established. It is suggested that the parameter adopted in the majority of the American continent countries be followed, that is, a quarterly delivery of information and a yearly presentation of the audited financial statements, including the corresponding notes of the auditing firm.

4. Because the application of diverse accounting principles can lead to different results, it is important that there exists a minimum of harmonization in regard to the accounting principles that the titles-securities emitting entities must use. It is desirable that the established principles follow the international standards. Due to the complexity of performing this harmonization task, it is possible that the elaboration of norms may take more than twelve months. For this reason, it can be established that in the first stage only the minimum requirements, such as principles on the accounting form of inventories, appraisal of monetary and non-monetary assets, appraisal of investments, establishment of reserves, effects of the inflation on the financial statements, etc. be pursued. Later emit complementary norms.

D. Norms for the establishment and operation of the investment funds: Because in none of the countries exist adequate norms for the investment funds, it is vital that they be emitted, above all if it is taken into consideration that in an integrated market, the investment funds could capture investment resources in a multinational manner. It is necessary that, at least, the following aspects be harmonized:

1. **Requirements to obtain the authorization to operate an investment fund:** The necessary requirements must be harmonized to establish and operate an investment fund, and this authorization must operate in the same manner as would the sole permit of the stockbrokers, that is, once the authorization is obtained in one country, action can be taken in any of those that form the Central American stock market, without need of covering an additional procedure, except the presentation of the original authorization to the competent authority before beginning operations.

2. The same as with the emitting entities, the basic information requirements that the investment funds must present to the investors must be harmonized, not only in regard to the placement prospectus, but also in regard to the continuous information that must be delivered. In the same manner, basic accounting principles must be established, which the investment funds must follow.

3. **Portfolio appraisal:** The basic criteria that the investment funds must follow to appraise their portfolios must be harmonized. It is important to remember that the application of different principles will obtain different results. With the purpose of protecting the investor, uniform and adequate principles must be established, particularly in regard to the following aspects:

- o Obligation of daily appraisal of the portfolio;

- o Procedures to appraise the portfolio: Clear principles must be established on the "price" with which each one of the titles-securities, which integrate the portfolio of investment funds, will be appraised. Generally, it is established that they must be appraised according to the market price. However, in small markets not all the titles are daily quoted. This makes the appraising task difficult. For this reason, clear principles that establish the form of appraisal when titles are not quoted, must exist. Therefore, do not count on the market price.

- o Obligation of giving the clients, once a month, an account statement which contains, at least, the quota and participation numbers as well as the number of shares that have been purchased or sold during the period, prices at which they were purchased or sold, and the appraisal of its position at the moment of the account statement closing; and

- o The obligation of letting the investing public know, at least once a month, the portfolio composition. This can be done at the moment in which the monthly account statement is given.

E. Harmonization or convergence in taxative matters: Even though it is not a strictly stock exchange transaction issue because the differences in the fiscal treatment in the region's countries can generate important distortions in the stock market, special emphasis should be placed on harmonizing, or at least converging, the taxative systems before the integration of the stock markets. An example that illustrates the situation is that, when the integration begins, the investors will prefer purchasing their indebtedness titles-securities in Panama, since in that country the interests gained for that concept are exempt of tax payment, while in the rest of the countries, even though with differential rates, these incomes are encumbered. It is important to remember that the Central American Economical Integration Secretariat (SIECA) is the entity in charge of carrying out studies and recommendations conducive to harmonizing or converging the taxative systems of the Central American countries. In this aspect where the European experience points out clear lineaments that are to be followed, in Chapter 2 were expounded in an ample manner, many of the considerations which have caused that the convergence in taxative matter be seeked.

Supervision

The most important thing for a stock market to function is to promote its transparency and, with this, protect the interests of the investing public. The best way to do it is through an adequate supervision of the middlemen and the operations they perform, particularly through the emission of prudential norms. Even though it is true that in this aspect the stock exchanges must perform a preponderant role when applying the self-regulation norms, it is also true that the need to have strong, highly qualified supervising entities that can perform effective controlling tasks cannot be obviated; above all in the preventive area. For this reason it is vital that the supervising entities be strengthened in the region.

To achieve efficiency and preserve the national sovereignty, it is important to maintain the supervision functions decentralized, and to do this, the adoption of the EEC model, in which the supervising entity of a member country is the one in charge of supervising and controlling middlemen, head offices and branches, whose head office is found domiciled in that country, is suggested. Given the conditions that prevail in the Central American region, it is important that the adequate measures be taken so that the supervising entities may adequately perform their functions. Among them stand out that the governments give these entities a decided support and sufficient resources so they may operate adequately and the qualification tasks of their members can be increased.

Likewise, it is vital that to protect the investing public's interests, the supervising entities must have the power to perform inspection visits and in its case, administratively intervene the middlemen. In order for the supervision to be effective, the supervising entities of the region's countries must act in perfect coordination. To do this, they must be in permanent communication. That is why it is convenient that an information system be created, which will permit a communication in actual time. Additionally, the representatives of the supervising entities must establish mechanisms to meet periodically. In this manner and coordinately, general character norms can be emitted, particularly those of prudential character.

Operative Systems

For the integration to be successful, it is required that the operative procedures be harmonized and count on the basic infrastructure to perform the transactions. Otherwise, the market's efficiency would be jeopardized and, therefore, the success of the integration process. The aspects that have to be covered are:

- A. Harmonization of the transaction procedures: Given that in order to perform operations in an integrated market, it is necessary to establish electronic links which will permit it, it is fundamental that the transaction procedures be harmonized. Otherwise, the action will be under different transaction procedures and this will make the concretion of operations extremely difficult.
- B. Derived from the previous issue, the need to establish an electronic transaction system which will link all the stock exchanges on time, is evident. This is the only manner in which an integrated market can be achieved. Currently, there exist various systems of this type that are in operation, but unfortunately not all are compatible. For this reason, it is vital that the endeavor be done to choose one of them and then adopted by all the other integrated stock exchanges.
- C. Emitting entities' information system: For a stock market to be efficient it must provide the necessary information to the participants, and the information on the titles-securities emitting entities is vital for the investment decision making process to exist. Additionally, the information must be available to all the participants in the same way and at the same time. A mechanism to fulfill these requirements is that in the transaction system that is dealt with in the previous sub-clause, an information module be incorporated, through which all the information in regard to the emitting entities can be divulged, including the addition of another one of economical character, like types of

exchange, interest rates, etc. and any other that affects the development of the stock markets. The way the system would operate is that the stock exchange of the native country of the emitting entity would receive the information and would be in charge of feeding it to the system. Until this happens, said information must be considered privileged. Given that the system would operate in actual time, once the information is fed and processed, it will be available to all the participants.

Besides covering with this the principles on information divulging, the system can represent an additional source of resources for the stock exchange, since it is possible that these will sell the system to the interested parties, or that specialized publications will be created to get the information from all the emitting entities of the region, to the interested parties.

C. Clearance and compensation systems: So that the integrated market may function adequately, it is indispensable that agile clearance procedures exist, that will permit multinational transactions, including value operations on the same day. To do this, it is fundamental that a clearing house be established. Without this mechanism, serious problems can present themselves in the markets, due to possible noncompliance in the clearances. It is a fact that the central banks of the Central American region countries do not wish to be an active part in this house. For this reason, the private sector must assume the function and create the house. Notwithstanding, it is indispensable that the member countries promise to permit freedom of capital flow and the free convertability of currency so that the house can operate adequately. Otherwise, the integration of the stock markets would be in danger. It is important to mention that, currently, there exist private financial institutions that are interested in establishing a clearance house.

So that the stock exchange transaction operations can be adequately liquidated or cleared, the transaction system must provide necessary information to the clearance house, so that it can perform its function. A way of doing it is through the cash management systems, through which it is possible to perform electronic fund transfers, including a foreign currency exchange. To do this, the stockbroker must establish check accounts with the financial institution(s) that the clearing house establishes. Another way of doing it is that the stock exchanges will be the ones that, acting on behalf of their stockbrokers, will consolidate the operations and directly deal with the clearance house so that, later, they can internally clear their stockbrokers.

E. Title-Securities transfer system: For the integration to be successful, it is necessary that the basic infrastructure of title-securities transfer be created, which will permit in an efficient manner, the concretion of the transactions. To do this the establishment of a Central office for the Central American Securities Deposit is suggested, in such a manner that the mobilization of titles from country to country is not required. Otherwise, unnecessary risks would be taken and the cost of the transaction would increase. In a schematic way, the structure that is proposed for the system is the following:

1. Formation of a stock company (corporation) whose only social objective would be the deposit, protection and administration of the titles-securities: It is recommended that all the stock exchanges and their stockbrokers be shareholders of the company. It is also convenient that banks and other financial institutions be invited to participate.

2. Multiple deposit and protection system: It is recommended to use the multiple vault system, that is to say, in each country the titles emitted by firms domiciliated in that country, or their governments, will be guarded. In this manner, the transfer of the titles from country to country will be avoided, and at the same time their protection will be insured.

3. Adequate control systems: It is vital that the necessary systems be established so that there exists a strict control over the titles-securities, which will permit not only their protection and custody, but also the identification of their holders. To do this it is necessary that a computation system be developed, which will operate on actual time in the following manner:

o Simultaneously with the clearance of the operations, the corresponding data will be introduced, so that in the country where the titles are deposited the transfer can be performed by means of annotations from the seller's account to the purchaser.

o Once the previous is done, the stock exchange(s) involved in the transaction will receive from the securities deposit company, the confirmation of said transfer. To do this, in that moment a certificate will be emitted, original and five copies, which will guarantee the property of the mentioned titles. Later, the stock exchange(s) will give the stockbrokers the documentation so that it can be distributed among their clients. The original and the copies of the owner certificate will be distributed in the following manner: the original for the purchasing investor; one copy for the selling investor; a copy for each one of the stock exchanges where the transaction took place, and one for each one of the stockbrokers, seller and buyer. It is important that the stock exchanges as well as the stockbrokers keep this documentation in a file, at least during a term of twelve months, in such a manner, that if a conflict arises on the negotiated titles, it can be agilely resolved. Even though the process seems complicated, it is not, since the operation will be performed quickly in the electronic manner. It is relevant to state that because all the possible alternatives have been considered, the emission of the original certificate and its five copies has been contemplated. In an extreme, it could happen that a stockbroker in a specific country performs a transaction with another that is in another country, and for that reason two stock exchanges would be involved. That is why the system must contemplate the emission of a sole original certificate that will necessarily be given to the investing purchaser.

Once the system is in operation, it is desirable that it may also serve to administrate the protected titles-securities. It is possible that through the securities deposit company, the rights that the titles grant may be collected, and the company will be in charge of distributing them among the stockbrokers where they are assigned, whether they act on own account or on behalf of third parties, in this manner they can distribute them among their clients. On the other hand, the company in the future may act as a clearinghouse to liquidate the stock exchange transactions. For this reason it is convenient that from the beginning the necessary nexus be established so that this may be achieved, in coordination with the house that the financial institutions form, and which is mentioned in the previous sub-clause D.

Until the basic infrastructure is not present for the clearance of operations and the transfer of titles-securities, the stockbroker must not be permitted to perform arbitration operations, so that short term sales, that can harm the market, are avoided.

Training

Due to the qualification needs in the region's markets and in view of the will of the participants to make the necessary efforts in order to increase it, it is suggested that the Central American Institute of Stock Exchange Qualification be created, being this a manner of institutionalizing the qualification process. Even though various forms exist where an institution of this nature can be established, next is presented one of them in a schematic manner:

A. Objective: The main objective of the Institute must be to provide the stock exchange and stock exchange agencies' personnel an adequate training. This can also be extended to the members of the supervising entities. However, it is important that it offers courses for the firms' executives and general public. For this reason its objective must be ample.

B. Shareholders: It is recommendable that a company be formed to establish the Institute. The type of company will depend on the legal norms that prevail in the country's head office for that type of organizations. The shareholders would be the stock exchanges and stockbrokers of the region.

C. Financial Autonomy: For the Institute to be a success, it is an indispensable condition that it be financially self-sufficient. To do this it must collect adequate fees for each course that it offers. In

the world there are many examples of institutions of this type, that are not only self sufficient, but even income-producing.

D. Main Office: It is necessary that the Institute establishes its domicile of corporation in one of the region's countries. However, part of its work plan must be the design of rotating courses, that is to say, that a same course or seminar is imparted in all the region's countries. According to the success and acceptance, in the future, the establishment of branches in some of the member countries could be considered.

E. Instructors: It is probable that for some subjects it is necessary to hire instructors that come from countries outside the Central American region. But in this case it must be contemplated that, as part of their work ambit, they train at least one instructor from the region.

F. Curricular Activity: The Institute must offer courses on themes related to the stock exchange transaction activity and diverse financial aspects. Next, some examples of the courses that could form part of the curricular activities of the Institute are presented. These are focused not only on the directly interested persons, but on the firms and public to whom they can also be attractive:

- a. Financial mathematics course at different levels.
- b. Money market operations which comprise, among other themes:
 - Administration of rates:
 - Discount rates
 - Return rates
 - Equivalent return rates
 - Operations with discount emitted titles
 - Operations of borrowing of securities
- c. Introduction to the stock market, comprising, among other themes:
 - Functions of the stock market
 - Money market
 - Capital market
 - Fixed income instruments
 - Variable income instruments
- d. Basic courses on financial engineering, comprising, among other themes:
 - Financial mathematics principles
 - Financing principles
 - Function of financial engineering
 - Development of financing solutions for the firms
- e. Basic course on treasury administration, comprising, among other themes:
 - Importance of planning
 - Planning methods
 - Cash flow projection
 - Short term administration of work capital
 - Cash administration
 - Maximization of work capital
 - Financing
- f. Financing options through the emission of titles-securities, comprising, among other themes:
 - Short term financing
 - Medium term financing
 - Long term financing
 - Capital emissions
- g. Analysis techniques applicable to the stock market, including among others:
 - Analysis pertaining to stock exchange transactions

Economical analysis
Fundamental analysis
Technical analysis

h. Basic course on investment fund administration, including among others:

Portfolio administration
Appraisal of portfolio

Finally, a measure that can be taken in a short term, which does not require the integration of the markets and which could possibly cooperate so that the investing public familiarizes with the titles of the region's countries, is the creation of a multinational fixed income investment fund. Next, the main characteristics of the fund are presented in a schematic manner:

1. **Formation:** The fund could be established by the region's stockbrokers, who would contribute with the initial resources to form it. They would also promote it among their clients. It is important that, besides having as an objective that the investors familiarize with the region's titles, it will also be an income-producing operation for the stockbrokers.

2. **Domicile of corporation:** It is convenient that the fund be organized in Panama, which is the only country of the region that has the off-shore characteristics. In order to operate, it must have the authorization of that country's authorities and its shares would be quoted in the Panama Stock Exchange. Notwithstanding, the fund could quote, previous authorization, in all the stock exchanges of the region. What is really important is that all the investors from the region's countries will have access to it.

3. **Administration:** The administration of the fund's portfolio must fall upon a group of professionals, especially hired for that effect. They would be responsible for directing the stockbrokers on title purchase or sales; for appraising the portfolio and establishing quota or share prices; transmitting that information to the stockbrokers and stock exchanges where the fund is quoted.

4. **Composition of Portfolio:** It has been proposed that it be a fixed income fund, given the scarcity of representative titles of the firms' capital stock in the market. The fund's portfolio would be formed by indebtedness titles-securities of the Central Americans. It is recommendable that a participation limit to the governmental titles be established, and it must be avoided that the public think that the fund was created to finance the region's governments' needs. It is proposed that not more than 40% of the fund's portfolio be formed by that kind of titles. Likewise, diversification criteria must exist, not only in regard to the nationality of the titles, but also in regard to avoiding the concentration of the investment in determined branches of the economical activity.

5. **Clearance of Operations:** In view of the current absence of infrastructure to perform operations in actual time, it is convenient that when a client wishes to purchase participations in the fund, above all at the beginning, his resources be applied after 24 hours, and for the clearance, that is the sale of participation, a term of 48 hours be established. These elements will facilitate the administration of the fund and will grant a covering for the stockbrokers in regard to massive investment output.

6. **Internationalization:** Once the fund's operations are begun, it could be sought that they be quoted in markets with higher degree of development, which would serve as a good thermometer to measure the grade of acceptance of the Central American titles by the international investors, and it will be a good beginning to introduce the products that the Central American market can offer.

A fund of this nature will probably encourage the private sector firms to use more frequently the stock exchange transaction mechanism to finance its needs, since the option of extending the market, and therefore, the available resources, will be a great attraction.

REQUIREMENTS OF TECHNICAL ASSISTANCE

Due to the lack of experience in the region's countries, it is probable that technical assistance be required to develop some necessary activities, not only to carry out the integration process, but to eliminate some of the distortions that they now affront. On the other hand, there exists the advantage of being able to create scale economies, since the same consultant could give technical assistance to all the region's markets. With this, the harmonization process will also be facilitated.

Even though the areas where the technical assistance is required are various, special emphasis should be given on those for which there is no previous experience in the region, and which are vital to eliminate the existing distortions in the national markets as well as to make a successful integration process feasible. Next, the areas on which, under these parameters, the technical assistance could have important benefits, are listed:

1. Writing out of prudential norms for the middlemen and training to the supervising entities on how to apply them.
2. Assistance to the supervising entities, for the elaboration of inspection and training handbooks, on inspection and supervision procedures for stock exchange transaction middlemen. Special emphasis should be put on the preventive norms and on the design of opportune alert systems.
3. Establishment of accounting systems for the stockbrokers, emission of an account handbook and norms for its supervision.
4. Development and establishment of the protection, deposit and administration of titles-securities at a regional level.
5. Standarization of the requirements for delivering financial information to the emitting entities, annually and quarterly, and the elaboration of formats for its presentation.
6. Supervision of investment funds and emission of norms for the appraisal of the portfolio.

ANNEX 1
MEETING AT ANTIGUA - NECESSARY ACTIONS TO
ACHIEVE THE CENTRAL AMERICAN ECONOMIC INTEGRATION

In the meeting held at Antigua, Guatemala, in June, 1990, the Presidents of the five countries of the region determined that, in order to achieve the economical integration of Central America, it was necessary to take action in the following areas:

- o Consolidation of the free trade area: Promote the entrance of Panama to this area, since with her there are advantages in reciprocal trade. The first step should be include the regional free trade of products of agricultural origin, and later on extend it, not limiting it to assets but including services such as transport, insurance, banking.
- o Creation of the common market: Evolutionize free mobility of factors: capital and work. In the case of work, it will be seeked by imposing restrictions that will avoid lack of equilibrium. To do this the mobility of professional groups will be begun, temporary migrations, and permitting that inhabitants at the border may work indistinctly in any country, as long as they live in their native country, and set permanent immigrant fees. In regard to capital movement, the need to establish an inter-regional payment system was recognized, which would open the possibility of investing in public and private titles-securities for depositors of each country, in the markets of the other member countries; and permit Central American investors to freely perform investments without any other regulation than those in force in the country where the investment is done. On the other hand, it was talked about the need to accept that the inter-regional trade transactions can be paid in local currency of any of the countries, without the intervention of the central banks.
- o Opening to third countries: Advance in three fronts: (1) unilateral opening through which the common market countries reduce their external tariffs; (2) incorporation of member countries to GATT; and (3) concretion of bilateral free trade treaties.

It was recognized that to achieve the previous objectives would imply great effort of regional coordination of the economical politics. To date, work is being performed in different areas to study the manner of harmonizing economical politics.

ANNEX 2

OTHER AGREEMENTS AND DECISIONS ADOPTED BY THE PRESIDENTS OF THE CENTRAL AMERICAN ISTHMUS COUNTRIES TO MAKE THE INTEGRATION OF THE REGION FEASIBLE

In the Official Announcement and First Action Program of the Economical Cabinets of the Central American Isthmus countries, carried out at Antigua, Guatemala, in March, 1992, various issues were agreed upon. Among them those that are directly related to the integration of the stock markets are:

1. Approve the Priority Agenda of the Economical Community of the Central American Isthmus.
2. Agilize free trade among the region's countries.
3. The Presidents of the Central Banks of the Central American countries, with the purpose of facilitating and promoting the inter-regional trade, agree that the commercial transaction payments can be performed through the use of the respective national currencies, the dollar of the United States of America, and other strong currencies, barter and other payment forms that the respective monetary authorities of the countries approve, and which do not require the intervention of the central banks. In this sense, and considering the progress in liberalization and regional integration matters, and in communication with the European Economical Community, all that is relevant to the continuity or not of the Central American Payment System will be determined.
4. With the purpose of promoting the mobility of the financial resources and integrating capital markets, the Presidents of the Central Banks agree to immediately begin the necessary actions so that, in a reciprocal and efficient manner, the next will be facilitated:
 - o The establishment and operation of branches and subsidiaries of banks and national acceptance houses in the other countries of the region.
 - o The necessary coordination for the integration of the countries stock exchanges.
 - o The review of the financial legislation and fiscal treatment of the instruments and financial institutions, so that their harmonization can be achieved.
5. Establish the Board of Public Finance or Treasury Ministers, which will have under its responsibility the definition of the taxative harmonization politics of Central America.
6. Establish the Executive Committee of the Board of Public Finance or Treasury Ministers, integrated by the respective Vice Ministers of said Offices, which will have under its responsibility the analysis of lineaments, experiences and mechanisms which lead to the harmonization and convergence of the politics in taxative matters, customhouse system, budget, and programs with the multilateral financing organisms.
7. Request from SIECA (Central American Economical Integration Secretariat) that, during the next twelve months, to act as Secretariat of the Executive Committee of the Board of Public Finance and Treasury Ministers, for which it will need to establish within its internal institutional structure, the unit specialized in matters of taxative politics, customhouse, budget and relationships with international finance organisms.
8. Request from the Interamerican Taxative Administration Center -CIAT-, the technical and financial cooperation which is required for the development of the activities indicated on the two preceding paragraphs, which will be directed by SIECA.
9. Request from the Executive Committee of the Board of Public Finance and Treasury Ministers the preparation of a:
 - o Report on the current situation and the reform programs foreseen for the current year, in regard to the taxative regime that is in force in each one of the Central American countries.

- o Report on the taxative administration systems, with emphasis on the procedures, information systems, controlling systems, and sanction regime in force in each one of the countries.
- o Report on the customhouse systems and the necessary mechanisms for the establishment of the Central American Customhouse Union.
- o Comparative report of the specific taxes that exist in regard to cigarette, liquor, beer, and soft beverage consumptions as well as in products derived from petroleum.
- o Comparative study on the fiscal incentives and taxes that exist on the exportations to markets outside the Central American region.

In the Declaration of Nueva Ocotepeque, Honduras, in May, 1992, the Presidents of El Salvador, Honduras and Guatemala, besides reasserting their previous decisions in regard to free trade and a common external tariff, gave an additional indication of their support to these initiatives. In their agreement they included a set of measures and politics focused on the modernization, coordination and integration of its financial and exchange systems, in order to include, not only the non-controlling of commercial inter-regional transactions, but also the banking system and the integration of the stock markets. In this reunion, the Presidents agreed upon:

1. Deregulation of payments: Eliminate the intervention of the central banks in the inter-regional trade payments. The plan also authorizes the exporters to receive and the importers to pay in local currency, in dollars of the United States of America or any other strong currency, barter or any other method without the need of authorization from the Central Bank.
2. Banking through borders: Authorize the banks and other financial entities of the member countries, to open branches and/or agencies in any member country.
3. Integration of capital markets: Coordinate whatever is necessary to integrate their respective capital markets and stock exchange.
4. Legal harmonization: review and harmonize the existing financial legislation, including the fiscal regime, the financial institutions and instruments.
5. Establishment: Establish at a ministerial level an Establishment Commission to work and recommend detailed measures and provisions to carry out these decisions; and
6. Non exclusivity: Summon Costa Rica and Nicaragua so that they may join in these actions, and summon Panama to initiate its integration to Central America.

Finally, on sub-paragraph 43 of the Declaration of Panama in December, 1992, the Central American Presidents reaffirmed these agreements when they expressed: "We stand out the need to achieve the regional financial integration, promoting and strengthening the complete freedom to move capitals among the countries in the region, with the purpose of investment. In this sense, and keeping in mind the resolution of the Economical Cabinets, we agreed to promote and strengthen the modernization and inter-relation of the national financing systems; link the stock exchanges so that they may perform all types of stock exchange transactions from one country to another; facilitate the establishment of branches of national finance entities of Central American countries in other countries of the region; and opening to all the financial services, all this in a frame that will permit that in those countries where there exists a state bank, it may compete under equal conditions with the private banks; establish common norms and criteria in regard to the preventive supervision of the financial entities, striving for a neutral taxative structure in regard to its impact in the mobility of the region's resources; and create adequate economical and financial information flows, to facilitate the decision making of the stockbrokers. For the mentioned purposes, we instruct the Central American Monetary Board so that during the first quarter of next year it may come up with a proposal of legislative regulations or modifications, according to the requirements in each case".

ANNEX 3

MAIN DIRECTRICES OF THE EUROPEAN ECONOMICAL COMMUNITY AND MODIFICATION OF THE SAME IN REGARD TO THE UNIFICATION OF THE STOCK MARKETS

Given that the objective of the European Commission is to create a unified stock market that will permit the emitting entities to capture resources within all the Community; the middlemen to offer their services and create branches in any of the member countries in the same manner that they would do in their own; and offer the investors a broad range of competitive financial products among which to choose from, and therefore, grant election capacity to the investors, various directives have been emitted with the intention of harmonizing or converging the regulations on value matters. Next is a brief description of the most important ones and their modifications:

I. In 1979, a directive that would coordinate the requirements for the admission of titles-securities to the official records of the stock exchanges in the member countries, was emitted. Such requirements are, for example, minimum size, amount of time the firm has existed, distribution of titles-securities among the public, minimum price of the emission, etc. Likewise, it imposes on the emitting entities permanent obligations on the delivery of information. Particularly, they must publish information on any relevant situation that can have a substantial effect on the price of their quoted titles-securities. Notwithstanding, in this directive is pointed out that the member countries are in liberty of imposing stricter restrictions.

II. In 1980, a directive that establishes the requirements on the structure of the prospectus, scrutiny and characteristics of the emission that are to be published, is emitted. The directive establishes a list of the information to be published when dealing with shares, indebtedness titles and certificates that represent shares and are admitted for their negotiation in a stock exchange. These information requirements must permit the investor to make an adequate evaluation of the assets and liabilities, financial position, profits and losses, and investment and development projects of the emitting entity. Likewise, the rights that the titles-securities that are to be emitted grant. In 1987, a directive was emitted, which modified the previous one, in order to coordinate the prospectus and all the requirements for the admission of a title-securities in the record of the stock exchanges of the member countries, in such a manner that, once the requirements are fulfilled in any of the member countries, an additional approval is not required to be negotiated in any stock exchange of another member country. The prospectus can be emitted without changing its content, except that it can be translated. Later on, in 1990, that directive was again modified to permit the emitting entities to use on sole prospectus approved in its place of origin, for public offer as well as for the admission to a stock exchange of any place in the community.

III. In 1982, a directive was emitted, which requires that the firms whose shares have been admitted for their negotiation in a stock exchange, publish semi-annually financial information, particularly on results.

IV. In 1985, two directives were emitted, on investment funds opened with transferable titles-securities, including unit trusts, investment funds, etc. One establishes the principle of achieving the mutual recognition of the legal provisions in each member country, and the control on behalf of the native country. The other establishes the framework to achieve the legal approximation to attain equal conditions of competition and effective protection for the investor in all the countries members of the community. With these directives, all restrictions on the free marketing of participations or units are eliminated. The coordination directive covers all the aspects on admission requirements, investment fund structure, and investment politics. The provisions also cover the information that must be provided to the unit or participation holders, the general obligations of the fund, such as the prohibition of requesting loans, the observance of the laws of the member country where the units

are to be marketed, the rights and obligations of the supervision authorities, and the creation of the Contact Committee formed by the persons assigned by the member countries and representatives of the Commission.

V. In 1987, a directrix focused to eliminate the indirect taxes applicable to transactions with titles-securities was emitted. The fact that not only the United States but also Japan would have eliminated them, was the most solid argument to sustain it.

VI. In 1987, another directrix was emitted, which seeks protection for the investors, removal of distortions, and fraud combat, coordinates the use of privileged information and is directed to harmonize the different behavior codes of the member countries.

VII. In 1988, another directrix that refers to the information that must be published when important participations in the registered companies' capital are purchased or sold, was emitted. Anybody that purchases or sells an important part of the shareholding of a firm, must notify it, pointing out the firm and the change in the rights to vote that the purchase or sale originates. Later on, the firm must publish the information pursuant to the directrix of 1979. Likewise, this directrix also refers to the public purchases of firms, and makes an effort to approximate the regulations of the different member countries, so that they may be just and grant equal opportunities. It is relevant to point out that this is the directrix that permits taking precautionary measures by the member countries, in order to prevent short term movements of capital for a period of up to six months, in case that its exchange and monetary politics are affected because of the liberalization of capital movements.

VIII. In 1989 is emitted a directrix that permits the emitting entities to use the prospectus approved in its native place when the titles-securities are offered for the first time to the investors through a simultaenous public offer in another country of the community. The divulging standard of the information must be, at least, the one that is requested by the directrix of 1980.

IX. In 1989 is emitted a directrix that supplements those of 1982 and 1987 on the transparency of the information and protection of the investor. In regard to privileged information, it requires that all the countries introduce similar rules to safeguard the operability of the market and insure the investors' confidence in the same.

Currently there exist projects to emit two other directrices:

- o One on financial services, focused to give a "European passport" to anyone that wishes to perform investment business on titles-securities and related instruments, subject to the authorization, regulation and supervision of its native country. It will extend the rights to provide these services to non-banking entities, since the banks already have these rights, and will permit all the investment firms, banking or not, to have access to a membership in all the stock exchanges of the member countries, and open branches or subsidiaries in any country of the Community. This project has great importance because in some countries of the Community there exists the concept of universal bank, that is to say, the banks act directly in almost all the areas of the financial market, including the stock market.

- o The other project deals on the adapting of the middlemen's capital, in such a manner that certain conditions may be attained and it can be counted on that they will have sufficient capital to cover a range of risks, even though it does not establish a binding to a minimum of financial resources. The intention is to insure an adequate protection for the investor and achieve a minimum equivalence between banking and non-banking middlemen, at the same time it permits the financial centers of the Community to maintain themselves competitive in comparison to their rivals outside said community.

ANNEX 4

THE FUNCTIONS OF THE FINANCIAL MARKETS

The main function of the financial markets is to provide the economic productive units with resources, in such a way that this economy will strengthen. As these markets become efficient, the resources will be provided at the lowest possible cost, swiftly and with least inconvenience. The most important condition so that the financial markets' objectives are achieved is that resources be provided to activities that generate wealth.

Fundamentally, in the financial markets participate three entities: surplus, deficit and intermediate ones. The first are the ones that have excess resources; the second ones are those that require resources; and the third ones are those that contact the other two. As the intermediates attain the fulfillment of their function, so will the economy grow and strengthen.

The financial intermediation activities can be divided into two: indirect and direct. The indirect intermediation is the one that typically perform the banking entities, since they receive money in deposit from the public, guaranteeing a return, and later on, place it among the entities that require it. The middleman is who decides where he will place the resources and when doing this he assumes a credit risk.

The direct intermediation is the one performed by the stockbrokers. They receive the resources from the public and place them among the deficit units according to what the surplus one decides. This is the typical intermediation that is performed in the stock market, and it differentiates from the other because the middleman never assumes the credit risk. It is relevant to clarify that when the middlemen administers the public's resources in a discretionary manner, he never assumes the credit risk.

Within the financial markets, the component which is most sensible to economy changes is the stock market. This will immediately react to any change. This is because the stock market behavior reflects the expectations of its participants, through the mechanisms of supply and demand of titles-securities. Because this market will only be efficient to the point where, through it, wealth is created, when it grows in virtue only to high return expectations with an elevated demand of titles-securities, without supporting wealth generation, there is risk that a speculative bubble will be generated. However, since this market is moved by supply and demand forces, at the moment the participants want to make their "profits" effective selling the titles-securities, the market will seek an equilibrium point and, therefore, the prices of the titles will reduce until they attain the equilibrium and, therefore, the speculation bubble will break.

In many of the countries that have experienced structural adjustment processes, the stock market has had a preponderant role in the assignment of resources towards productive activities, the attraction of foreign capital and the democratization of the capital, above all because it is capable of measuring the population's expectations and the confidence that it has on the stability of the adjustment process.

The stock market is an ideal vehicle to direct resources towards the most productive economy activities, that is to say, those capable of generating more wealth. Given that the resources in the economy are scarce, the entities that demand them will compete for them and in virtue of the supply and demand mechanisms of the free market, only the most attractive projects, and with higher possibility of generating wealth will have access to them at the lowest possible cost. Likewise, due to the fact that in the stock market the middlemen do not assume any risks, the expected return of those that offer resources will be greatest when they adjust to a traditional middleman that performs active credit operations.

Because the stock market reflects the expectations of those that offer resources through supply and demand of titles-securities, this market acts as a thermometer of the economy, immediatly

reflecting any change in the macroeconomical variables. Thus, for example, when a rise is expected in the interest rates, the price of the titles-securities immediately will descend because the offer will surpass the demand, even before the mentioned increase presents itself. The contrary will occur when a reduction of the interest rate is expected.

On the other hand, the stock market is the ideal means to achieve the democratization of the capital, since any person can have access to the market and purchase shares from the different firms that go to it. Although it is true that in the practice, the majority of the middlemen in the stock market restricts the entrance to a great part of the population when it establishes limits on the minimum amount of investment, it is also true that there exist mechanisms that permit that practically anybody can participate in the market. One of these mechanisms is the one of the investment companies or mutual funds.

The key element for the assignment of the resources to be successful, through the stock market, is that its participants have access to all the available information from the emitting entities of titles-securities, and avoid that only some make an inadequate or advantageous use of it. When the stock markets are efficient, they are the most similar thing to the perfect competition system.

The stock market is an important alternative source of alternative financing for the private sector firms, whether they are financed through indebtedness or capital, because it is important to diversify the resource sources in order to reduce global costs as well as the risk in a determined moment, of not obtaining the needed resources. This is true because when recurring always to the same source, the moment could come when the doors are closed, or in the case of bank credits, there exist legal limits imposed by the supervising entities in regard to lending to only one institution. On the other hand, the stock market offers an important investment alternative for the firms' treasuries. Given the flexibility that it offers, it is possible to invest idle resources, even for very short terms of one day, improving thus its financial performance.

Additionally, the stock market is a very useful tool for the financial authorities of a country, since through the operations of the open market, it is possible to carry out an active monetary politics, being able to control the monetary offer. When creating a secondary market for the titles-securities emitted by the government, there will be an additional tool to control the amount of circulating money in an efficient and swift manner. If the liquidity is to be increased, the government could make a repurchase of its titles-securities, or if it wants the contrary, it could perform greater emissions. It is important to remember that the adequate administration of the monetary politics is a vital element to attain control over the inflation.

The stock market is an efficient means in the monetary control, above all when the control of seasonal or business cyclic movements of the monetary offer is required. This is due to the fact that its effect is immediate, not like other measures, such as the variation of the legal reserve. On the other hand, to carry out an efficient administration of the monetary politics through operations of the open market, it must be remembered that the simple emission of governmental titles-securities is not enough. There has to be an active participation, monitoring the circulating balances and act through purchases or sales at the opportune moment, according to the prevailing conditions.

The stock market is also an additional financing source for the public sector. It is important to consider that financing will be obtained at market rates, and distortions from the past, when some central banks lend the government resources at preferential or subsidized rates will be avoided. Notwithstanding, it is important that the emissions destined to the financing of the public sector are not mixed with those directed to the monetary control, since, otherwise, the control of both activities will be lost and distortions that affect the control on public finances will be produced.

ANNEX 5

MATRIX OF THE MAIN CHARACTERISTICS OF THE STOCK MARKETS OF CENTRAL AMERICA AND PANAMA

TABLE A5-1. Main Characteristics of the Stock Markets in Central America and Panama

Concept	Guatemala	Costa Rica	Panama
Authorized Stock Exchanges	-National Stock Exchange	-National Stock Exchange	-Stock Exchange
Stock Market Law	-National Agricultural Stock Exchange	- Electronic Stock Exchange of Costa Rica	-Global Stock Exchange of Panama
Supervising Entity	None, a Bill has been written out	Stock Market Regulation Law	-There are dispositions dispersed in various mandamus, a Bill has been presented to Congress
Power of Supervisor to emit general character norms	None	National Securities Commission	National Securities Commission
Power of Supervisor to perform inspection visits to middlemen	None	Limited	Very limited
Supervision to middlemen	None	None	Limited
Prudential norm emission for middlemen	None	Very little	Very little
Adequate account systems for middlemen	None	None	None
Power of intervention from supervisor to middlemen	None	None	None
	None	Very limited	None

Concept	Guatemala	Costa Rica	Panama
Assignment system	None	None	None
Mercantile Commission Contract	Not used	Not used	Not used
Regulation on Advertisement	None	Limited	None
Contingency Fund	None	None	None
Information on middlemen operations a)supervising entity b)stock exchange	a) none b) very little	a) very little b) very little	a) limited b) very little
Operator control by a) supervising entity b) stock exchange	a) none b) very limited	a) none b) limited	a) limited b) limited
Promotor figure	None	None	None
Regulation of investment funds	None	Incomplete	Regular
Supervision of investment funds	None	Very limited	Very little
Appraisal norms from portfolio to investment funds	None	None	None
Adequate sanction code for a)Middlemen b) Emitting entities	a) Poor b) Poor	a) Poor b) Poor	a) Poor b) Poor
Information quality of emitting entities a) prospectus b) continuous	a) Poor b) Poor	a) Good b) Good	a) Good b) Poor
Standarization of the financial information of emitting entities	None	Good	Regular

Concept	Guatemala	Costa Rica	Panama
Adequate application of norms by stock exchange	Regular	Good	Regular
Clearance procedures and securities transfer	Regular	Good	Regular
Presence of indebttness	Majority	Majority	Majority
Presence of governmental instruments	Majority	Majority	Majority
Presence of medium and long term titles	Reduced	Reduced	Ample
Secondary market	Represented by repurchase operations with banks	Represented by repurchase operations with banks	Very reduced
Analysis capacity of markets	Deficient	Regular	Deficient
Qualification of supervising entity	Not applicable	Regular	Regular
Qualification of stock exchange personnel	Regular	Regular	Regular
Qualification of middlemen	Deficient	Deficient	Deficient
Existence of qualifying firms	None	One	None

TABLE A5-1. Main Characteristics of the Stock Markets in Central America and Panama

Concept	Honduras	Nicaragua	El Salvador
Authorized Stock	-Stock Exchange of Honduras	-Stock Exchange of Nicaragua	-Stock Market of El Salvador
Exchanges	-Central American Stock Exchange	-Central American Stock Exchange	-Central American Stock Exchange
Stock Market Law	With assistance of USAID/Honduras, in September began writing out a Bill	None	None, a Bill has been written out
Supervising Entity	Bank superintendency	Bank superintendency of financial system	Superintendency
Power of Supervisor to emit general character norms	None	Limited	Very limited
Power of Supervisor to perform inspection visits to middlemen	None	None	None
Supervision to middlemen	None	Indirect	Indirect
Prudential norm emission for middlemen	None	None	None
Adequate account systems for middlemen	None	None	None
Power of intervention from supervisor to middlemen	None	None	None
Assignment system	None	None	None
Mercantile Commission Contract	Not used	Not used	Not used

Concept	Honduras	Nicaragua	El Salvador
Regulation on Advertisement	None	None	None
Contingency Fund	None	None	None
Information on middlemen operations a)supervising entity b)stock exchange	a) none b) very little	a) none b) very little	a) none b) very little
Operator control by a) supervising entity b) stock exchange	a) none b) limited	a) none b) very limited	a) none b) very limited
Promotor figure	None	None	None
Regulation of investment funds	None	None	None
Supervision of investment funds	None	None	None
Appraisal norms from portfolio to investment funds	None	None	None
Adequate sanction code for a)Middlemen b) Emitting entities	a) poor b) poor	a) poor b) poor	a) poor b) poor
Information quality of emitting entities a) prospectus b) continuous	a) poor b) poor	Not applicable	a) poor b) poor
Standarization of the financial information of emitting entities	None	None	None
Adequate application of norms by stock exchange	Poor	Not applicable	Regular
Clearance procedures and securities transfer	Regular	Not applicable	Good

Concept	Honduras	Nicaragua	El Salvador
Presence of indebttness	Majority	Majority	Majority
Presence of governmental instruments	Minority	Not applicable	Majority
Presence of medium and long term titles	Reduced	Not applicable	Very reduced
Secondary market	Very reduced	Not applicable	Represented by repurchase operations with bank
Analysis capacity of markets	Deficient	Not applicable	Deficient
Qualification of supervising entity	Deficient	Deficient	Deficient
Qualification of stock exchange personnel	Poor	Poor	Regular
Qualification of middlemen	Deficient	Deficient	Deficient
Existence of qualifying firms	None	None	None

ANNEX 6

ANALYSIS OF GUATEMALAN STOCK MARKET BILL

Next is presented a brief analysis of the Guatemalan Stock Market Bill. It is pertinent to clarify that only the articles or fractions of them that can generate important distortions if the Bill is approved the way it currently is, are transcribed, and that in some cases the article or fraction of it are only summarized.

STOCK MARKET AND MERCHANDISE BILL

TITLE I

OF THE GENERAL DISPOSITIONS

SOLE CHAPTER

Art. 1: Objective - The present law establishes the legal framework:

- a) of the stock exchange transaction, and non stock exchange transaction stock market
- b) of the public offer in trade stock exchange, of merchandise, contracts on the same, singular or uniform...

COMMENT: When defining its objective, the law mixes two totally different concepts: the negotiation of titles-securities, of purely financial nature, and negotiation of merchandise. The ambit of these markets is totally different and for this reason, the same rules cannot be applied. This is evident throughout the Bill, since an adequate separation of both markets is not attained, and on occasions terms and application ambits are confused. For this reason, it is highly convenient that a different norm for merchandise negotiation be emitted, and that the same entity will not supervise both markets. In this case, there do exist clear incompatibilities that do not occur when the same entity supervises financial activities of diverse nature.

Art. 2: securities, merchandises and contracts...

a) **Securities.** Securities are all those experts, titles or certificates, shares, typical or non-typical credit titles, which are incorporated or represented, depending on the case, property rights, credit or participation rights. The securities can be created or emitted and negotiated by means of annotations on account.

b) **Merchandises:** Merchandises are all these assets that are not excluded from the trade due to their nature or disposition of the law.

c) **Contracts:** For the effect of this law, by contract is understood all legal business by whose virtue are created, modified, extinguished or transferred liabilities within a stock exchange transaction market, whether they are singular or uniform.

COMMENT: Even though reference is made to the dematerialization of the titles, none of the measures that must be taken to safeguard the holders' interests are mentioned. All though in Title VI various articles are dedicated to the dematerialization, reference is not made to these measures either. In sub-clause b) the merchandises are defined in a very ample manner, in such a way that it will be possible to negotiate any product; and reference is not made on the need to standarize the same in order to perform this type of transactions. In fraction C, reference is made to those contracts that are the instruments used in merchandise negotiations and their function is not too clear.

Art. 3: Public Offer- The public offer, for the effect of this law, is the invitation that the emitting entity openly makes to the public, in his name or by the intermediation of a third party, by means of a trade exchange or any other massive or social divulging communication, for the negotiation of securities. The utilization of the previously mentioned means, does not imply the existence of a public offer, if the invitation is directed exclusively to those who are already partners or shareholders of the emitting entity, and the shares emitted by the latter are not registered for public offer.

The legal acts and businesses, whose contents are the result of private securities, merchandise or contract offers, registered or not for public offer, are excluded from the present law.

The securities public offer of the Government, decentralized, autonomous or semi-autonomous entities, Guatemalan Bank, Municipalities and institutions controlled by the Bank Superintendency, will be regulated by its own laws.

COMMENT: In the first place, the public's interests are not protected if private offers of securities registered for public offer can be performed. For example, a private offer, whether purchase or sale of shares, is made in such a magnitude that the composition of the rights to vote will be affected, and it will not be necessary to inform in regard to the same, because they are not contemplated under the Law. It is important that when titles have been registered for public offer, any transaction with them must be made known to the public and supervised. On the other hand, in regard to the institutions controlled by the Bank Superintendency, even though it is true that the approval of the emission is faculty of this institution, whether it is done by means of the emission of general character norms or in a particular manner, for example, authorization of the banks to emit financial paper up to a determined amount of their capital, or that a bank be permitted to increase its capital through public offer of shares or convertible bonds, it is also true that this does not excuse the emitting entity from fulfilling the other requirements which are necessary to perform the public offer, above all those that have as its objective the information to the investing public, and in this sense they should be under the Law ambit.

Art. 7: Agents - The stockbrokers are legal persons that dedicate themselves to the intermediation with securities, merchandises or contracts, pursuant to the dispositions of this law; those that act in the stock exchange call themselves "stockbrokers", and those that perform outside the stock exchange, with securities for public offer, "securities agents".

COMMENT: It is important that the agents have as sole objective the habitual intermediation of titles-securities, and the carrying out of complementary activities. Otherwise, firms that perform multiple activities will be created, and their control will be extremely difficult. On the other hand, the figure of securities agent is defined; nevertheless, none of the subsequent articles makes reference to the form of obtaining authorization to act as such, or the entity that will supervise them. It is vital that if these middlemen are to be created, there exist norms that will regulate them. They will also deal with the investing public and will receive resources from it. If this spirit is maintained, the legal creation of "informal" markets will take place.

TITLE II
OF THE SECRETARIAT OF THE STOCK MARKET AND MERCHANDISES
SOLE CHAPTER

Art. 8: Nature - The Secretariat of the Stock Exchange and Merchandises is created - from now on called the Secretariat- as a body of the Presidency of the Republic, with a strictly technical character, whose objective is the control of the legal aspects and registration of acts that are performed, and contracts that are celebrated by persons that intervene in the markets to which this Law refers to.

The Secretariat will have complete technical and functional autonomy in its administration and performance, and will organize its administrative actions through documented or informatic methods which, according to the Secretary, are the most convenient for fulfilling its objectives.

COMMENT: According to the objective of the supervising entity, its main activity will be the registration. Supervision and controlling powers are expressly not given on the middlemen. Maybe because of this the power to emit general character norms is not clearly expressed either. This emission is one of the most important functions in attaining a transparent stock market. It is important that these powers be clear and explicit, and for this they have to be in a specific article. It is relevant to point out that in this respect, the Bill is ambiguous because in the subsequent articles it appears as if the Secretariat has these powers. However, the fact that they are not explicit may make their performance difficult. It is important to remember that due to a similar deficiency, the Bank Superintendency of Guatemala affronts a lawsuit promoted by the banks against a prudential norm to classify the portfolio it emitted, arguing that it does not have the power to do this, and there exists controversy in regard to the powers that the Superintendency has to supervise the related credits. It must be avoided that the Superintendency may affront similar problems.

Art. 16: Powers - The Secretariat has the obligation to comply with this Law and have it fulfilled. In regulating normative dispositions of general character, its powers, without prejudice of others established in this law, are the following:

a) Submit for approval of the President of the Republic, the regulation projects that must be dictated by disposition of this law, or the amendments that are convenient. If the President of the Republic does not return, within the following month, the presented project in a reasoned manner, the project will be considered approved and the Secretary must demand its publication, remitting it to the Official Newspaper, within eight days after the maturity of such term.

COMMENT: Pursuant to what this article expresses in whole, it is deduced that the Secretariat's activities correspond more to the administrative area than to the supervision one. The supervision and controlling powers are not granted sufficiently clear, and although in Article 80 they are granted, they must not be contemplated separated and distant from its activities, nor from others that the modern legislation contemplates, such as the promotion of the market's development, and above all, the protection for the investing public. On the other hand, in this fraction the power to regulate is granted to the Secretariat. Notwithstanding, in subsequent articles it is established that the regulations on the functioning of the stock market will correspond to the stock exchange. For this reason it is insisted on the need to make the power explicit and place it in a separate article. The power of performing inspection visits is not granted either to the stock exchange nor middlemen, a measure of vital importance for the performance of an effective supervision

f) record, compile and direct the publication in the Official Newspaper, paid by the interested parties, of the normative and regulatory dispositions of general character emitted by the trade exchanges, for the negotiation of securities, merchandises or contracts in the commodity exchange.

COMMENT: It is important to note that it says "record", that is, have knowledge of. Approve, authorize or, at least, opine, is not specified, which is a basic function of this type of supervising entity. Just as the Law is right now, each stock exchange is permitted to emit its own norm, and with this situation distortions will be created. The spirit of granting the stock exchanges the capacity to regulate, and even, supervise the stockbrokers, its agents and attorneys, as well as the emitting entities, is maintained throughout the Bill, which contrasts, in a certain sense, with the powers that are granted to the Secretariat. It is vital to keep clearly in mind that the maximum authority in regard to stock markets, is the Secretariat.

h) Record the public offers of securities performed by the Government, the Guatemalan Bank, the Municipalities and other decentralized entities, autonomous or semi-autonomous, as well as those performed by the institutions controlled by the Bank Superintendency, based on the information that such entities give to the Secretariat.

COMMENT: It is true that the action field of another supervising entity should not be affected, although they should act in a coordinated manner, which is the situation that this fraction apparently promotes. However, the records of the supervising entity should be of public character and therefore, contain all the information in regard to the emitting entities and their emissions. What cannot be achieved by this manner, it is necessary that the emitting entities, under the supervision of the Bank Superintendency, fulfill the requirements of any public offer, with the exception of the harmonization, which is jurisdiction of their supervising entity.

j) Officially dictate, by request of party, in a reasoned manner and with the corresponding legal grounds, the necessary resolutions, so that the trade exchanges, agents, securities emitting entities, and those that offer merchandises or contracts in the commodity exchange, adjust their actions to the dispositions of the present law and to the normative and regulatory dispositions of general character.

k) Determine the legalness of the acts and contracts that are submitted to its consideration, pursuant to the dispositions of the present law, and according to the normative and regulatory dispositions of general character dictated pursuant to the same.

COMMENT: The issue on the general character norms is again discussed, but the law is not very clear in this aspect, above all if the power of regulating the stock exchanges and the fact that the Secretariat will only record them, are taken into consideration. Furthermore, it should also act officially when dictating general character norms.

l) Suspend or cancel, previous the measures that the present law establishes, the registration of the trade exchanges and of the agents.

COMMENT: It is important to notice that the cancellation procedures established in the Bill refer, in an ample manner, to the voluntary cancellation and it is less explicit in regard to the forceful cancellation due to the transgression of the law and the general character norms.

m) Suspend or cancel, before the measures that the present law establishes, the registration of the securities public offers, as well as those of merchandises and contracts negotiated in the stock exchange market.

COMMENT: No article refers to the procedures to cancel the registration of merchandises nor to the motives that can originate it. Another of the difficulties in mixing both markets is the ambiguity in the emission of norms such as this one.

n) Remit, for its publication in the Official Newspaper, as well as in any other social divulging media, all that is related to the registration, suspension, modification or cancellation of acts, persons or contracts, when according to the Secretariat's criteria said publication tends to safeguard the public's interests.

COMMENT: Those facts should always be published to safeguard the public's interests. In the majority of the markets, these publications are done paid by the involved entity.

**TITLE III
OF THE COMMODITY EXCHANGE
CHAPTER I
OF THE GENERAL DISPOSITIONS**

Art. 18: Activities - The commodity exchange can perform the following activities:

COMMENT: The article says that they can, and all the listed activities are not optional but obligatory. Otherwise, it cannot function adequately. For this reason it is convenient that the writing be modified and it should read "must". In a sub-clause at the end of the same article, it can be added that: "Furthermore, they can perform all those complementary activities that are not prohibited by the law"; and also, it should be added that they will perform all those that the Secretariat disposes by means of general character norms.

a) Adequate instalations and facilities, and establish mechanisms that facilitate the relationship and operations between the offering entities and the demanding entities of securities, merchandises or contracts, and the performance of any business of stock exchange nature.

COMMENT: It is important that the negotiation of titles-securites is not mixed. Even if the present outline is maintained, it is vital that the negotiations be performed in different places, even if its inside the same area.

b) Record the securities public offers that would have registered in the Secretariat, and fulfill the requirements of the normative and regulatory dispositions of general character of the commodity exchange where the public offer is to take place.

COMMENT: The stock exchange norms are those that prevail and the fraction clarifies that there could be different regulations according to the stock exchange that emits them. It is true that there could be a certain degree of freedom and that the regulations can be differentiated. However, in all them must be contemplated the basic principles of the market that promote its transparency, and that

all the participants act according to the same rules. Furthermore, the diversity of the norms makes the realization of the supervising tasks difficult.

e) Watch over so that the performance of its agents and emitting entities are adjusted to its normative and regulatory dispositions of general character.

COMMENT: Given the spirit of "self-regulation" of the stock exchanges that promote the Bill, it is obvious that all the supervising activity be left to them.

h) Request before a competent judge of First Instance of the Civil Branch, in an incidental proceeding, the intervention of emitting companies and stockbrokers, or stock exchange houses, who would have transgressed legal dispositions, normative and regulatory dispositions of general character of the respective commodity exchange, when to his knowledge, said measure is needed. The intervention will have the desired effect foreseen in Article 661 of the Guatemalan Commercial Code, and as of the date of the notification of the resolution that said measure decrees, the alienation of those assets that do not constitute the ordinary business of the firm, can only be carried out with judicial authorization. The intervention can be decreed without previous hearing of the affected party, in view of the serious circumstances that justify this according to the judge's criteria.

COMMENT: Again, all the force and judgment is possessed by the stock exchanges through the regulation that they emit. Although it is possible that the intervention be contemplated, it is important that in a necessary case, this be performed without delay. It is evident that requesting it before a judge requires time, so in order to grant legal security to the market and so the measure can be taken swiftly, the Secretariat must have this power. On the other hand, even though the prohibition of alienating assets tries to protect the investors, it must be remembered that the alienation of titles-securities is within the activity business of the stockbrokers, which could cause its decapitalization if it has its own portfolio, or a poor performance on its part with the titles entrusted to them by the investors. On the other hand, the securities agents are not regulated at any moment. It is important that they be regulated and that an intervention can take place when they do not comply with the Law and regulations. The omission is probably because, since they will not act within the stock exchange, they are out of its jurisdiction. This argument strengthens the fact that the Secretariat is the one that performs these activities. It must be kept in mind that the securities agents are also middlemen and specify that the Secretariat will dictate the norms that will regulate their actions.

Art. 19: Registration requirements to perform public offer - The following will be required so that the commodity exchange may register a securities public offer, except when it is in regard to public entities:

- a) That the emitting entities request the registration
- b) That the securities are recorded at the Secretariat
- c) That they fulfill the requirements that the normative and regulatory dispositions of general character of the respective commodity exchange establish.

COMMENT: Again, all is in the hands of the stock exchanges and their regulations.

The registration of securities for their negotiation in commodity exchanges, does not imply any guarantee on the liquidity and solvency of the emitting entity.

COMMENT: This explanation is important; nevertheless, it is customary in all the markets that its publication be obligatory in all the documents, in order to perform the public offer, prospectus, newspaper notices, etc. Following the lineaments of more developed markets, the legend should read: "The registration of the emitting entity and of the emission at the Stock Market Secretariat, does not guarantee the goodness of the title-securities nor the solvency of the emitting entity." It is important to remember that not all the public offers are performed through the stock exchanges, and it is important that they also fulfill this requirement.

Art. 21: Preventive injunction- The Secretariat may request through the incidental manner, to a competent judge of First Instance of the Civil Branch, preventive injunctions against the commodity exchanges and the agents, in the following cases:

- a) When they seriously infringe normative or regulatory dispositions of general character, which could imply harm to third persons.
- b) When they provide the Secretariat, or the general public, mediating fraud, documents or information that suffer from falsehood or inaccuracy.
- c) When they execute fraudulent acts which tend to manipulate the prices of the securities or other instruments which are quoted in the commodity exchange, without detriment to the legal responsibilities of whom have executed such acts.

The preventive injunctions decreed against a commodity exchange, or an agent, will remain in force only for the amount of time during which the cause for which they were agreed upon subsists. In case the preventive injunction is the intervention, the intervening position will fall upon a suitable person, whose functions will be regulated by what is disposed of in the Civil and Commercial Code of Procedures. It will have as fundamental objective to insure the public's interests, and only under serious circumstances which justify it, according to the judge's criteria, will it be decreed without a previous hearing.

COMMENT: For reasons already exposed, it is important that these powers are exercised directly by the Secretariat, without having to go to a judge, although it has to be clarified that the measures taken do not exonerate the infringer of the civil and punitive responsibilities that his action can generate. Likewise, the Secretariat, through general character norms, must clearly establish the causes and procedures of the precautionary measures, including the intervention, and it must also be a power of the Secretariat to assign the interventors.

CHAPTER II OF THE AUTHORIZATION OF THE COMMODITY EXCHANGE

Art. 22: Procedures- The persons interested in obtaining the corresponding authorization to operate a commodity exchange must direct their request to the Secretariat, fulfilling the following requirements:

- c) Accompany the internal regulation project that regulates, at least, the following aspects:
 - 1) admission, suspension and exclusion of its members or its administrators, officers or employees;
 - 2) the rights and obligations of its members;
 - 3) that related to the registration of the securities public offer, the suspension and cancellation of such registration;

COMMENT: If merchandises can be registered in the stock exchanges, why are the requirements for their registration, suspension or cancellation not requested. In sub-clause 5), the norms for their negotiation are asked for.

4) the general norms on the celebration, quotation and negotiation of uniform contracts.

COMMENT: If the Bill contemplates the existence of non-uniform contracts, then why are the respective norms not requested.

The commodity exchanges must remit to the Secretariat, for its knowledge, the normative and regulatory dispositions of general character that are applicable to its operations.

COMMENT: It is relevant to note that they are requested only for knowledge. There are no powers to make observations. In few words, the Secretariat is a purely administrative entity, which results incongruent to other powers that the Bill grants it.

The Secretariat, within fifteen days after receiving them, must decide whether the request and the provided documents and information fulfill the requirements demanded by this law. Otherwise, it must indicate within the same amount of time, the totality of the requirements that were omitted or were not adequately fulfilled. Within a term of fifteen days after the date on which he is notified, the requesting entity must comply with presenting the documentation and information that corresponds according to this law.

COMMENT: Even though the norm is inspired to avoid bureaucratic character delays, the performing of a complete analysis of all the requested documentation, particularly the regulations, will probably require more time, at least 20 work days.

Art. 24: Regulation- The commodity exchanges authorized to operate as such, have the right to regulate in regard to their operations, functioning and internal administrative organization. The internal regulation of the commodity exchange must be approved by the entity's stockholders' assembly, published at least once in the Official Newspaper and in one of major circulation; an original copy of its text must be sent to the Secretariat.

COMMENT: Again the same problem: complete "self-regulation" of the stock exchanges.

TITLE IV OF THE PUBLIC OFFER SOLE CHAPTER

ART. 25: Objective of the regulatory dispositions on public offer- The regulatory dispositions that on the public offers, within the stock exchange transaction and non-stock exchange transaction markets, emit the commodity exchange and the Secretariat, respectively, must have as objective to give the participants the maximum security in the fulfillment of the operations that they perform, as well as guarantee sufficient conditions of transparency, honorability and security for the investing public.

COMMENT: In this article it seems to be understood that the Secretariat will only have the power to emit regulatory dispositions on the non-stock exchange transaction public offers, when both should be regulated by the same regulations and supervised under the same norms and criteria. Apparently operation procedures are the subjects which actually affect the secondary market and not the public offer per se. What should be insured is that the emitting entity fulfills all the requirements and that, with this, all the necessary information be given to the public, and this will surely help the market's transparency. It is opportune to mention that the norms that insure the transparency of the transactions must be emitted.

Art. 26: General principle- The securities public offers are not subject to a previous administrative authorization, except their registration in the Secretariat. The registrations of the same does not imply that the Secretariat will assume responsibility of any kind in regard to the rights that the securities incorporate, nor on the liquidity or solvency of the emitting entity. It simply means the classification that the information contained in the offer satisfies the requirements that this Law demands.

COMMENT: Although the principle is correct, just as was previously explained, it is convenient that this law be published in the offer's advertisement. On the other hand, it is important that authorization of the offer be granted, including the establishments of time limits to perform it.

Art. 28: Determination of the nature of an offer- The Secretariat, by request of the interested party, or officially, will determine if an offer is public or not, pursuant to law and by means of a motivated resolution.

COMMENT: The Secretariat must always determine, officially, if an offer is public or not, and it actually should have the authority to suspend the offers that lack the authorization and sanction those who perform them.

Art. 29: All the securities public offers, within the stock exchange transactions or not, must contain faithful information on the securities that are object of the same, and on the financial situation of the emitting entity.

COMMENT: Even though through general character norms it is possible to establish all the requirements to be presented, it is important that the article be clearer and, at least, the most relevant information requested be established; above all because in the following paragraphs if it is established in case of controlling and controlled firms, vital information is not included for the analysis of the firm, future plans, etc. At least it should be clarified that it will be requested by means of this type of norms.

The corporations which emit securities that, for the effect of this law, exercise, or should be considered that are subject to, direct, indirect or effective control on other corporations, are obliged without impairment of the observance of what is established in the previous paragraph, to let the Secretariat and the public know such circumstance, as well as the following extremes:

- a) The integration and identity of the administration body, general management and agents of the controlling and controlled companies;
- b) If the resources to be obtained through the negotiation of the securities, will be exclusively destined to the financing of activities of the emitting company, or if, on the contrary, will be partially or totally used to directly finance the activities of other companies or persons;

c) If the emitting company were a controlled one, it must be indicated if the controlling company will respond on the obligations of the controlled company or not; and in an affirmative case, exactly in what way and under what conditions; and

d) If the emitting company were a controlling company, it must be indicated if one or more controlled companies will respond for their obligations or not; and in an affirmative case, point out exactly in what way and under what conditions.

The company that exercises control is called controlling one, and the one that supports it is called controlled.

There exists a direct control when a company is holder of half plus one or more of the shares emitted, and with right to vote, by the other company; there exists indirect control when said proportions is acquired by means of other companies which, at the same time, are controlled by another; and there exists effective control when a company exercises by own right, powers of substantial decision in regard to the controlled company.

Art. 30: Requirements for public offer - When there is a stock exchange transaction public offer, it will be under the requirements that the normative and regulatory dispositions of general character demand within the commodity exchange where the emission is negotiated. When there is a non-stock exchange transaction public offer, before the registration of the offer, the Secretariat will verify the fulfillment of the requirements established in this law and in the regulations that are emitted for the effect.

COMMENT: Again, it must be the Secretariat the one who norms all the stock exchangeable or not public offers. The stock exchanges may establish additional requirements to decide if they can be negotiated or not within them, but it is important that the market be ruled by the same parameters and that distortions are not created.

Art. 36: Public offers of financial entities- The public offers of institutions that are subject to control by the bank superintendencies will be ruled by their own legal dispositions and are not subject to the fulfillment of the requirements established in the present law.

COMMENT: As was expressed before, the authorization of the emission must be granted by the Bank Superintendency, but it is vital that the public offer requirements be fulfilled; otherwise, it could mean that, for example, the banks could make title offers without the adequate publication or not giving the public financial information, etc.

Art. 37: Stock exchange negotiation of merchandises or contracts- For the negotiation of stock exchangeable merchandises or contracts, the commodity exchanges must dictate the normative and regulatory dispositions of general character, which establish the necessary requirements and conditions to accede, stay and go out of the respective markets, so that such norms may procure the transparent, secure and efficient functioning of the same.

The corresponding regulations or norms must be remitted to the Secretariat for their recording, compilation and publication in the Official Newspaper, just once, paid by the corresponding stock exchange.

COMMENT: It implies that any stock exchange may simultaneously negotiate securities and merchandises. Activities are again mixed and the stock exchanges are granted the powers.

**TITLE V
OF THE AGENTS
SOLE CHAPTER**

Art. 42: Requirements to register as agent- In order to obtain registration as agent, the following requirements must be fulfilled:

- a) **Constitute in form of a stock company, with capital represented by registered shares.**
- b) **Establish in its incorporation papers that other agents cannot participate, directly or indirectly, in its capital.**
- c) **Present a request to the Secretariat, accompanied by the following documents:**
 - 1) **authenticated photocopy of the incorporation papers of the company and of its modifications, if applicable.**
 - 2) **authenticated photocopy of the notarial certificate which assigns the legal representative of the company, or of the instrument that accredits the legal capacity of the company's representative;**
 - 3) **authenticated copy of the surety bond that pledges the stockbrokers' responsibilities which could be derived from their actions in the non-stock exchangeable stock markets; the amount of the bond will be determined by the Secretariat through general order norms.**

COMMENT: In principle, the Title refers only to agents, with which is understood that it is applicable to the stockbrokers as well as to securities agents. The requirements are easy to fulfill. Others should be included, such as the presentation of a feasibility analysis; competence of its administrators; financial statements, etc, and it is not specified if they will be subject to supervision from the Secretariat nor if they will have to implement the general character norms that the Secretariat emits. It is important that this be clearly expressed because these are the prudential norms [minimum capital stock, operation limits, etc] and those that, therefore, protect the investors. On the other hand, a bond is requested only for the securities agents, but they as well as the stockbrokers must present it.

Art. 43: Activities- The legal persons that are registered as agents are authorized to perform the following activities:

- a) **Act on own account, as middlemen for another's account, in operations with securities that are found in public offer, merchandises or contracts to be negotiated in the stock exchange, subject to the present law and its normative and regulatory dispositions of general character.**

COMMENT: The Bill contemplates that the same agents perform operations with securities and merchandises, which requires the specialization in two different areas. Within the activities that can be performed is not contemplated that they can represent collective credit holders, as in the case of liabilities or bonds. In the past, this activity was exclusive of the banks. Currently, the stockbrokers perform it in the most developed markets.

- e) **Receive or grant loans or credits to carry out the activities related to them.**

COMMENT: It is important that it be clearly regulated when the agents can receive credits, since the way the norm is at this moment, it could be dangerous because it is very ample. For example, in what way will the investors be protected if the agent requests credits for the purchase of shares and with it he generates a loss and has to respond to his creditors with his assets. The same is applicable when the agent grants margin credits.

Art. 44: Execution of orders- The agents can only execute orders from their own shareholders, administrators, managers or legal representatives, once the orders of third parties have been executed; and in no case can he give preference to his own orders before his clients'. He cannot execute an order having his clients as counterparts either, except when they authorize him previously, in writing.

COMMENT: Even though the spirit of the norm is adequate, there should be general norms so that an assignment system can be established, which will avoid privileges for some clients. The small investor should be protected.

Art. 47: Requirements that the agents' official representatives must fulfill - The administrators, managers and legal representatives, who are responsible for the ordinary steps of the agents, must gather the following qualifications:

- a) Lack criminal background
- b) Not be delinquent debtors.
- c) Not be in a situation of insolvency or bankruptcy.

None of the official representatives to which the present articles refers may act as administrator, manager or legal representative of other agents.

The requirements established in the present article are not applied to the judicial representatives.

COMMENT: It does not incorporate competence. In those markets with greater development an exam in regard to knowledge is requested for managers, especially for agents that perform operations with the investing public. In effect, the figure of promotor is not specifically mentioned in the Bill.

Art. 48: Operators of Agents - An operator is the person who performs the stock exchange or non-stock exchange operations, on behalf of an agent. The operators of the different agents must fulfill the same requirements that are established in the previous article, as for the administrators, managers or legal representatives, who are responsible for the ordinary steps of the agents. Likewise they must accredit technical knowledge or experience in the financial area, which is qualified to develop intermediation operations in the stock market.

COMMENT: The roles of operator and promotor are mistaken and confused, since in the non-stock exchange market it not necessary to act as operator. On the other hand, it is made reference to the securities market, in the sense that the stockbrokers can intermediate both products, pursuant to the Bill.

Art. 50: Requirements to maintain the registration of agents in force- In order to maintain their registration within the Secretariat in force, the agents must fulfill, before the Secretariat, the following requirements:

- a) Send their annual audited financial statements, within the next 120 days after the closing of the fiscal period.

COMMENT: The norm is weaker than for the emitting entities, to whom is requested that the non-audited financial statements be turned in within 20 days after the end of each quarter, and the audited financial statements withing 30 days after the holding of the general regular assembly. It does not point out that they have to adjust to special accounting norms dictated by the Secretariat. Reference is not made to the delivery of non-audited financial statements, which should be turned in

monthly, and in effect it is desirable that the monthly, as well as the annually be published, whether in a bulletin of the Secretariat or in a national circulation newspaper. This will help the transparency of the negotiation and the fact that the public will be updated on the financial situation of the agents.

d) Send to the Secretariat, semi-annually, within 120 days after the maturity of each quarter of the calendar year, the statistical information related to the volume and nature of the operations performed in the stock market.

COMMENT: No information on the non-stock exchange transactions is requested, the same which is maybe more important than the stock exchange one, which is public and registered by the stock exchange. Additionally, in order to adequately supervise and control the agents, the information of the operations that they daily perform is vital, and preferably by electronic means. If this is not possible, this information must be sent daily for its analysis. Otherwise, the supervision effort is useless, because if the information is not opportune, the errors, frauds and poor management will be detected too late.

Art. 51: Cancellation of Registration - The agents may request before the Secretariat the cancellation of their registration. With said request, they must present to the Secretariat an authenticated copy of the public deed where the dissolution or liquidation of the company is agreed upon, or the modification of its objective or of the firm name, where none of the expressions to which Article 5 of this Law refers, may not appear.

COMMENT: This only refers to the cancellation by request and not by in fulfillment or transgression of the law or norms.

TITLE VI OF THE SECURITIES REPRESENTED BY MEANS OF ANNOTATION IN ACCOUNTS SOLE CHAPTER

Art. 53: Creation- The securities to which sub-clause a) of Article 2 of the present Law refers, created and emitted by private entities, the Government of the Republic, autonomous and decentralized entities, municipalities and the Bank of Guatemala, may be represented by means of annotation in accounts, in which case, said modality must be applied to all the securities that form the same series of determined emission. The securities represented by means of annotations in accounts have the quality of personal property

COMMENT: Although it is a step towards the desired dematerialization of the titles, so that the administration is transparent and efficient, it requires the previous existence of an institution of custody and deposit and administration of securities, except when it is in regard to the public sector, in which case the emitting entity may keep the registration. Then the institution of deposit and custody is whom will be in charge of these annotations jointly with the emitting entity. Otherwise, poor management by the person in charge of the registration will be seen. A strict control is necessary. On the other hand, clear procedures are not established on the procedures of the annotations when the titles are negotiated.

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Art. 55: Circulation Law- The transmission of securities represented by means of annotations in account will take place through an entry in the emitting entity's books. The annotation in favor of subsequent purchasers will produce the effect of a complete ownership transfer of the securities. The transfer will be exceptionable to third parties from the moment the annotation is practiced.

COMMENT: The disposition does not offer the possibility of control and implies an enormous administrative wear and tear.

Art. 56: Legitimation- The person registered in the accounting books of the emitting entity will be considered the legitimate holder of the securities, represented by means of corresponding annotations on account, and may enforce the rights that said securities confer. The emitting entity who pays in good faith to whom appears registered in his books as holder of securities, will be exempt from the obligation.

COMMENT: The process is left to employees of the emitting entity, and sanctions are not established in case of committing faults. The proposed procedures do not offer sufficient protection for the investor.

Art. 58: Placement - The emitting entity will give in consignment, to one or more agents, part or all of the securities emission, represented by means of annotation in account, which the agents will enter into their own accounting, based on the respective document.

Once the accounting entries are operated, the referred to securities can be negotiated and the evidence or evidences of the accounting entry, can be issued in favor of the purchasing entities, which will accredit the acquisition of the respective securities. The copy of said evidences must be sent to the emitting entity, on the work day following the liquidation, so that he may immediately perform the respective annotation on account in favor of the purchasing entity.

The emitting company and the agent or agents, in common agreement with the commodity exchange where said securities are quoted, will establish the accounting records, the organization and functioning norms of the identification and control systems of the securities, represented by means of annotation on accounts.

COMMENT: In case the agents keep accounting records of the securities created by annotation on accounts, it is vital that these be separated from their accounting. Otherwise, the control will be very difficult. On the other hand, the responsibility is left to the agents and the stock exchange, so that they may establish the accounting records, the organization and functioning norms of the identification and control systems of the securities, and no supervision concept is applied by the Secretariat. The system proposed is very complex and does not offer adequate protection for the investor, above all in case of placements and negotiations in the non-stock exchange market.

Art. 59: Every company that emits securities represented by means of annotations on accounts, has the obligation of practicing on its accounting books the entries that correspond to all the legal acts or businesses, in regard to such securities.

If a negotiation is performed in the primary market, the annotation on account will be performed based on the evidence that the agent emits, to which Article 58 of the present law refers.

If a negotiation is performed in the secondary market, by means of an agent not authorized to emit the evidence to which Article 58 of the present law refers, the annotation on account will be performed based on the evidence of the operation in the stock exchange, required as is indicated in the emission instrument.

COMMENT: The same as was indicated in the comment on the previous article, it is vital that the registrations be kept in separate accounting, and for no reason at all are they to be mixed with those of the firm. Even with restrictions, the system could function in the stock exchange market. However, in the non-stock exchange market, serious problems could be created. Furthermore, it will only work with registered titles. In order to function with bearer titles, the agent must assign a code to each client, so that it is possible to identify the person to whom the title holding corresponds, without need of giving his name, but to do this, systems that grant legal security to the procedure must be established.

TITLE VII OF THE CONTRACTS AND OF THE AUXILIARY INSTITUTIONS OF THE STOCK MARKET

CHAPTER I OF THE STOCK EXCHANGE CONTRACTS

COMMENT: This chapter refers to the stock exchange contracts that are the instruments used in the negotiation of merchandises, and for this reason they will not be analyzed. What is important to mention is that the stock exchanges will be the ones to establish the terms and conditions in which the markets that celebrate term contracts must operate.

CHAPTER II OF THE INVESTMENT COMPANIES

COMMENT: The investment companies are not auxiliary institutions of the stock market. They are considered institutional investors even though they are subject to supervision and control because the administrators of the company make investment decisions and capture resources from the investing public in order to invest them in a diversified portfolio of titles-securities. The same happens to the other activities of which this chapter is about, except that they are dedicated to the collective deposit of securities.

Art. 73: Investment Companies - The investment companies are those that have as their exclusive purpose the investment of their resources in the securities to which Article 2 of this law refers, and are subject to the following dispositions:

d) Shares of stock without a right to vote can be emitted only when, by request of its holders, the emitting company has to repurchase them within a maximum term of thirty days.

COMMENT: The figure of investment companies was created in Mexico, and they constitute matters of a law which is separated from that of Stock Market. The purpose of creating them was to grant the market a figure of the open end investment funds, and because the form of corporations was given them, an independent law was created so that they could operate without fulfilling the requirements of the Mercantile Partnership Law which is established for every corporation. This law was adapted in the Costa Rican market and the norms that appear in this Bill are very similar. The deficiencies are many and a very ample and complete study will be required to explain each one of the problems that can generate with this norm, and the distortions that they will create due to their

nature. Furthermore, the figure is very complex. For this reason, in the present report, reference will only be made on the general aspects of greater importance.

One of the requirements that the investment companies, as stock companies, do not fulfill is precisely that they have the power to emit shares without the right to vote, which are the ones that the investors purchase and that are quoted in the stock exchange so that the investor can know the development of his investment as well as the cost of the share to purchase and sell in the company. The quotation is in function of the investment portfolio appraisal of the company, and is not set according to the supply and demand of the shares. For this reason, the appraisal rules are of vital importance, and these must be adopted, and the composition of the portfolio must be periodically published so that the investing public will be advised. Likewise, these companies do not grant dividends, since any return that they obtain, whether from the obtainment of interests, capital gains or dividends, is immediately incorporated to the portfolio, which at the moment of appraisal, will reflect this in the quotation. So as not to give a very profound explanation, we will say that the administrators of the company are the only owners of the shares with a right to vote, since they are the ones that decide the composition of the portfolio. If an investment company fulfills the purpose of capturing the savings of small and medium investors, it will have a large number of shareholders and it would be very difficult to gather them in a stockholders assembly or make them agree on the composition of the portfolio, and in general, on the administration form of the company, and it would hinder its wholesome development. For this reason, they do not have the right to vote, and for their protection, they will sign a contract on which the clear manner of all the aspects relevant to their administration, repurchase of shares, etc., will be expounded.

The fact that the investment companies can repurchase their own shares, is because in that way they are granted the power to give liquidity to the investors, although it is the company which, in its operation rules, determines the conditions and term in which it will repurchase its shares. It is important to mention that these will always be notified to the investor. The restriction of emitting shares without the right to vote that the company will have the obligation to purchase in a maximum term of thirty days, will only promote the development of investment companies that promote short term investments, and one of the most important functions of the institutional investors will not be fulfilled. It is important to point out that the Bill does not specify that the investment companies should continue with their operation, appraisal of portfolio, accounting, diversification of portfolio, etc. In the general character norms, that for the effect are emitted by the Secretariat, is not specified if to be formed, they require or not authorization, or if they will be controlled by the Secretariat, activities which in all the developed markets are performed by the supervising entity in order to protect the interests of the investing public.

h) In the stock exchange only their shares emitted without the right to vote can be quoted. To do this, they must be previously registered in the Secretariat and in the respective commodity exchange, presenting the documentation and information that any share emitting entity has to provide in order to negotiate them in public offer.

COMMENT: It has been already explained that the shares without the right to vote are precisely the ones that should be quoted in the stock exchange. What corresponds here to comment is that the norm leaves the door open for negotiation in the non-stock exchange, which could jeopardize the interests of the public.

i) They must announce the net value of their assets by share, in the manner and with the periodicity that for the effect the Secretariat disposes, or in its case, the commodity exchanges where their

shares are quoted. Net value means their assets per share, which results from dividing the net assets of the fund by the number of emitted shares.

COMMENT: Again, many powers are granted to the stock exchanges, and in this case, it is of vital importance that all the investment companies that exist in the countries continue the same appraisal rules, and if the power to norm the manner of action is given to the stock exchange, as many as the existing stock exchanges could be had. The appraisal of the portfolio is one of the most important aspects that must be taken care of. It is complex and the appraisal manner that is proposed in this article is very simple and if applied, it could create problems. A poor appraisal of the titles that form the investment portoflio could cause the under or over appraisal of the shares. Moreover, a poor appraisal could lead to large losses.

CHAPTER III OF THE INVESTMENT FUND CONTRACT

Art. 74: Investment fund contract- The investment fund contract is that through which an agent receives money from third parties with the purpose of investing it on their behalf, in a systematic and professional manner, in securities registered for public offer, and at the maturity during the agreed upon term, or at the end of the contract, according to own dispositions, he is obliged conditionally or unconditionally, to return the received capital with all its fruits, keeping a commission whose amount and characteristics are defined in the same contract.

COMMENT: This figure is very similar to the one that is used in Chile, but the concept used is totally distant from the international one, and it does not give the minimum guidelines that are required for the functioning of the funds; there is no talk on participations or units, their appraisal, information to the public, vigilance, constitution, etc. On the other hand, the word "fruits" is used and it must be remembered that in an investment fund where the totality or part of the portfolio is invested in shares, there could be losses. For this reason this disposition could create serious problems for the market.

CHAPTER IV OF THE INVESTMENT TRUST CONTRACT

Art. 76: Investment trust contract - The banks and the private financial companies could agreed with the agents on the delegation of their function as trustees for banks and private financial companies. The delegate trustee will be able to perform all the activities that are proper of a trustee, and will be, along with the delegating entity, jointly responsible for their performace.

The banks, as well as the private financial companies, such as the delegated trustees, may function as trusts of trustees, constituted for the investment in securities that are found in public offer. If, as a result of the constitution of the trust, the emission of the fiduciary certificates is agreed upon, its public offer must be registered in the Secretariat, and at the same time, the trustee may request its registration to be quoted in the stock exchange, in which case, the fiscal regime of the respective certificates will be the same as the one applicable to the bonds emitted by private financial companies.

The constituent document of investment trust, as well as its modifications, can be spread upon a private document, and the emission and negotiation of the fiduciary certificates, to which the

present article refers, are subject only to the requirements that this law establishes to perform the public offer of securities emitted by mercantile partnerships.

COMMENT: This form is very similar to the one used in Colombia. The same as in the previous cases, it does not contemplate elements such as portfolio appraisal, appraisal of fiduciary certificates, etc. On the other hand, the motive for which a special fiscal regime is granted to the the fiduciary certificates is not clear, and this is not done in the case of investment companies nor the investment fund contract.

CHAPTER V OF THE CONTRACT ON SECURITIES SUBSCRIPTION

COMMENT: This chapter is made up of one sole article which makes reference to the possibility that agents, as well as private financial companies, may perform underwriting operations. Notwithstanding, the article establishes in its last paragraph: "For the effect of the non-stock exchange negotiation of said emissions, the private financial companies may act as agents without the need of a previous registration or procedure"; the disposition grants advantages to the financial companies to act in regard to non-stock exchange placements. This is dangerous and attempts against the interests of the public, above all if it is considered that the acceptance houses in Guatemala are not supervised and they only require a registration in the Bank Superintendency, and that currently there are some that perform questionable practices, such as offer high returns to the public that entrust their resources, which is substantially at a distance from those of the market.

CHAPTER VI OF FUTURE CONTRACTS

COMMENT: This chapter refers to the future operations with securities, merchandises, funds in national and foreign currencies, and other assets of licit trade. The application is very ample and again it mixes markets. Additionally it grants all the powers to regulate its negotiation in the stock exchange.

CHAPTER VII OF THE COLLECTIVE DEPOSIT OF SECURITIES

COMMENT: This chapter refers to the creation of institutions of deposit, protection and administration of securities. However, it does not contemplate aspects of much more importance, such as rules for its establishments, formation and organization, operation rules, endorsement in administration, supervision, etc.; furthermore, it establishes that only the commodity exchange, or whom it assigns as depository or trustee, may perform the function.

**TITLE VIII
OF THE VIGILANCE AND CONTROL
SOLE CHAPTER**

Art. 80: Legal control- It corresponds to the Secretariat, pursuant to this law and those precepts that develop it, the legal control over the acts and contracts performed or celebrated by the commodity exchange, the agents and auxiliary institutions of the stock market.

COMMENT: It is convenient that these powers be included in Article 16 that deals with the attributions of the Secretariat, since the Bill is not too clear in this aspect, because as has been seen in various articles, it establishes that it is a function of the stock exchange.

**TITLE IX
OF THE SUSPENSIONS AND CANCELLATIONS
SOLE CHAPTER**

Art. 83: Suspension of securities registration- The Secretariat, previous hearing of the emitting entity for ten days, may suspend the registration of the securities that it has emitted, in case any of the requirements foreseen by the law are transgressed, as well as the regulatory and normative dispositions of general character. Likewise is the case when the documents or reports that must be presented to the Secretariat, or to the commodity exchange, contain differences or inaccuracies that have not been clarified during the referred to hearing. It can also suspend the registration in regard to securities of those emitting entities whose administrators, managers or legal representatives divulge false or inexact information, with the purpose of inducing third parties into errors, in regard to the financial situation of the emitting entity. The suspension will be maintained during the amount of time in which the causes that motivated it have not disappeared, or until the infringer adjusts his performances to the law.

COMMENT: This power is very important, but for the sake of protecting the investing public's interests, it must be able to act quickly without delay when detecting a serious fault and not wait ten days. For this reason, it is important that a clear typification of the faults and corresponding sanctions be made. Notwithstanding, it is relevant to point out that this power is granted in the following article. Before resolving the suspension, all the necessary measures should be taken, so that the interests of the titleholders of the titles emitted by this firm are duly safeguarded. On the other hand, it does not contemplate the temporary suspension of the quotations when erratic movements occur which substantially distant from the market's conditions. This measure is adopted in the developed markets by the stock exchanges as well as by the supervising entity.

Art. 86: Suspension of the registration of agents or their representatives- The Secretariat, by means of a motivated resolution and with a previous hearing during five days, can suspend the registration of any agent, their administrators, managers or legal representatives, as long as any of the following infringements occur:

COMMENT: When the previous and direct power of the Secretariat to administratively intervene does not exist, the punitive measure is directly taken and in this manner, the interests of the investing public are not adequately safeguarded.

e) To be declared in bankruptcy or in a state of payment suspension.

g) Lose more than sixty percent of its paid capital.

COMMENT: Precisely the prudential character norms must avoid that these situations present themselves, and for the same reason it is necessary that the Secretariat perform its supervision and controlling functions on the middlemen in an adequate manner.

Art. 87: Cancellations- The Secretariat may request, officially or by request of party, to a competent judge of First Instance of the Civil Branch, the cancellation of the registration in any record of the commodity exchange, agents, emitting entities, investment companies, investment funds, and administrators, managers or legal representatives of these, in any of the following cases:

COMMENT: It must be the Secretariat's power to be able to perform or directly demand without delay, the cancellation of these records, previous certification that the investing public's interests have been safeguarded. Furthermore, it is the Secretariat the one that should be in charge of keeping the records that authorize them to act in the stock exchange market, without detriment to those that can keep the stock exchanges, and will only have to resort to a judge in regard to the cancellation that are not linked to the stock exchange activity, such as trade, etc. In the disposition are not contemplated serious transgressions to the law and general character regulations, and the diverse instances are not clearly mentioned either. The power that the Secretariat has to use, in its case, the public force to enforce its determinations is not established.

Art. 88: Other precautionary writs - The Secretariat may request to a competent judge of First Instance of the Civil Branch, by the incidental way, the necessary precautionary writs, with the purpose of protecting the rights of the investing public against those who, without being registered as it corresponds, function as commodity exchanges or agents, or perform public offer.

If the judge deems it necessary, in view of the circumstances of the case, and with the purpose of protecting the rights of the investing public, the precautionary writs could be decreed when the procedures of the respective incident are given, without the previous hearing of the affected one. In case the decreed precautionary writ is the intervention, this must fall upon the adequate person for the position, whose functions will be ruled by what is disposed in the Civil and Commercial Code of Procedure; and will have as fundamental objective to insure the interests of the public. The intervention will last the necessary time for the legal businesses that would have been performed, to be liquidated. If this is not possible, that the businesses be transferred to other commodity exchanges or agents, duly registered to operate as such. The intervention will also end if the persons or intervened entities request and obtain the necessary registration to act as commodity exchanges or agents, or to perform securities emissions.

COMMENT: It is important that the Secretariat has the power to directly intervene, and without previous procedure, before any other authority, because even though the procedure is accelerated, it is necessary to recognize that in any case, the measure takes time. Likewise, it should have the power to assign the middlemen.

**TITLE X
OF THE SANCTIONS
SOLE CHAPTER**

Art. 95: Privileged information- For the effect of this law, it is all the information of concrete character in regard to securities, merchandises and contracts that has not been made known to the public and that, if having been made public, could have influenced in a relevant manner on their quotation.

The administrators, as well as the managers and legal representatives of the commodity exchanges, agents or emitting entities, and any other person that, because of his position, has access to a privileged information, must abstain from performing on his own account, or by means of an intermediary, operations with any type of securities, merchandises or contracts, in his own benefit or that of third parties, while the mentioned information is not divulged among the investing public. The information stops being privileged from the moment the information is given in writing to the Secretariat or the corresponding commodity exchange.

The persons that infringe what is disposed in the paragraph of the present article, will be sanctioned with a fine of five thousand (5,000) to fifty thousand (50,000) units.

COMMENT: It is convenient that an express mention be made of the officers and employees of the Secretariat to the persons who have access to privileged information. This is because it is relevant to point out that in the practice, a lot of privileged information will be handled, and not just because it is made known to the Secretariat will this character be eliminated, since in order to perform some procedures, it is necessary that it be made known to the Secretariat before it is opportune to give it to the public. That is why it is important that the officers and employees have the obligation of keeping a reserve in regard to the same.

**TITLE XI
OF THE FINAL TRANSITORY DISPOSITIONS
SOLE CHAPTER**

Art. 103: Secretariat's budget- The commodity exchanges to which the present law refers, must contribute with the necessary amounts in order to support the Secretariat of the Stock and Merchandise Market, in the form and with the amounts that are determined in a specific regulation that must be emitted, the latest, ninety days after the Secretariat begins its functioning.

The amount of the contributions that the commodity exchanges give, in no case can exceed one per thousand, annualized on the transactions that are performed in such commodities. In case these contributions are not enough to cover the budget of the Secretariat, the Executive Body is authorized to cover the necessary amounts and to perform the corresponding budgetary transferences. The calculation of the fees for the maintenance of the Secretariat will begin as of the moment the aforementioned regulation is in force.

COMMENT: It is important to note that only the stock exchanges will be the supervising entities that will contribute to the Secretariat's budget. These will tend to transfer those expenses to the agents, and these to their clients, with which the intermediation costs will substantially increase in the stock exchange market. This market will be placed in a complete disadvantage in regard to the non-stock exchange market, which will not make any contribution. Therefore, the latter will be the one that is promoted. For this reason it is convenient to distribute the cost among all the participants,

since the stock exchanges are not the only supervised entities. There are also the stockbrokers and the securities agents, their operators and promoters, and emitting entities, whether they perform public offer in the stock exchange or non-stock exchange market, investment companies, etc. Generally, different types of tariffs are established, such as: supervision tariffs, mainly for stock exchanges and agents, registration fees for the emitting entities and their emissions, fees for the granting of permits to operators and promoters, etc.

On the other hand, the maximum amount which will be charged is very high and must be also differentiated by the type of operation, since it will substantially affect all the operations, but particularly those of the money market, which for the moment are the most important ones.

ANNEX 7
ORGANIC LAW OF THE GUATEMALAN BANK:
SECURITIES REGULATION FUND AND
SECURITIES COMMISSION

ORGANIC LAW OF THE GUATEMALAN BANK

CHAPTER VI
RELATIONSHIP WITH THE GOVERNMENT

Article 112: As a State entity, the Guatemalan Bank will form a "Securities Regulation Fund". This fund will be administrated by a "Securities Commission" formed by the Bank's President and General Manager, and by the Treasury and Economy Ministers. The resolutions of the commission will be adopted with the favorable vote of, at least, three of its members.

Article 113: The Securities Regulation Fund will be formed by:

- a) The amount that the Government initially contributes for its constitution, pursuant to the transitory dispositions related to this Law;
- b) By the other contributions that the Government performs pursuant to the special laws or by means of budgetary assignments;
- c) By the net profits of the institution which, pursuant to Article 11 of this Law, are destined for its increase; and
- d) By the idle funds that come from the surplus or balances not used of the National Treasury which, temporarily, are included within the stock of the same fund, by agreement of the Monetary Board and with the favorable vote of the Treasury Minister.

Article 114: The administration and investment of the Securities Regulation Fund stocks will have as objective to stabilize the quoting of titles emitted and guaranteed by the Government or by the public entities; and of the other official or semi-official securities, according to what the Securities Commission agrees upon.

Such stabilization will be done through the purchase and sale of said titles and securities in the open market, avoiding all interventions that will contradict the fundamental tendencies of the market and threatens the exhaustion of the resources of the Regulation Fund.

Article 115: The profits obtained by the investments of the Securities Regulation Fund, whether due to purchase and sale operations, or to interest perception on the acquired titles and securities, will enter the same Fund with the purpose of increasing its resources and its means of action as well as to constitute a reserve to cover eventual losses in future operations.

ANNEX 8 LAW OF THE GUATEMALAN BANKS

BANK LAWS

Next are transcribed the articles, or fractions of them, that norm the acquirement of titles-securites by the commercial banks in Guatemala, pursuant to the Bank Law which is in force:

Art. 43: The banks may acquire bonds and credit titles, of stable value and of easy performance, emitted and guaranteed by the Government, public entities, governmental or semi-governmental institutions, Banks that operate in the nation and the private firms whose emissions are qualified by the Securities Commission as of first order, previous hearing to the Bank Superintendency.

When the Monetary Board deems it convenient, in view of the currency exchange and credit position of the country, it may authorize the same banks to acquire, under the conditions and limitations that it determines, foreign and international securities of stable value and of easy performance.

The Monetary Board may set the maximum limit of the investments that the commercial banks may perform in bonds and credit titles, whether they are in regard to the volume of their deposits or their capital and reserves. However, in no case may it authorize the banks to invest in bonds and credit titles with maturity of more than three years, an amount that exceeds 20% of its total deposits. From said limitation are exempt the bonds and titles of which is in charge the Guatemalan Bank, which may be acquired by the commercial banks without any limitation.

Art. 64: The mortgage banks may acquire bonds and credit titles of known stability, emitted and guaranteed by the Government, public entities, governmental or semi-governmental financial institutions, banks that operate in the nation and the private firms whose emissions are qualified as first order by the Securities Commission, previous hearing to the Bank Superintendency.

In exceptional cases, and with the purpose of facilitating the international operations which are of benefit to the national economical development, the Monetary Board, taking into account the currency exchange and credit situation of the country, may authorize the same banks to acquire under the conditions and limitations that it determines, foreign and international securities of stable value and easy performance.

The Monetary Board will set the maximum maturities and the other conditions of the bonds and titles that the mortgage banks are empowered to acquire, with the purpose of maintaing the security of such investments, and avoid an excessive immobilization of the resources of the same banks.

Art. 90: The banks are forbidden to:

- d) Acquire, without the authorization of the Monetary Board, shares or participations of any kind of companies or firms;
- f) Perform commercial, agricultural, industrial and mining activities, and participate in any manner, directly or indirectly, in firms that dedicate themselves to such activities...

ANNEX 9
ANALYSIS OF THE LAW N° 7201
STOCK MARKET REGULATION LAW
OF OCTOBER 29TH, 1990

Next is presented a brief analysis of the Stock Market Regulation Law of Costa Rica. It is pertinent to clarify that only the articles or fractions of them, that can generate important distortions are transcribe, and that in some cases the analyzed article or fraction of it is summarized.

STOCK MARKET REGULATION LAW

COMMENT: The Law grants the National Securities Commission the power to emit rules of general character. Notwithstanding, it maintains in various aspects subordination to regulations and decisions of the stock exchanges; and the investment capacity that it is granted is very limited.

CHAPTER I
PRELIMINARY DISPOSITIONS

Art. 2: ... The expressions used to identify physical or legal persons are also reserved, whose activities must be authorized by the National Securities Commission or by the stock exchanges. The Commission may demand the administrative intervention of who infringe this disposition, until he stops using the expression unduly used...

COMMENT: The Commission is the only one that must authorize the activities that are developed within the stock exchange market. If the stock exchanges are also authorized, a doble standard is created. On the other hand, it is convenient that in every case, the Commission has the power to perform the intervention directly, or that the assignment of the middlemen be included.

CHAPTER II
OF THE PROMOTION AND REGULATION OF THE STOCK MARKET

Art. 10: In regard to the regulation, controlling and vigilance of the stock market, besides the attributions that in other articles of this Law and in its regulations are conferred, the National Securities Commission will have the following functions:

a) Authorize the functioning of the middlemen that operate in the stock market, without harm to the attributions foreseen in the laws that are in favor of the General Audit of Financial Entities of the stock exchanges.

COMMENT: The subordination of the regulating entity to the stock exchanges must not exist. This makes their authority doubtful and grants greater power to the supervised than to the supervising entities. This point of view is kept during various aspects through out the law.

b) Authorize the public offer of titles, except those emitted by the Government, its institutions, banks of the National Banking System, and the financial entities that are registered in the General Audit of the Financial Entities, or in the stock exchanges.

COMMENT: The Commission must always authorize the public offer and determine if it is a public offer or not. The General Audit of the Financial Entities must authorize the banking system entities the emission, but not the public offer. However, it is important that the part that excludes the need to obtain authorization for the emitting entities, which are registered in the stock exchanges, be eliminated. Otherwise, a subordination relationship is established and based on this, the firms may deny to register in the Commission.

j) Know, in appeal, the resolutions of the stock exchanges and of all the entities that the law submits to the vigilance of the Commission.

COMMENT: The disposition is adequate, since effectively, the stock exchanges have the power to sanction. Notwithstanding, it is important that the Commission has the express power to investigate and sanction independently, that is to say, without impairment of what the stock exchanges may dictate.

j) Establish the accounting and audit norms to which the firms that perform public offer of titles must adjust, in regard to the presentation of financial statements, pursuant to the generally accepted accounting principles. These statements, and any other type of information, must be certified or dictaminated exclusively by authorized public accountants, not related to the interested firms.

COMMENT: The disposition is adequate. However, its ambit does not include the middlemen. It is fundamental that they be included. To date, the Commission has emitted some norms in regard to this, but they are not sufficient, because they do not reflect with precision the financial situation of the middlemen since all the stock exchange operations are registered in order accounts.

Art. 11: The Commission will write out its own budget, which will be submitted to the Board of Directors of the Central Bank of Costa Rica for its approval. Its financing will be totally in the hands of the Central Bank of Costa Rica.

COMMENT: This disposition adopts the Chilean model; However, the Commission could charge fees to the supervisors, just as many supervising entities of the banking system do.

Art. 13: The Board of Directors of the National Securities Commission will be assigned by the Board of Directors of the Central Bank of Costa Rica, for periods of six years, and its members can be reelected just once.

It will be formed by the following members:

- a) The Treasury Minister or his representative.
- b) The National Planning and Economical Politics Minister, or his representative.
- c) A representative of the Board of Directors of the Central Bank of Costa Rica.
- ch) The General Auditor or the General Vice-Auditor of Financial Entities.
- d) A representative of the stock exchanges.
- e) A representative of the Stock Exchange Position Association.
- f) A representative of the entities that emit shares or investment certificates or both.

COMMENT: There exists an evident conflict of interests in the fact that the supervised form part of the decision making process of the supervising entity. To date, those supervised, or that have direct interests in the stock market, are the majority, because one of the Ministry's representative has that position. This situation could impede that the Commission adopt norms that could already be in

conflict with its interests, but favor the market. In effect, it has happened in the past. What is recommendable is that the supervised act as consulting entities.

CHAPTER III OF THE STOCK EXCHANGE

Art. 27: The stock exchanges have as their objective to facilitate the transactions with titles and strive the development of the respective market by means of the following activities:

ch) Award the concession to the stock exchange positions and authorize the exercise to the stockbrokers.

COMMENT: It is a faculty of a private sector firm, such as the stock exchanges, to determine if it accepts a person, or not, in this case a stockbroker; but it is faculty of the supervising entity to authorize the interested parties to act as such.

d) Authorize the public offer that legal persons perform, with titles registered in it.

COMMENT: This faculty or power must belong to the Commission. The stock exchange may accept to negotiate in it, or not.

e) Dictate the internal regulations to which it must be adjusted, pursuant to the law and the stock exchange and commercial uses, the contracts that are carried out in the stock exchange positions, and stockbrokers, among them and with their respective clients, as well as the registration of the titles emitted by legal persons that wish to offer them to the public.

COMMENT: It is true that the stock exchanges must dictate their own regulations, but these must always be in accordance to the general character norms that the Commission dictates, particularly in regard to contracts, since it is this Commission that must settle the problems that may arise. The ideal thing is for the Commission to dictate basic rules on the content of the contracts, and each stockbroker can incorporate those he considers convenient, as long as they are not opposed to the norms.

Art. 28: The lack of due fulfillment of what is prescribed in sub-clauses c), e), g), i) and l) of Article 27, will be sanctioned by the National Securities Commission, according to the seriousness of the fault, with the application of any of the following sanctions:

COMMENT: The disposition is adequate; nevertheless, a sanction code exists, where the seriousness of the fault is classified, or criteria is given to classify them. On Chapter V of the Law that deals with stockbrokers, an article on the sanctions that the Commission should impose over the stockbrokers when they commit a fault is not included, since all of the sanction power is held by the stock exchanges. It is vital that it be included following the previous principle.

Art. 31: Of the net profits of the stock exchanges, ten percent (10%) will be saved for the formation of a legal reserve fund. This obligation will cease when the fund obtains forty percent (40%) of the subscribed and paid capital stock. Without impairment of other reserves that the partnership agreement foresees or that the stockholder's assembly agrees upon, the residuary of the net profits would be distributed among the partners, as dividends.

COMMENT: The law does not specify the objective of constituting this fund. This is vital because, otherwise, the need to constitute it is not clear. Notwithstanding, it can be inferred that it is a contingency fund in favor of the investing public, but due to lack of definition, its utilization could be impeded. If it is a contingency fund, its value will be reduced. This must be constituted as a percentage of the operations until it comes to an adequate figure. In order to determine it, the Commission must perform a previous study on the market.

Art. 32: The stock exchanges must suspend or cancel the authorization granted to physical or legal persons so that they may publically offer their titles, when they or their emitting entities stop satisfying the requirements that, to this respect, the internal regulation of the stock exchange determines. Likewise, it can suspend the quotation of the titles when unruly conditions or operations that are not in agreement with the wholesome uses and practices of the market are produced.

The disposition that the stock exchange makes, in one sense or the other, must be notified to the National Securities Commission within the next twenty-four hours.

The stock exchange that fails to fulfill any of the obligation pointed out in this article, will be sanctioned pursuant to Article 28.

COMMENT: These powers must also be had by the Commission when there exist infringements of the law or the general character norms that it emits, without impairment of what the stock exchanges can do. In the same manner, the quotation of the titles can be suspended. It is important that the Commission be immediately notified as soon as the situation occurs, so it can adequately perform its functions. Sometimes, twenty-four hours can result in too much time and the investing public's interests will not be protected.

Art. 33: The object of a contract within the stock exchange, without need of registration, can be the bills of exchange, promissory notes, bills of lading, mortgages, waybills, certificates, invoices of bills of exchange and notes for loans emitted by general deposit warehouses, collateral certificates and the rest of the individual titles-securities. These operations will be made under the exclusive responsibility of the parties that intervene in the undertaking, and must pay the corresponding rights established by the stock exchange. The intervention and responsibility of this will be limited to inform, in the manner that it deems convenient, data in regard to such operations.

COMMENT: The disposition is very ample and in some cases it could result dangerous. for example, a firm could frequently emit promissory notes without the need to give financial information. Although it is the responsibility of the parties that intervene, some type of provision should exist which would protect the investor as well as the stockbroker. This could be the obligation of the client to sign a document where he explicitly accepts the risk of the operation. Even though this type of operations is frequent in the stock exchanges, it is normally performed outside the formal transactions and in the so called negotiation table; in this manner, an extra safeguard is taken. It is convenient that the obligation to negotiate these titles on the negotiation table be included in a disposition or a general character norm. On the other hand, the stockexchangeability of this type of titles should be promoted.

Art. 35: The National Securities Commission will demand the administrative intervention of the stock exchanges, or of the stock exchange positions which incur in any serious infringement of the obligations that the law imposes, and whose seriousness causes risks for the firms with registered titles, the positions or the investors. The dispositions are those of Article 134 of the Organic Law of

the Central Bank of Costa Rica, N° 1552 of April 23rd, 1953, and its amendments, where applicable.

COMMENT: The Commission must have this power directly, that is, without need of any procedure and must be able to exercise it immediately as a prudential measure. To do it in another way would imply the need of performing a step, and therefore, a waste of time.

CHAPTER IV OF THE CENTRAL OFFICES FOR THE DEPOSIT OF SECURITIES

Art. 36: Without impairment of what is disposed by the special law, in regard to the banking and financial entities, as well as the general deposit warehouses, only the stock exchanges can create central offices for the deposit of securities, which operate within its administrative structure or by means of subsidiary companies. There will only be one central office for each stock exchange.

COMMENT: The disposition is restrictive when it permits that only the stock exchanges may create these entities. It is recommendable that the possibility be opened for the stockbrokers to open them, above all if it is taken into consideration that in the country there is more than one stock exchange, and to create only one institution to perform the tasks will permit making the services more efficient and reduce operation costs. On the other hand, the law does not contemplate the endorsement in administration, which is one of the elements that permits the efficient dematerialization of the titles. Furthermore, it permits the receiving of interest payments, or any other right contained in a title-securities derived from its holding, so that the securities deposit institution be the one to distribute them among the middlemen. The middlemen, therefore, could distribute them among their clients which hold a title, and this would make this procedure less expensive.

CHAPTER V OF THE STOCK EXCHANGE POSITIONS

Art. 60: The stock exchange positions are legal persons who are beneficiaries of a concession granted by a stock exchange market to perform stock exchange intermediation activities authorized by this law.

COMMENT: The Commission should be the one that grants authorization and establishes the quality of the stockbroker. This authorization is the one that permits acting as such, and it will be the stock exchange's power only to determine, under its own rules, if it permits that a specific stockbroker may act in it or not. Because the activities performed are those of financial intermediation and the Commission must be the maximum authority of the market, it must have the faculties to regulate and inspect them. Otherwise it will not be able to adequately perform its supervision and control tasks and will not be able to adequately protect the investing public's interests.

Art. 64: To be concessionary at a position of the stock exchange, the company must also gather the following requirements:

a) Use in its name , or after this, the expression "stock exchange position", as well as having completely paid its minimum capital, determined by the referred to stock exchange, by means of general character dispositions. The concessionaries may not have as partners stock companies with shares to the bearer. When the concessionary is a stock company, its shares must be registered ones.

COMMENT: The National Securities Commission is the one that must set, by means of general character rules, the minimum capital for the stockbrokers and establish, in the same manner, all the operation limits.

b) Have as manager and agents exclusively persons that satisfy the following requirements:

- i) Have complete legal capacity.
- ii) Be Costa Rican, or a foreigner with a ten year residence in the country.
- iii) Have his domicile within the national territory.
- iv) Be of a widely known good behavior.

COMMENT: Competence is not requested, nor the presentation of an exam that accredits his knowledge. One of the ways to protect the public's interests is that the supervising entity grant a permit to the operators, with a previous fulfillment of the requirements that it imposes. The law does not recognize the figure of promotor, who must follow the same procedures and requirements than the operator, that is, act as such when he has a permit to do so. In order to facilitate the integration of the region's markets, sub-clause ii) should be eliminated because it is limiting.

Art. 66: All conveyances or transfers of shares belonging to a concessionary of a stock exchange position must be authorized by the Board of Directors of the respective stock exchange, which must pronounce itself within thirty days after the request. The Board of Director's silence will be equivalent to the authorization.

COMMENT: Making a resemblance with what occurs in the banking systems, it is easy to understand why it must be the Commission who authorizes this conveyance or transfer. It will be the stock exchange's concern to decide if it maintains the concession to the stock exchange position or not, given the modification of the shareholding. It is convenient that, the same as in the banking system, parameters be established to diversify the participation holding, that is, that a maximum holding percentage be established for each person. In some markets, the stock exchange agencies are open firms, that is, they quote in the stock exchanges and the special authorization of the supervising entity is only required when the percentage established as maximum is acquired by the authority. In this manner, the creation of a secondary market is permitted for shares.

Art. 70: The stock exchange positions have the following obligations:

b) Guarantee its action, that is in agreement with the general character dispositions that the pertinent stock exchange dictates.

COMMENT: Above all, the stockbrokers must guarantee their action pursuant to the general character norms that the Commission dictates.

d) Keep the necessary record, or records (...) all pursuant to the dispositions that for such effect dictates the respective stock exchange.

COMMENT: Again the authority of the stock exchanges is superior to that of the supervising entity.

e) Give statistical information on the activities and operations that it performs, whenever the stock exchange requests it.

COMMENT: The first entity that must receive the information on operations is the Commission. In effect, general character rules must be established, which will stipulate the information that they must provide in a customary manner, so that the supervising and control tasks are adequately performed. The information should be given in a daily basis. Ideally it should have an electronic supervision system.

g) Give its client a copy of the transaction slip.

COMMENT: This measure is obsolete, since in an active market, the same operation can be performed, which could involve the execution of orders of the various clients. If it were so, it would be senseless to give a voucher; and if with the purpose of complying with the law, various operations are performed, the market's efficiency would decrease and the administration costs of the stockbrokers could increase, which would evidently have as repercussion the elevation of the transaction costs. The custom of the developed markets is that the agent gives a voucher of the operation, emitted by the stockbroker, reason why the law has to give him the legal force that he requires.

i) Permit the controlling of the respective stock exchange, in regard to all of its operations and activities, as well as verifications of its accounting, inventories, audits and other accounting or non-accounting verifications that are deemed convenient.

COMMENT: It is undeniable that these must be the express functions of the Commission in order to adequately supervise and control the stockbrokers.

Art. 72: Equally, the stock exchange may suspend or cancel the concessionary's concession, when he:

c) Grants his clients any discount or bonus, or performs operations or maneuvers that produce the economical result of charging, for his services, an inferior sum than the one established for the corresponding negotiation, in regard to the authorized tariff.

ch) Charges higher commissions than those which correspond to each operation, pursuant to the established tariffs.

COMMENT: These dispositions are obsolete, because in order to reduce the intermediation costs, the establishment of commissions has been left to a free competition on behalf of the stockbrokers.

CHAPTER VI OF THE STOCKBROKERS

Art. 80: To be a stockbroker it is necessary to gather, to the satisfaction of each stock exchange, the following requirements:

COMMENT: It is important that the Commission be the one who grants the authorization or permit to act as operator. On the other hand, the law does not contemplate the figure of promotor, even though it is a fact that in the market the function is exercised.

- b) Be Costa Rican, or a foreigner with a ten year legal residence in the country.

COMMENT: In order to affront the integration of the region's markets, it is necessary to eliminate the limiting factor of nationality. An authorization could be granted to those that already have it in their native countries, with only the presentation of the same; although it could be requested that they present an exam in order to prove that they know the operation laws, norms and procedures of the country.

- e) Have a university degree, with experience and knowledge on activities related to the stock market, which will be evaluated by the respective stock exchange, pursuant to its regulation.

COMMENT: It may be the stock exchange the one that performs the evaluation. Nevertheless, this evaluation should be performed under the criteria that the Commission establishes.

CHAPTER VII OF THE INVESTMENT COMPANIES

COMMENT: This chapter is based on the Investment Company's Law of Mexico; nevertheless, when adapting it, the spirit with which this law was created was lost. The resulting figure is inefficient. In Mexico it was created with the purpose of granting the market a figure of the open end investment funds, and because they were given the form of stock companies, an independent law was created so that they could operate without having to fulfill the requirements that the Commercial Company Law establishes for all the stock companies. An aspect that is relevant to point out is that, in regard to the investment companies, the Commission has all the power to perform supervision and control tasks (Article 123), including the inspection visits and the administrative intervention.

The deficiencies of the adaption that Costa Rica made are many, and a very ample and complete study is necessary in order to explain each one of the problems that can generate with these norms, and the distortions that will be created by its nature. Furthermore, the figure is very complex. For this reason, the present report will only mention the general aspects of greater importance.

Art. 87: The concessions are untransmissible and will refer to any of the following types of companies:

- a) Common investment companies
- b) Fixed income investment companies
- c) Capital investment companies
- ch) Investment fund companies

In the case of capital investment companies, their main objective will be the acquisition and placement of titles in the primary market; the counsel of the emitting firms, and the creation of a market for the new emissions of capital titles, which can be financed with own resources or others, under the regulations that the National Securities Commission establishes.

COMMENT: It is convenient that all types of investment companies be defined, although it is convenient to clarify that in subsequent articles they are indirectly defined when establishing its investment regime, which is precisely what makes them different. The definition of capital investment companies is incorrect and incomplete. The fundamental error in its function is to acquire firms in order to mend them financially and operatively. These firms are called promoted. Subsequently, the shares will be sold but it is not a function of the company to place the titles in the primary market. If this definition is adopted, it will imply that these companies may place all kinds of titles-securities.

Art. 91: The investment companies must be organized as stock companies, arranging the dispositions of the Commercial Code, and the following special rules:

1) Have a minimum capital of ten million colones, completely subscribed and paid in cash. The Central Bank of Costa Rica will periodically review said minimum amount of capital to adequate it to the real circumstances of the economy.

COMMENT: It is not convenient that pre-fixed amount appear in a law, in spite that a reservation is included to be able to review it periodically. However, if the Commission is independent, why then is the central bank the one that will review this amount. The disposition should say: "Have the minimum capital that the National Securities Commission establishes through general character rules". On the other hand, a minimum amount of capital should be established, according to the type of company.

2) The capital will be represented by registered common shares.

COMMENT: In the disposition, mention is not made that the investment companies may emit shares without the right to vote, which was one of the objectives that Mexico had when creating the figure. Precisely these are the shares that are placed among the investing public and which are daily quoted in the stock exchange, so that in this manner, the investor will know the gains or losses that he has obtained. If an investment company fulfills the goal of capturing the savings of small and medium investors, it will have a large number of stockholders, and it would be very difficult to gather them in a stockholders assembly, or make them agree on the composition of the portfolio, and in general, on the way the company is administered. This would also hamper its wholesome development. For this reason, they do not have the right to vote, and for their protection, they will sign a contract where, in a clear manner, all the aspects that are relevant to their administration, appraisal, repurchase of shares, etc. will be exposed. Due to the omission aforementioned, reference is not made either to the fact that the investment companies will necessarily have a fixed capital without the right to withdraw, formed by the shares that do have the right to vote and, therefore, cannot be repurchased. Generally, these shares will be held by the company's administrators and the disposition is established to protect the interests of the public, since the existence of minimum resources is insured to affront irregularities and to grant liquidity to the other shares. In sub-clause 9) of this same article, all the shares that may be repurchased are pointed out.

3) Never may governments, foreign official businesses, financial exterior entities or associations of foreign persons, physical or legal, participate in any manner in the capital of these companies, whatever the form that they may take, whether directly or by an intermediary. In regard to common investment companies and the capital ones, the financial external entities as well as the associations of foreign persons, physical or legal, may participate in the capital pursuant to what is disposed in Article 96 of this law.

COMMENT: The disposition is not congruent to the opening politics of the economy, moreover if it is considered that in Article 92 it is established that no person, whether physical or legal, may have more than 10% of the paid capital from one of these companies. An exception is made for the common investment companies and capital companies, which results incongruent if the property of the Costa Rican firms is to be preserved, since they are the ones that constitute their investments in shares, that is, firms' capital. It does fulfill its objective if what is seeked is to avoid that the indebtedness titles be in hands of foreigners.

Art. 93: The investment companies can only operate with those securities that are authorized by the National Securities Commission, or a stock exchange, except in regard to capital investment companies, whose operations may be performed with any type of securities and documents, pursuant to what is disposed by Article 100 of this law.

COMMENT: Again, the stock exchange is granted as much authority as the Commission, if it is taken into consideration that there are two stock exchanges in the country and that not necessarily all the titles that exist in the market would quote in both. Then, the disposition could be restrictive at a certain moment. On the other hand, the disposition is very ample in regard to the capital investment companies, because when they are permitted to invest in any document, this could increase even more the risk that these companies assume, which by nature are very risky. In effect, in Mexico they are called capital investment risk companies, because it is the figure given to the "venture capital fund". On the other hand, it is important to point out that Article 100 of the law, does not refer to capital investment companies but to the common ones, and it should read Article 105.

Art. 94: The securities that form part of the assets of the investment companies should be deposited in a Central office for the deposit of securities.

COMMENT: The disposition is adequate when there is a Central office. If these do not function fully, the only thing that is being done is avoid the formation of investment companies.

Art. 95: The shares emitted by the investment companies must be appraised by appraisal committees that the investment companies designate, subject to the following requirements:

b) The members of the committees must be persons of reknown competence in regard to securities.

COMMENT: Ideally, the persons that perform the appraisal must present an exam before the Commission, unless they already have an operator or promotor permit. In this way, their capacity and competence is insured. The law does not make reference to the fact that the appraisal must be performed daily. The omission is not serious because it is established that general character norms will be dictated in this respect.

Art. 96: The investment companies will be forbidden to:

- a) Hypothecate their real estate.

COMMENT: Because of the nature of these companies, except the capital ones, their only assets are titles-securities. Otherwise, the appraisal of their portfolio will be very difficult and its objective is lost. If they are authorized to have other assets, several questions would have to be answered: what appraisal criteria will be used if the appraisal has to be done on a daily basis; how will the depreciation be accounted, etc.

- b) Give as collateral the securities that they maintain in their assets, except in regard to guaranteeing loans and credits that can obtain pursuant to sub-clause d) of this Article.

- d) Obtain loans and credits, except those that they receive from banks, non-banking financial middlemen, and financial entities, national or foreign, in order to satisfy the liquidity needs that require the adequate performance of the operations foreseen by this law; obtain the development of an orderly stock market; and in regard to capital investment companies, facilitate the fulfillment of its objective. The obtainment of these loans and credits will be subject to the dispositions of general character that the Central Bank of Costa Rica emits.

COMMENT: With the exception of the capital investment companies, these entities can only give as guarantee the titles that represent the fixed capital without the right to vote. Otherwise, it will mean that the investor's resources are used to obtain other resources to pay other investors, which results extremely dangerous. It must be the Commission who will dictate the rules for the obtainment of credits. On the other hand, the disposition does not mention that it will be forbidden to grant credits, a measure that also protects the investor, since he can only grant credits through the titles-securities that form his investment portfolio and that in order to obtain an adequate appraisal of the same, they will necessarily have to quote in a stock market.

Art. 97: The investment regime of the companies to which Article 93 refers will be submitted to the criteria of diversification of risks, security and liquidity and attractive profitability, as well as avoid that they can acquire control of the firms. The National Securities Commission has the power to establish limits on the investments in regard to a same branch of industrial activity, or when it corresponds to firms that belong to a same group, and which, consequently, because of its patrimonial or responsibility nexus, constitute common risks for an investment company.

COMMENT: The disposition is adequate, even though it is convenient that the terms security and return be eliminated, since at this moment, the Commission becomes a securities classifier. The important thing is the obligation of periodically letting the public know the composition of the portfolio.

Art. 99: The common investment companies operate with securities of variable income and fixed income, according to the terms of this chapter.

COMMENT: The disposition is correct, since these companies can invest in both types of titles, even though the highest percentage of the portfolio will be investing in shares that are variable income titles. But it must be pointed out that, currently, in Costa Rica, the indebtedness titles emitted with a floating or variable rate, are classified as if they belong to the variable income sector, which is

not correct; and when applying this definition there does not exist any difference between the common companies and those of fixed income.

Art. 101: The fixed income investment companies will operate exclusively with securities of fixed income, and the gain or net loss will be assigned daily among the stockholders, pursuant to the terms of this chapter.

COMMENT: It is vital that this disposition be applied also to the common investment companies.

Art. 103: In the fixed rate investment companies, the value of the share will be determined daily by the officers of the company who are empowered for this in the companies' bylaws. The registration of said gains or losses in the accounting statements is their responsibility (...)

COMMENT: It is vital that this disposition be applied also to the common investment companies. The persons in charge of performing the appraisal are members of the appraising committee of which Article 95 of the law is about, and the gain or loss must be reflected daily in the price of the shares, since that is precisely the objective of performing the appraisal of the portfolio.

Art. 110: The companies that operate the investment companies require a previous authorization from the National Securities Commission. This authorization will be granted when, in opinion of the mentioned Commission, the following requirements are satisfied:

e) Never can the persons or associations of persons to which sub-clause 3) of Article 91 of this law refers, participate in their joint stock, directly or indirectly.

COMMENT: This disposition is restrictive, just as has been expressed, and impedes the formation of companies of this kind, that can act with regional character.

Art. 115: The investment fund companies will have as their objective, sole and exclusive, the administration of funds and securities of third parties.

COMMENT: This figure is very similar to the one that exists in Colombia for investment funds, reason why in effect two figures are taken, whose purpose is the same. Additionally, the dispositions are not sufficient to regulate their action.

Art. 119: The accounts that the investment companies must keep will be strictly adjusted to the catalogue or prospectus that for the effect, the National Securities Commission authorizes. Previous authorization of the same Commission, the companies that need to, may introduce new accounts, and indicate in a request the reasons they have for it. In this case, it will be added to the respective catalogue or prospectus.

COMMENT: This article is very confused since it deals with two aspects totally different and that do not have relationship among them: the account catalogue and the prospectus. The account catalogue refers to the indication of the way in which these companies must keep their accounting, and by the nature of the companies, it must be special and different from any stock company. The prospectus is the document which is emitted for the placement, and that necessarily must be emitted to place their shares among the public. The Commission must point out the minimum requirements that they must contain. The concepts must not be mixed. The adequate thing is that each one of

these aspects be treated in separate articles. What should be clearly expressed is that both will be regulated by general character norms. Particular features cannot be established, especially in regard to the account catalogue, because differences in the accounting manner would be created among the investment companies that operate in the country, which could be reflected in the portfolio appraisal.

Art. 120: The investment companies must keep an accounting system that cautions the Commercial Code, and the records and auxiliaries that the National Securities Commission demands.

COMMENT: This article goes against the previous one. Furthermore, given the nature of the investment companies, it is vital that they have their own accounting system, in such a way that their operations may be correctly reflected. To do it through auxiliaries will not reflect adequately their operations.

CHAPTER VIII OF THE OPEN CAPITAL STOCK COMPANIES

COMMENT: This chapter creates the figure of open capital stock companies with the purpose of promoting that the firms place their shares among the investing public. In the next chapter, fiscal stimulation is given. Notwithstanding, the dispositions establish rules that make them inoperative; some of them are the establishment of a minimum capital of 50 million colones; and the fact that nobody can hold more than 10% of the companies' capital and that annually, at least 10% of its shares are negotiated in the stock exchange. We suppose that the capital limit is to promote that only large firms will accede to this rate, but it results elevated to achieve that an important number of firms may acquire this rate, and therefore, it limits the majority of the ones existing in the country. In regard to the limit of shareholding, it goes against the mentality of the Latin American businessmen, who in rare occasions are willing to lose control over the company. In regard to the obligation of negotiating at least 10% of the shares, this would imply forcing the creation of a secondary market. This would be little practice because if a certain firm shows interest in being an open capital stock company, and in view of the possibility of not creating a secondary market, the registration operations would be promoted to simulate the existence of such a market, which would harm its development instead of benefiting it. The National Securities Commission gave in 1992 a diagnose on the stock market, and all the observations it makes in regard to this chapter and the following one, are very correct and should be taken into consideration in order to modify the law. On the other hand, it is important to consider that the high cost of increasing the capital in Costa Rica does not favor that the firms use this means of financing.

CHAPTER IX FISCAL INCENTIVES FOR OPEN CAPITAL STOCK COMPANIES AND ITS MEMBERS

COMMENT: Currently, the incentives for the members of the open capital stock companies have been eliminated, even though those of the firm remain, the same as the double taxation on the dividends. It is necessary that a complete study be carried out in order to evaluate the incentives that still remain.

CHAPTER X OF THE LIABILITIES

Art. 155: The total unredeemed amount of the liabilities emitted by a non-financial nor banking company cannot exceed the maximum limit established by the National Securities Commission, in regard to the amount of paid and existing capital stock at the moment of the emission, except in case of emitting entities with titles registered in a stock exchange, which will be regulated by the limits that each one of them determines, pursuant to the dispositions of this law, or when the liabilities are guaranteed according to Article 156.

The emitting companies cannot reduce their capital except in proportion to the reimbursement they make on the liabilities emitted by the same (...).

COMMENT: In many commercial legislations there exist limits to the emission of liabilities. Notwithstanding, the market should be the one that sets them when accepting a determined emission or not. On the other hand, the subordination principle is maintained to the stock exchanges. The market must act pursuant to the same rules and the fact that the regulations of the different stock exchanges may be different, eliminates this principle. Additionally, it does not represent any guarantee that the emitting firms have titles registered in a stock exchange, since these can be of indebtedness, promissory notes, investment certificates, etc.

Art. 156: Each emission of liabilities can be additionally guaranteed:

() The amount of the liabilities guaranteed with mortgage or collateral, cannot exceed eighty percent (80%) of the partially estimated value of the assets given as guarantee.

COMMENT: If the firms can emit unsecured liabilities, that is without a specific guarantee, then this disposition has no sense. It corresponds to the investor to evaluate the firm and decide if he accepts the implied risk or not. Furthermore, it eliminates the possibility of granting partial guarantees to an emission. On the other hand, it is not clear what "partially estimated value" means.

CHAPTER XII OF THE OPERATION CLEARANCES

Art. 174: The stock exchanges will act as clearing houses in all the operations that are performed in it.

COMMENT: The possibility that the Securities Deposit Central Offices may perform the function is omitted. The operation clearance process would be more efficient if these Central offices could function completely.

**ANNEX 10
ANALYSIS OF THE STOCK MARKET BILL OF PANAMA
AUGUST 16, 1993 VERSION**

Next is presented a brief analysis of the Stock Market Bill of Panama. It is pertinent to clarify that only the articles or fractions of them, that can generate important distortions if the Bill in its current state is approved, are transcribed, and that in some cases the analyzed article or fraction of it is summarized.

STOCK MARKET LAW

COMMENT: In general terms, the Bill is very good, since it only establishes the general frame for the functioning of the stock market, defining each one of the actors of the same and the functions they perform.

**TITLE I
OBJECTIVE AND SCOPE**

Art. 3: Create the National Securities Commission, which is assigned to the Commercial and Industrial Ministry, and that will have legal capacity, autonomy in its internal management and regime, subject to the vigilance and inspection of the Executive Body and of the General Comptrollership of the Republic, in the terms established by this law.

COMMENT: It is important that it be granted not only administrative autonomy, but also the one necessary to supervise, control and promote the stock market. A reason is not given why an institution that will regulate and watch over a financial market is assigned to the Commercial and Industrial Ministry.

**TITLE II
OF THE NATIONAL SECURITIES COMMISSION**

Art. 5: The National Securities Commission will be formed by a Board of Directors and an Executive Board.

The Board of Directors of the National Securities Commission will be formed by seven (7) commissioners and their respective deputies, all of acknowledged good reputation and competence in regard to the stock market, and assigned by the Executive Body thus:

- a) One (1) representative of the Commercial and Industrial Ministry, who will preside it.
- b) One (1) representative of the National Bank of Panama
- c) One (1) representative of the Treasury Department
- d) One (1) representative of the securities middlemen
- e) One (1) representative of the stock market institutions
- f) One (1) prominent member of the commerce
- g) One (1) prominent member of the industry ()

COMMENT: The representatives of the sector under supervision of the Commission are not only those of the public sector, above all if it is considered that those mentioned in the sub-clauses f) and

g) can represent firms that emit titles-securities. The active participation of the supervised sector is desirable at a consulting board level, not as an integrating part of the decision making process.

Art. 6: () Likewise, those members and officers of the Commission that have material or personal links that present conflict of interest with any case, institution or situation that requires the Commission's deliberation, will be temporarily disabled to act as constituents or deputies and to know of the pending issues of the case.

COMMENT: Although the disposition is adequate, it is not sufficient, since it is more convenient that it follows the principle pointed out in the Comment of the previous article. Furthermore, it results very difficult to establish up to what degree there could be conflict of interests.

Art. 7: The attributions of the National Securities Commission are:

a) Regulate, supervise and control all the activities and negotiations that are performed in the stock markets, the transparency of the transactions, the correct formation of prices, and the protection to the investors, pursuant to what is established in the present law.

COMMENT: It is vital that these powers are extended to regulate, supervise and control the performance of the securities middlemen, stock exchanges and emitting entities. Otherwise, it will only partially perform its functions.

b) Formulate and recommend the regulations that are appropriate and necessary for the execution of the dispositions established by the present law, to the Executive Body.

COMMENT: It is important that the Commission has the power to directly emit the general character norms that will regulate the market. Otherwise, efficiency in its functioning is lost. Although this possibility is contemplated in Title VII of the final dispositions, it is convenient for greater clarity and legal security that it be included within its attributions.

e) Establish general application criteria on the acts and operations that are considered contrary to those stock exchange transactions or wholesome practices of the market, and dictate the necessary measures so that they are adjusted to the referred to uses and practices of the market.

COMMENT: Although the disposition has the correct spirit, it must be considered that the criteria does not have the same legal force as the general character norms to regulate the market, and that are established in sub-clause b) of the same article. For this reason, it is convenient that the word criteria be substituted by general character norms. This recommendation is extensive to all the articles where this meaning of the word criteria is used.

l) Norm the procedures and information that any request must contain to obtain from the holders of securities any power, authorization or approval in regard to the securities registered with the National Securities Commission.

COMMENT: The disposition is not very clear, and neither the objective that is pursued with it. On the other hand, it is convenient that a similar disposition be included, in regard to the information and procedure requirements that the middlemen and stock exchanges must fulfill in order to obtain their authorization and keep it. It is recommendable that those things related to establishing special accounting systems and information on the performed operations are expressed in an explicit

manner. In separate dispositions must be included the same principles for the investment funds and institutions for the deposit of securities, just as is done in Articles 10 and 11 of the same law for the emitting entities.

Art. 8: With the purpose of achieving the effective fulfillment of the Law, the Commission will be empowered to:

a) Request testimonies, perform inspections, exams, audits, demand the exhibition of accounting books, documents, records, correspondence, and minutes of the companies, or any other material that is necessary and relevant to any investigation that will permit proving the truthfulness of the information provided to it and the public; establish responsibilities, determine infringements of the law and apply sanctions. The examining power of the Commission will be extended to any branch or subsidiary of any person that is under investigation.

COMMENT: The principle established in the dispositions is adequate when it deals with entities that emit titles-securities. Notwithstanding, in case of the middlemen, stock exchanges, investment funds and central offices for the deposit of securities, they are activities of customary character in order to adequately perform its functions, and not only in case of special investigations. On the other hand, the law only grants the Commission the power to intervene investment companies (articles 56 to 61). It is important that this power be made extensive to the middlemen and stock exchanges.

TITLE III OF THE SECURITIES' PUBLIC OFFER

COMMENT: It is convenient for the law to define what is meant by securities.

TITLE IV REGULATION OF THE STOCK MARKET

CHAPTER III SELF-REGULATED ENTITIES OF THE STOCK MARKET

Art. 25: () The Securities Middlemen who are members of a Self-Regulated Entity or Stock Market, cannot perform transactions with securities listed outside it.

COMMENT: The disposition limits the activities of the securities middlemen, since there can be titles-securities that are placed in public offer, but that are not registered in a stock exchange. Furthermore there exist others that are not object of the public offer, but that can be negotiated. Additionally, there exist operations that may be performed outside the stock exchange with titles that belong to the stockbrokers's own portfolio. The most common example is to perform borrowing securities for treasury management. Due to the aforementioned, it is suggested that the writing be modified so that the disposition will establish that: "the Securities Middlemen, members of a Self-Regulated Entity or Stock Exchange, cannot perform transactions with securities registered in a Self-Regulated Entity or Stock Exchange outside it, except in cases where by means of general character norms may emit the National Securities Commission".

CHAPTER IV
OF THE CLEARINGHOUSE AND SECURITIES DEPOSIT

COMMENT: It is convenient that the figure of endorsement in administration be created, since it is the one that permits the complete functioning of these institutions. For example, it permits the receiving of interest payments or any other right contained in a title-securities or derived from its holding, so that the deposit institution be the one who distributes them among the middlemen so that they can distribute them among their clients holders of securities. In this manner the cost of this procedure would decrease. In regard to this same function, the law creates in its Chapter V, Payment Agents, Registration and Transfer. However, as was expressed before, the function could be absorbed by the institutions for the deposit of securities. It is convenient that this power be granted, since the costs would be reduced and the activity would be more efficient.

TITLE IV
OF THE INVESTMENT COMPANIES

CHAPTER I
PRELIMINARY DISPOSITIONS

COMMENT: The law does not contemplate that these companies may emit shares without the right to vote, because precisely these shares are the ones that are placed among the investing public and that are daily quoted in the stock exchange, so that in this manner, the investor may know the gains and losses that he has obtained. If an investment company fulfills the objective of capturing the savings of small and medium investors, it will have a large number of shareholders, and it would be very difficult to gather them in a stockholders assembly or make them agree on the composition of the portfolio, and in general on the administration form of the company. Likewise it would hinder its wholesome development. For this reason, they do not have the right to vote, and for their protection they will sign a contract in which all the aspects related to its administration, appraisal, repurchase of shares, etc. will be clearly expounded. Due to the aforementioned omission, reference is not made either to the fact that the investment companies will necessarily have a fixed capital without the right to withdrawal formed by the shares that do have the right to vote. This is essential for the open investment companies, and therefore, cannot be repurchased. These shares will generally be held by the company's administrators. This disposition is established to protect the public's interests, since the existence of minimum resources is assured, to affront the irregularities and to grant liquidity to the other shares.

It is necessary that it be established that the investment companies will operate pursuant to general character norms which the Commission establishes. In them can be established portfolio appraisal criteria, diversification, minimum content of the contracts that are signed by the investors with the stockbrokers for the acquisition of shares from these companies, requirements for the presentation of information to the Commission and investing public, accounting system that must be used, etc. Likewise, it must be left clear and totally explicit, that investment company and mutual or investment fund are synonyms.

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CHAPTER II OF THE OPEN INVESTMENT COMPANIES

Art. 46: Every person that is owner of shares, securities, or participation or investment certificates, emitted by an Open Investment Company, may, pursuant to the procedure established in the informative prospectus, request the clearance of all, or part, of its securities, and in such case, the company will pay cash and in a term not greater than than thirty days, the amount equivalent to the net value of the securities presented for its clearance.

COMMENT: The criteria established in the prospectus must remain. Otherwise, the thirty days one will be preferred, which is not clear. Because of this, the investing public may be harmed, since the calculation form of the net value is not established, which will not be more than the corresponding aliquot part of the company's portfolio, pursuant to the appraisal criteria that are established. It is not specified if the appraisal will be performed on the day the clearance is requested or on the payment date, which evidently goes against the investor's interests, because in view of the lack of clarity, the criteria that is best for the administrators will be used, in regard to companies that have investments in variable and fixed income titles. In regard to companies that only invest in fixed income titles, except important variations in interest rates during the periods of request and clearance, the value on the sale request date will be applied.

Art. 47: The Open Investment Companies cannot emit titles that have preference or priority on other securities of the company. Furthermore, they can emit indebtedness titles, or contract loans up to an amount not greater than 10% of the company's total assets, immediately after the obligation is contracted, granting as guarantee up to 15% of the same. Short term sales operations, future contracts, sale or deed options, and any other contract or value that represents an obligation for the company that is not completely paid, are included as debts.

COMMENT: The restriction on the emission of preference or priority titles, must be applied to all type of investment companies. In regard to the limits for the obtainment of credits, it is necessary that through general character norms, be established the cases when these can be obtained; and that the same norms establish the limits, since the appearance in the law does not make the disposition more flexible. On the other hand, some of the operations that are considered strictly debts, must be catalogued as contingent.

CHAPTER IV OF THE ADMINISTRATORS

COMMENT: The Companies that Administer Investment Companies are not defined. It is necessary to do this for the law to be clear. Additionally, in the previous chapters, the obligation that the investment companies have to be necessarily administered by one of these entities is not established, and that is why no disposition in regard to the entity in charge of the portfolio appraisal of the investment companies is mentioned, just as is done in Article 53. This creates a very important gap in the law for the investment companies that are not administrated by an administrating company.

Art. 53: The Administrators will have to calculate on a daily basis the net value of the investment portfolio, and the securities of each one of the Investment Companies under their administration. To calculate the net value of the portfolio, they will use the market quotations of each one of the

investments. In case it is not possible to obtain market quotations, the Board of Directors of the Investment Company will determine in good faith and rationally, using an independent evaluation provided by the Administrator, the market value of these investments. Immediately after, to calculate the net value of the securities, it will divide the total of the investment portfolio by the number of the Investment Company's circulating securities at that moment.

COMMENT: To establish the obligation of the daily appraisal is very important and correct. However, the appraisal criteria must be emitted by means of general character norms so that they are flexible and will adapt to the market's conditions, but it is vital that all the investment companies apply the same criteria. Otherwise, obvious distortions will be created. Furthermore, it results difficult to prove good or bad faith of the appraisal and its rationality. It is a reality that in the Latin American markets not all the titles are quoted daily. This happens in the larger and most complete markets, such as the Chilean or the Mexican ones. For this reason it is of vital importance that clear rules be established. As an example that illustrates the situation, it is suffice to mention that in 1992 the Mexican Investment Companies had to affront losses of various thousands of millions of dollars due to the lack of clear appraisal criteria for those titles that are not quoted daily.

TITLE V OF THE SANCTIONS

COMMENT: The monetary sanctions that are contemplated do not cover all the irregularities that can be committed. For this reason it is convenient to perform an analysis on this matter, and its application be extended, above all, to use the privileged information. On the other hand, some of the sanctions foreseen are very reduced. For example between B/.10 and 100 when the information delivery is not fulfilled. Additionally, when they are established in the law it will subtract flexibility to adapt them, according to the economy conditions. It is convenient that the power to impose sanctions is established in the law, but the amounts are set through general character rules.

**ANNEX 11
ANALYSIS OF THE PRESIDENTIAL AGREEMENT NUMBER 115
OF FEBRUARY 24TH, 1988**

Next is presented a brief analysis of the Presidential Agreement N° 115 of Honduras. It is pertinent to clarify that only the articles or fractions of them, that can generate important distortions, are transcribed, and that in some cases the analyzed article or fraction of it is summarized.

PRESIDENTIAL AGREEMENT N° 115

COMMENT: The greatest obstacle for the development of the stock market is established in the Agreement in its Article 45. Because the emissions of titles in series requested by the firms have to be authorized by the Executive Body, after a long procedure, it is important that the necessary changes be made to simplify the process. The Agreement grants the stock exchanges all the supervision and regulation powers, except the modification of its regulation and the limitation mentioned at the beginning of the comment. The stock exchanges have all the authority over the stock market. The Agreement does not establish any measure to protect the investing public's interests, and only contemplates partial aspects of the stock market; it also establishes very limited supervision capacities to the Bank Superintendencies and it practically does not grant regulation faculties.

CHAPTER II

Art. 10: The modification of the constitution, bylaws and internal regulations, the merging, transfer, anticipated dissolution and extension of the stock exchanges will require the authorization of the Executive Body, previous opinion of the Central Bank of Honduras. The capital increases are exempt from this disposition.

COMMENT: The disposition implies indirect supervision to middlemen, operators and emitting entities, since Article 12 contemplates that the internal regulation will contain the norms for registrations and authorizations, among other aspects. However, it results curious that, although the modifications of the regulation require authorization when they are established for the first time, they are not subject to any authorization, which implies an even less supervision capacity. In order for the supervision tasks to develop in an adequate manner, they must be performed directly.

**CHAPTER IV
STOCK EXCHANGE POSITIONS AND STOCKBROKERS**

Art. 16: The stock exchange positions and the stockbrokers must be authorized by the stock exchanges to perform intermediation activities, pursuant to the requirements, rights, obligations, prohibitions and sanctions that each stock exchange establishes in their Internal Regulation, and which be incorporated in the contract that is subscribed for the effect.

COMMENT: In this Article the stock exchanges are granted ample powers, from the dictation of general character norms to the authorization of the middlemen; but it implies that the latter will not be subject to any supervision, and it is to them that the supervision is most important, because they are the ones that perform the operations with the investing public.

Art. 19: The company that is authorized to operate a stock exchange position will have, besides the obligations established in the Internal Regulation, the following:

a) Guarantee their action by means of a security that will be granted with the characteristics and conditions that are determined by the stock exchange, through general character dispositions.

COMMENT: This fraction ratifies the ample power that the stock exchanges have, and the practically null activity of the supervising entity.

d) Give to his client a copy of the contracts for each negotiation in which he intervened.

COMMENT: What must be done is sign a contract of commercial assignment which will be the one that regulates the relationship between the client and the stockbroker. This latter must give an operation voucher each time he executes an order from the client, or acts in his name, in the case of discretionary accounts. Furthermore, it is not defined that they are "contracts", but it can be supposed that it refers to the slips of transaction performed in the stock exchange, which results impracticable and non-operational, since in the same operation transactions can be executed on behalf of various clients. Due to the aforementioned, it is suggested that the obligation of signing the commercial commission contract be incorporated, and that the writing of this fraction be substituted for: "Give its clients an operation voucher for each negotiation performed on his behalf".

Art. 20: The stock exchange may suspend or cancel the authorization, without any indemnification for the company holder of the position, at any moment the latter stops satisfying, temporarily or definitively, the requirements to which the previous Article refers, or when it infringes the obligations established in the Internal Regulation.

COMMENT: These powers must belong to the supervising entity, without impairment of the ones the stock exchange may have. To protect the stockbrokers, it must be added that the sanctions will be applied pursuant to what is established in the Internal Regulation and in the general character dispositions that are emitted. Otherwise, the stock exchange is fully empowered to sanction, even if there does not exist a classification of the faults according to their seriousness. It was not mentioned that also the unfulfillment of the dictated general character norms may make the stockbroker deserving of a sanction.

CHAPTER VIII SUPERVISION AND VIGILANCE

Art. 40: The supervision and vigilance of the stock exchanges and of the operations that are performed in it, will be under the responsibility of the Central Bank of Honduras, by means of the Bank Superintendency. It will be able to require, for the effect, all the reports and data that to its judgment, are useful for the performance of its functions.

COMMENT: With the exception of rules that the stock exchange must follow in its accounting, pursuant to what is established in Article 42 of the Agreement, the supervising entity does not have the power to emit any norm for the entity that it directly supervises. For this reason, it will not have clear criteria to perform the task and will have to apply those that are established in the Internal Regulation of the stock exchanges.

CHAPTER X GENERAL DISPOSITIONS

Art. 45: The titles in series, created by a sole declaration of will, which must be placed among the investing public by means of the stock exchange, will require the authorization of the Executive Body, except those titles-securities that are subject to a special regime.

For this effect, the request must be presented before the Treasury and Public Credit Department, which will send it to the stock exchange for its opinion. This entity, must assure itself, through the corresponding investigation:

- a) That the public interest and the economical and financial conditions of the emitting entity justify the authorization.
- b) That the organization and administration of the emitting company, as well as the seriousness, honorability of the administrating members, additionally guarantee the interests of the acquiring entities of the titles-securities it emits.
- c) The other requirements that are established by the Internal Regulation of the stock exchange.

Once the opinion is emitted in the aforementioned terms, the Executive Body will decide on the requested authorization.

COMMENT: As was already expressed, the procedure is complex and it will necessarily be slow because it must be authorized by the Executive Body, under the assumption that the stock exchange should authorize the public offer. If this one has the power of decision, then there are no arguments that support this process, and the only thing it does is discourage the emission of this type of titles. On the other hand, it compels that the stock exchanges become classifiers of securities, which results highly dangerous. its function should be insure itself that the emitting entity fulfills the requirements of delivering all the necessary information so that the investor can make a decision. Otherwise, its position becomes liable because if it authorizes an emission and due to any reason the emitting entity does not pay, he will be morally responsible because there is no legal responsibility. But this will definitively harm its image and it is probable that it will affect the investing public's confidence. On the other hand, the classification process is very complex, and requires the participation of specialists in different fields of activity, reason why the stock exchange may not be able to do it and will have to hire experts, whether permanently or only to perform each opinion. This will increase its operation costs and necessarily will have to be transferred to the stockbrokers, who at the same time, will transfer them to the investing public. Therefore, the intermediation costs will increase.

ANNEX 12
ANALYSIS OF THE EXECUTIVE DECREE Nº 33-93 OF NICARAGUA
GENERAL REGULATION ON STOCK EXCHANGES

Next is presented a brief analysis of the Executive Decree Nº 33-93 of Nicaragua, which contains the regulatory norms of the stock market. It is pertinent to clarify that only the articles or fractions of them, that can generate important distortions, are transcribed, and that in some cases the analyzed article or fraction of it is summarized.

DECREE Nº 33-93
GENERAL REGULATION ON STOCK EXCHANGES

COMMENT: The present Decree is the solution that the government has given for the lack of a stock market law. For this reason it has to be subject to some dispositions already established in the country's laws, such as the definitions and obligations that it establishes for the operators, and the fact that it only norms the public offer of titles-securities in the stock exchange. An interesting aspect is that it keeps a double standard, in the sense that it is not expressly clear if the supervision will be directly performed by the Bank Superintendency, or indirectly through stock exchanges. In any case, its supervision and control powers are limited, above all in regard to the middlemen, because the granting of authorizations, inspection and intervention visits are not contemplated. Notwithstanding, this can be made up for with the emission of general norms. Article 33 of the Decree grants that authority to the stock exchange as well as to the Superintendency, when it establishes that both "_ must dictate norms that will guarantee the transparency of the stock exchange market"; the scope of the disposition is not clear. The Decree's first article defines, among others, the mutual fund fees as transferrable securities; nevertheless, the Decree does not mention these funds, reason why there do not exist rules to obtain authorization, initiate operations, etc. It is vital that this omission be mended. It is important that, as soon as possible, the writing out of a Bill be begun, which will cover the basic aspects of the stock market and mend the current deficiencies.

PRELIMINARY DISPOSITIONS
CHAPTER I

Art. 4: The persons that intend the emission of securities, which will be object of the offer, using the intermediation of the stock exchange, must communicate this intention in a written manner to the Superintendency, through the respective Stock Exchange, with the contents that is established in Article 25 of the present rule.

COMMENT: In this disposition, a third party, the stock exchange, requests on behalf of the interested person, the registration of the public offer. However, it is not requested that there must exist a power of attorney for this procedure. It is important that this be added in order to avoid possible future problems.

CHAPTER II OF THE STOCK EXCHANGES

Art. 9: The Stock Exchanges will be administered by a Board with not less than five (5) members, and it will have the following general functions:

a) **Regulating:** it will be its responsibility, previous authorization from the Bank Superintendency, to dictate and modify the internal Stock Exchange regulation. Likewise, it may dictate general internal norms for the organization of the stock exchange market, the administration of the Stock Exchange, middlemen, and emitting entities, striving at all moment that the transaction will insure the existence of a transparent, competitve and orderly market.

COMMENT: Because the Superintendency must authorize the internal regulation of the stock exchange, as well as the general norms, it has the power to regulate indirectly. The trouble may present itself when it is necessary to modify them, since there does not exist any mechanism that demands it.

b) **Controlling:** the Board will be responsible for seeing that in the development of the operations that are performed in it, the strict fulfillment of the legal provisions and their regulatory norms are carried out.

COMMENT: Even though it were necessary that the stock exchanges perform these activities, its powers are limited. For example, neither the inspection visits nor the intervention authority are mentioned.

c) **Disciplinary:** the Board will be responsible for applying the disciplinary measures established in its bylaws and regulation, over the Stock Exchange Positions, Stockbrokers and all of its personnel.

COMMENT: The disposition is correct; nevertheless, it is not mentioned in the Decree that these are also functions of the Superintendency, and there is a gap, since it is not established that it will sanction the unfulfillment of the norms that the Superintendency emits. Furthermore, within its action ambit, the mentioning of the titles-securities emitting entities was forgotten.

The above without impairment of the delegation of powers that can be made to the Board on duty, General Manager and other employees, to apply or propose sanctions during the meetings, sessions of the Stock Exchange, and others, pursuant to what is disposed in its internal norms. The Board, when the situation merits it, may suspend the functions of a middleman, having to inform the Superintendency of such situation, exposing all the grounds on which it based itself for such a decision.

COMMENT: The power of intervention is not contemplated. It is important that it be added. The authority cancellation is not mentioned either, even though in all cases they should be functions of the Superintendency.

CHAPTER III OF THE STOCK EXCHANGE POSITIONS

Art. 13: A Stock Exchange Position is the legal person constituted as a stock company, whose social objective is the intermediation in securities, within the stock exchange ambit. It will operate through concessions granted by the Stock Exchange, previous registration in the Bank Superintendency. It can negotiate on own account, with the limitations that are pointed out by the Stock Exchange Internal Regulation.

COMMENT: It is important that the stockbrokers as well as its operators and promoters, who are not mentioned in the Decree, obtain authorization from the Superintendency, and not only be registered in it. It is also important that all the activities that a middleman can perform be defined; otherwise, there could be problems in the future. Among them it is relevant to point out: lend counseling in regard to titles-securities, perform placements of titles-securities, administer investment portfolios, administer investment funds and act as common representatives of bondholders.

Art. 15: The Stock Exchange Position must operate necessarily and obligatorily by means of Stockbrokers duly authorized, who will be its representatives because of the simple assignment, with the powers to oblige them in any of the stock exchange intermediation activities authorized in the respective Laws and Regulations.

COMMENT: It is not specified who must grant the operators the authorization, and the need to pass an exam is not mentioned. It is understood that they must forcefully perform the promotion activities, since the definition is very broad. It would be convenient that the promotor figure be created.

Art. 16: The companies authorized to operate a Stock Exchange Position will have, besides the obligations established in the Internal Regulation, the following:

COMMENT: The Decree does not mention that the authorization is necessary. It only establishes that the stock exchange will grant a concession. It is important to make this clear.

a) Render bond or guarantee pursuant to the terms established in the following Articles 18 and 19.

COMMENT: The related articles refer to the bonds that must be given to the operators. It is convenient that this be established separately for the stockbrokers. It must be promoted that the Stock Exchange create a contingency fund in favor of the investing public with the contribution of all the stockbrokers.

b) Give to the Stock Exchange and the Bank Superintendency, within three months after the closing of the fiscal year, its balance sheet, annexed statements, duly approved by the competent social body, audited by an Authorized Public Accountant.

COMMENT: In order to perform an effective supervision task, the stockbrokers must turn in their non-audited financial statements on a monthly basis. Additionally, they must have a special accounting system, established by the Superintendency, which adequately reflects its operations.

c) Keep the necessary Records, where it will write down, clearly and precisely, the operations that are performed, expressing quantities and prices; names of the contractors, and every other detail that will permit an exact knowledge of each business, pursuant to the dispositions that for such effect are dictated by the Stock Exchange.

COMMENT: It is important that a permission be given so that these records be kept by electronic means. Because the stock market secret must be kept, it is convenient that the utilization of codes to identify clients if necessary be permitted. On the other hand, only in case of operators with registered titles, and cross operations, a stockbroker will know the names of the two contracting parties. Otherwise, he will only know that of his client. The stockbroker of the counterpart stock exchange operation will know the name of the other contracting party.

d) Daily publish the securities offered and demanded in the Stock Circle, its amounts and its quotations.

COMMENT: This is an obligation of the stock exchange. It would be impractical if so many publications are published daily in the market; besides, these do not have the necessary information to adequately fulfill the disposition.

e) Give its client a copy of the contracts for each negotiation in which he intervened.

COMMENT: What should be done is sign a commercial commission contract, which will be the one to rule the relationship among the client and the stockbroker. The latter must give an operation voucher every time he executes an order of the client, or acts on his behalf, in regard to discretionary accounts. Furthermore, the term "contracts" is not defined, but it can be supposed that it refers to slips of transactions performed in the stock exchange, which results impractical and inoperative, since in the operation many transactions can be performed on behalf of various clients. Because of the aforementioned, it is suggested that the obligation of signing the commercial commission contract be incorporated, and that the writing of this fraction be substituted for: "Give his clients an operation voucher for every negotiation performed on his behalf."

Art. 17: The Stock Exchange may warn, fine, suspend or cancel the concession of a Stock Exchange Position, without any indemnity for the company that operates the same, at any moment when this Position stops satisfying the requirements to which the previous Article refers, or when it infringes the regulations established in the Internal Regulation and in the Concession Contract. Of all the aforementioned, it must inform the Bank Superintendency.

COMMENT: These powers must belong to the Superintendency, without impairment of those that the stock exchange may have. For the protection of the stockbrokers, it must be added that the sanctions will be applied pursuant to what is established in the Internal Regulation and in the general character dispositions which are emitted. Otherwise, the stock exchange is fully empowered to sanction without the existence of a fault classification according to its seriousness. It is not mentioned that the unfulfillment of the general character norms which are dictated, may also make the stockbroker a candidate for a sanction.

CHAPTER IV OF THE STOCKBROKERS

Art. 18: Stockbrokers are the natural persons who are previously authorized by the Stock Exchange and registered in the Bank Superintendency, which are dedicated to brokerage operations in the Stock Exchange. In order to exercise their office they must render a bond or guarantee in favor of the Stock Exchange, that for such effect is established by the Bank Superintendency. Furthermore, they must fulfill the following requirements:

COMMENT: The authorization to act as operators must be given by the Superintendency. It is convenient that the figure of promotor be incorporated, since it is mistaken with the operator, given the obligations that Article 20 establishes.

Art. 20: The Stockbrokers are obliged to:

- a) Keep books and records that are prescribed in the present Regulation and those that the Bank Superintendency determines.
- b) Provide periodically to the Stock Exchange, and with the details requested by it, information on the operations they perform.
- c) Provide the documentation that the Superintendency deems necessary to maintain updated the Registration information.
- d) Assure the identity and legal capacity that the persons have, in whose negotiations they will intervene, and in its case, the legality of the signatures of the physical persons who order the performance of the stock exchange operations, and in its case, the existence of a sufficient power to act in representation of a legal or natural entity, and the registration of the last transfer or conveyance in the Emitting Entity Records. When the contracting persons do not have the free administration of their assets, the stockbroker cannot render his services without the due authorization pursuant to the laws.
- e) Propose the negotiations with accuracy and distinctness, refraining from making false suppositions that will induce the contracting parties to error.
- f) Maintain a reserve on everything related to the negotiations that they perform, and not reveal the names of the persons that give them these negotiations, unless the law, or the nature of the operations, demand the contrary, or that the interested persons consent that their names be known.
- g) Issue, on account of the interested parties that so request it, a certification of the entries related to their contracts.
- h) Legally respond to the authenticity of the signature of the last transferor in the bill of exchange or other endorsable securities negotiations.
- i) Attest on the delivery of the effects and their payments, if the interested parties so demand.
- j) Celebrate the operations on the titles negotiated in the Stock Exchange, by means of the procedures that this last one establishes.
- k) Fulfill the legal, statutory and regulatory dispositions of the respective stock exchange.
- l) Conduct all negotiations with loyalty, clarity, and precision, and abstain from using artifices that in any manner, may induce the contracting parties to error.

COMMENT: The obligations established are those of the stockbrokers, nor of the operators. Of those established obligations, only the ones mentioned in sub-clauses e), f), j), k), and l) are applicable to them, since the operators perform the transactions within the stock exchange, on behalf of the stockbrokers, and in active markets they do not know the names of the clients; they only

receive orders to perform operations. The obligation in sub-clause f) is applicable to the promoters. The obligation established in sub-clause a) is equally requested from the stockbrokers. This will represent a tremendous administrative effort and will increase the cost of intermediation. It is just to mention that these dispositions were established because the operator was given the quality of stockbroker, and it was necessary to establish the fulfillment of the mandates established for them in Title III, Chapter I, of the Commercial Code. A short term solution to the problem is that the activity be defined in another manner, in such a way that it will not be necessary to modify the mentioned Code, but, at the same time, the operational characteristic of the stock market be promoted.

Art. 21: The stock exchange may warn, fine, suspend or cancel the authorization of a stockbroker, informing the Bank Superintendency of the actions taken. The referred to suspension or cancellation can only proceed if the Stockbroker incurs in some of the following causes:

- a) Stop fulfilling the necessary requirements for the authorization.
- b) Incur in serious infringements of the obligations that are imposed in this Regulation, the Internal Regulation of the Stock Exchange, or other dispositions that rule;
- c) Take part, in a guilty or fraudulent way, in transactions that are not compatible with the wholesome practices of the stock markets;
- d) Participate in public offers of securities within the Stock Exchange, which are not registered according to this Regulation, or whose transaction has been suspended; and
- e) Do not comply, due to reasons that are imputable, with the obligations originated from securities transactions, in which they have participated.

COMMENT: These powers must belong to the Superintendency, without impairment of those that the stock exchange may have. It is important to clarify the meaning of "serious" in sub-clause b). The fault described in sub-clause d) is not applicable to the operators, but to the stockbrokers, since the first act on behalf of the latter.

CHAPTER V OF THE RECORDS AND OF THE INFORMATION

COMMENT: The chapter refers to the registration in the different records (stock exchanges, public offer securities through mechanisms of the stock exchange, stockbrokers and operators), and although it is true that it is an important task, the authorization is even more, and the law only makes reference to the registration.

Art. 25: The Superintendency will proceed to the registration, to which the previous Article refers, pursuant to what is established in Article 4 which precedes, and as long as it complies with informing on the following aspects:

- a) **Legal:** Emission agreement, characteristics of the securities that are to be emitted, antecedents on the constitution and registration of the emitting entity, its modifications and registrations, duration term, composition of patrimony, administrators and proxies, registration of members or the number of them, and any other antecedent that is reasonably necessary for the complete identification of the emitting entity.
- b) **Financial-Economical:** Antecedents on the Economical and Financial situation of the emitting entity, as well as its most recent Annual Balances that are available, or the opening Balance and projections in case of an emitting entity that initiates operations, the most recent of which must be presented duly audited by registered external auditors in the Bank Superintendency, accompanied

by a reasoned report on the financial condition of the entity, its patrimony, its reasons to be indebted, and every other data that permits the formation of a complete opinion on its economical-financial situation.

Furthermore, a prospectus must also be presented, where the use that will be given to the resources, general characteristics of the negotiation, and the favorable and unfavorable projections that could affect the future are described.

COMMENT: Although an ample list of information is presented, there is some of importance that is not included, such as: Types of titles to be emitted, amount of the emission, rights that the titles will grant, in its case, interest rates that will be paid and the manner they will be calculated, form and periodicity of the payment, etc. Because of the aforementioned, it is suggested that a third sub-clause be added, which will establish: "Furthermore, they will deliver all the information that the Bank Superintendency establishes, by means of general character norms". The information requested that contains the prospectus is very poor. In effect, at the least, a summary of what is established in sub-clauses a) and b), as well as all the information relevant to the titles-securities must be included. For this reason the modification of the writing is suggested, such as: "Furthermore, a prospectus that contains, at the least, the information established by the Bank Superintendency in general character norms, must be presented". It is important that the granting of power to the Bank Superintendency in order to dictate norms on accounting and presentation of financial statements be included, in such a manner that the standarization can be achieved.

The Superintendency will have a term of ten working days, counted as of the date of the respective request, to procede with the registration.

COMMENT: Although the disposition tries to make the procedure expeditious, it has to be considered that the Superintendency must authorize the public offer of the titles; and ten working days is a very short amount of time to be sure that all the required information is given and perform a complete analysis in order to prove its veracity, even using selective methods. In small markets where there are similar limits, these are not less than three weeks for the initial registration. When it is a new emission from an emitting entity previously registered, the time can be reduced to the term of the disposition, and even to smaller terms, even 72 hours, in case of commercial paper emissions, in which a credit line is annually authorized up to a determined amount; but because it can be rotary, it promotes the existence of various emission during the year that the authorization lasts. The term to authorize the renewal, extension or reduction of the credit line, can be ten days.

Art. 26: The emitting entities within the Securities Record will give the Superintendency, Stock Exchange and general public, information on the matter pointed out in Article 25, with the periodicity that the Bank Superintendency determines.

COMMENT: It must be added to what is written: "with the periodicity and the manner that are established by the Bank Superintendency, through general character norms".

Art. 27: The directors, administrators, and every person that because of his office or position in the registered emitting entity, will have access to the information that has not been officially divulged to the public, in fulfillment of this Regulation which can influence on the prices of their securities, will keep strict reserve on it.

The persons mentioned in the previous sub-clause are forbidden to use said information to obtain for themselves or others, advantages through the purchase or sale of securities. These must also watch over so that this does not occur through subordinates or third persons of their confidence.

COMMENT: It is important that the directors and employees of the stock exchange, stock exchange agencies and Bank Superintendency, be included. Due to their position, they could have access to this information. On the other hand, it is indispensable that the sanctions be added, since no prohibition has force if it is not accompanied by a sanction.

CHAPTER VII OF THE SANCTIONS

Art. 30: It will correspond to the Bank Superintendency to apply sanctions in which the Stock Exchanges will incur by infringement of this Regulation, bylaws or Internal Regulation of the Stock Exchanges and the instructions dictated by the same Bank Superintendency ()

COMMENT: It is convenient that the writing of the Article be modified and that "instructions" be substituted by "general character norms". Likewise, it is vital that the Superintendency have that same power in regard to the stockbroker, operators, promoters and emitting entities, and that the power to perform inspection visits and administrative interventions be added.

CHAPTER VIII GENERAL DISPOSITIONS

Art. 34: Any transfer that is done of the concession given to a Stock Exchange Position, must be previously authorized by the Stock Exchange, and informed to the Bank Superintendency.

COMMENT: The Superintendency must be the one that grants the authorization.

Art. 39: The negotiation mechanisms, such as the Stock Exchange Circle and others, the execution, clearance of transactions and others directed to centralize the negotiation in the Stock Exchange, may be regulated by the same Stock Exchanges, previous information to the Bank Superintendency.

COMMENT: It should say previous authorization of the Bank Superintendency and according to the general character norms that this entity emits on this aspect.

ANNEX 13
ANALYSIS OF THE STOCK MARKET BILL OF THE
REPUBLIC OF EL SALVADOR

Next is presented a brief analysis of the Stock Market Bill of the Republic of El Salvador. It is pertinent to clarify that only the articles or fractions of them, that can generate important distortions, if the Bill is approved in its current condition, are transcribed, and that in some cases only the analyzed article or fraction of it is summarized.

STOCK MARKET BILL

COMMENT: The Bill does not grant the Financial System Superintendency the power to emit general character norms, whose incorporation is vital, because the Bill practically grants the stock exchanges all the powers to regulate. The Bill establishes that the Superintendency may perform inspections, but cannot intervene nor cancel authorizations. This last one, nevertheless, is function of the stock exchanges, that is, an indirect participation of the supervising entity is proposed, and its powers are very limited. In all cases, the stock exchanges are granted greater force. The intervention power should be incorporated. It is important that powers, so that the Superintendency can adequately regulate and supervise the market's participants, be incorporated, particularly in the case of the middlemen.

On the other hand, it does not deal with the investment companies or funds, since the preparation of a special Bill is expected for those institutions. However, one is already operating in the country, and others may probably arise in a short term. What results serious is that, if the prohibition established in Article 94, to capture resources is applied to non-authorized entities, then the investment funds are illegal entities; and if the disposition is not applied, the law would lose force. Because of the aforementioned, it is important that a mechanism be established to regulate them; or maybe alternate mechanisms could surge, disguised as portfolio management operations on third party accounts, which would operate without supervision nor regulation.

Another aspect that limits the development of the market in an important manner, is that the stockbrokers are not permitted to have their own portfolio, except to perform placements in the underwriting modality. With this, the management of the firms' treasuries is difficult, as well as the opportunity to give the market liquidity, etc. Furthermore, if a stock exchange agency is well administered, it must not have idle resources, and the limitation will not permit it to invest its treasury surplus. Furthermore, it cannot perform the underwriting in an adequate manner, because this implies having resources of important amounts that will not be used all the time. There is no stockbroker in the whole world that constantly performs placements of titles-securities. The cost of maintaining these idle resources would be very high, and no stockbroker would want to perform this type of operations. Due to the aforementioned, it is vital that the stockbrokers be empowered to perform operations on their own behalf.

It is important to point out that the Bill considers, in a certain measure, the possible integration of the stock markets, and it establishes some dispositions that could facilitate it, even though there are still some deficiencies and limitations.

**TITLE I
FUNDAMENTAL NORMS**

**CHAPTER I
BASIC DISPOSITIONS**

Art. 3: All securities that are the object of public offer, as well as the emitting entities of the same, must be registered in a stock exchange, which at the same time must register them in the public records, that for such effect will be kept by the Superintendency.

COMMENT: In Article 1 of the Bill it is established that : "() the Superintendency of the Financial System will control the fulfillment of the dispositions of this Law, as well as the natural or legal persons whose activities are regulated in it." It is evident that the emitting entities are some of the persons on which the Superintendency must perform its functions, but if it is not empowered to authorize the public offer and deal directly with the emitting entities, it will be difficult that it may perform them adequately.

Art. 4: The securities emitted by banks or acceptance houses will continue to be regulated by the dispositions established in the Bank and Acceptance House Law. And only those securities that will be transacted in a stock exchange must be registered in one stock exchange and the Superintendency, without too much procedure, and to which the requirements indicated in Article 8 of the present Law will not be enforced.

COMMENT: Article 8 establishes the information requirements, including the presentation of the prospectus. If the banks and acceptance houses do not have to present this information, then with what elements will the public make its analysis in order to make an investment decision in regard to the titles that are emitted by these entities. Although it is true that the authorization requirement can be cleared away, above all because the same entity supervises them, it is also true that the information presentation must not be obviated.

Art. 5: For the effects of this Law, the following will be understood:

a) Securities: Securities are the shares, bonds and other credit or participation titles that are emitted in series. ()

COMMENT: The titles emitted in volume are not included; the possibility of dematerializing the titles is eliminated; it is important that this type of titles be included as well as the power to dematerialize. On the other hand, the definition is limiting since the possibility of emitting commercial paper, reinforced with the disposition of Article 62, which is analyzed later, is eliminated.

Art. 6: The next must be registered in the public records which will be kept by the Superintendency for such effect:

- a) Entities that emit securities;
- b) Securities;
- c) Stock Exchange agencies;
- d) External auditors of the stock exchanges, stock exchange agencies, and emitting companies.
- e) Risk classification entities
- f) Administrators of entities which are subject to registration

COMMENT: In sub-clause d), the auditors of risk classification entities and companies specialized in securities deposit and custody must be added. The registration of operators and promoters was omitted.

CHAPTER II PUBLIC RECORDS

Art. 8: The Superintendency will proceed to the registration of the emitting entities and the public offer securities in the public records, as soon as a stock exchange sends the certification of the resolution of its Board of Directors, approving the registration of the securities in said stock exchange, accompanied by the following information:

- a) Corporation charter of the emitting entity and its amendments, duly registered.
- b) Nominee of the members with their participation within the company's capital, administrators and administrative proxies, with the data relevant to their identity documents;
- c) Financial statements of the three last exercises, duly audited by registered external auditors in the Superintendency;
- d) In case the emitting entity belongs to an enterprise group, it must provide: the name of the firms that form the group, its stockholders and directors, as well as the consolidated financial statements.
- e) In case there exist enterprise relationships, he must provide: the names of the related firms where he has participation, of its stockholders and directors;
- f) Agreement of the competent social body, where the emission is authorized;
- g) Types of securities that are being registered and their characteristics, with the bond emission deed and other credit titles;
- h) Emission prospectus; and
- i) In case the emission is guaranteed with personal property or real estate, the guarantee constitution documents must be presented.

COMMENT: Even though important information that is asked for in every market is requested, a lot of information that is vital to evaluate the firm is omitted, and which should normally form part of the prospectus, but the contents of the prospectus is not specified. It is vital that the minimum content of the prospectus be included, whether in the law or in the general character norms. To do this it would be convenient to add to the article: "the prospectus must contain as minimum, the information that the Superintendency establishes by means of general character norms". The aforementioned has more importance if the poor quality of the prospectus that have been emitted in the Salvadoran market is taken into consideration. Some of the omitted information is: destiny of the funds, brief description of the emitting entity's activities, investment or extension projects, products or services that it produces or negotiates, destiny of the funds captured through the emission, rights that the titles grant, in its case, interest rates, form of calculating the interests, place and payment dates, etc.

Once the previous information is received from a stock exchange in a complete manner, the Superintendency will have five work days to pronounce itself, after which, and if the same has not formulated any objection, the registration will be considered performed.

In case the information is not completely presented, the Superintendency must request from the stock exchange the information that is lacking. Once the information is received, the registration must be carried out as determined.

COMMENT: In this disposition, a third party, the stock exchange, requests on behalf of the interested person, the registration of the public offer. However, it is not requested that there must exist a power of attorney before a notary. It is important that this be added to avoid possible future problems. Although it is true that the disposition tries to make the procedure expeditious, it has to be taken into consideration that the Superintendency should actually authorize the public offer of the titles, and five work days is a very short time to verify if all the requested information has been given and perform a complete analysis to prove its veracity. Even when selective methods are used, not less than three weeks are needed for the initial registration in small markets where similar limits have been established. When it is in regard to a new emission by an emitting entity which has been previously registered, the time can be reduced to the one stipulated in the disposition, or even shorter terms of up to 72 hours. In case of commercial paper emissions where a credit line is annually authorized up to a determined amount, but because it can be rotary, it may promote the existence of various emissions during the year the authorization lasts, then the term to authorize the renewal, extension or reduction of the credit line, may be five days.

Art. 9: Only the public institutions and public companies, both of Central American origin, as well as their securities, may be registered in the respective public records, when they fulfill the requirements established in this Law, and when they are registered in a stock exchange of its native country and there is reciprocity. Said registration will be subject to the approval of a stock exchange and of the Superintendency, pursuant to the corresponding instructive.

COMMENT: Even though the disposition tries to facilitate the negotiation of titles emitted by the Central American countries' firms, it does not grant any advantage if they are registered in another market, because in any manner it must perform the complete registration and inscription procedures. On the other hand, the law is very limiting when specifying that only the institutions of Central American origin can be registered when there exists reciprocity with that country. If in the future agreements are signed with stock exchanges of other countries outside the Central American region, the law will have to be modified.

Art. 10: The Superintendency will proceed to the registration of the stock exchange houses in the public records, when it has received from a stock market the certification of inscription of a stock exchange house, accompanied by the request with the information that proves the fulfillment of the following requirements:

- a) Having constituted the guarantees legally required;
- b) Prove that the stockholders, directors and administrators of a stock exchange house are not debtors of the financial system for credits to which mending reserves of fifty percent or more of the balance have been constituted.
- c) Present evidence given by the stock market regulating authority of the native country for foreign members, where it is indicated that there does not exist any disability to act as such; and
- d) Have as directors and administrators, persons that satisfy the following:
 1. be Salvadoran, or foreigners with a three year residence in the country;
 2. or having been convicted for a felony against the property, or against the public treasury

() (sic)

COMMENT: Again, the Superintendency's activities are indirect. Maybe the most important issue of supervision and control, is that the supervising entity performs it directly on the middlemen and the officers or proxies that directly work with them, and that require authorization to act as such,

operators and promoters. It is customary in markets with higher degree of development, in order to give an authorization, to request the registration of names and qualifications of the persons that are in charge of administrating the stock exchange agency and of those that perform as operators and promoters. Additionally, a feasibility study is requested.

Art. 12: The stock exchange, in those cases where the delivery of information is not expressly indicated, will send to the Superintendency the periodic information that it receives from the emitting entities and the stock exchange houses on the changes in aspects that were taken into consideration for the registration, at the latest eight days after having received it, with the purpose of keeping the public records updated.

This information will be sent pursuant to the instructive that, for such effect, is dictated by the Superintendency.

COMMENT: It is important to clarify what "instructive" means. If the same only refers to the presentation form or if it can include general character norms in regard to the accounting system, etc. If this is so, it could be the way to achieve the standarization of information.

Art. 13: The Superintendent, through a reasoned resolution, may suspend the offer or the transactions of registered securities up to thirty days, when the emitting entity:

- a) Gives indication of incurring in one of the causes for dissolution contemplated in the Commercial Code, or
- b) Does not send to the respective stock exchange the information in the periodic manner established in this law.

COMMENT: The measures destined to protect the investing public's interests are not mentioned, nor the establishments of systems to avoid erratic movements in prices.

Art. 15: The registration of a stock exchange house could be suspended by the Superintendent up to a maximum term of one year.

COMMENT: In the article the causes are pointed out; nevertheless, the sanctions should be cleary stipulated; that is, the sanction should not be discretionary and for the same fault the same sanctions should always be applied. No criteria is given due to the manner in which the article was written.

TITLE II STOCK EXCHANGES AND STOCK EXCHANGE OPERATIONS

CHAPTER I STOCK EXCHANGES

Art. 25: Each stock exchange will be administered by a Board of Directors with no less than seven members, of which at least three must be members of the Board of Directors of stock exchange houses.

The Board of Directors of the stock exchange will have, among others, the following specific functions:

- a) Regulation: Dictate and modify the regulations and internal norms of the stock exchange, and emit the instructives to which the stock exchange houses will be subject, trying at all moments

that the transaction mechanisms insure the existence of a transparent, fair, competitive, orderly and informed market;

COMMENT: The same observations are made in regard to the "instructives" as in the previous Article 12. Because the Superintendency must authorize the internal regulation as well as the general norms of the stock exchange, it has the power to indirectly regulate. The problem may present itself when, to its judgment, its modification is necessary, since there does not exist a mechanism to demand this. Although it is vital that the Superintendency be the one that dictates general norms, the mechanism so that the Superintendency directs the emission of new rules is not established either.

b) Control: Watch over so that the development of the operations performed in the stock exchange will strictly fulfill the legal precepts, regulations and instructions given by the stock exchange and those dictated by the Superintendency;

COMMENT: Even though it would be adequate for the stock exchanges to perform these activities, their powers are limited. Furthermore, a gap is created because it is not specified who will control the activities and operations linked to the stock exchange activity which is performed outside the stock exchange.

d) Disciplinary: Apply the disciplinary measures established in its bylaws and regulations to the stock exchange houses, personnel of the same and own personnel. This without impairment of the delegation of powers that can be given to the directors, General Managers and other employees, in order to apply or propose sanctions in the circle meetings, or others in agreement with that disposed in the norms which are in force ().

COMMENT: The disposition is correct, although it omits sanctions for the emitting entities.

Art. 27: The internal general regulation of each stock exchange must be approved by the Superintendency and will contain dispositions, at least, of the following aspects:

COMMENT: It is in this Article that ample powers are granted to the stock exchanges in order to regulate. Notwithstanding, many of the aspects dealt with do not correspond to an internal regulation, but to general character rules. The difference is that the internal regulation should only give the general framework, and for this reason it should tend to be permanent, while the general character rules or norms must be flexible and cover specific aspects, which otherwise would be impossible to completely cover. It must be pointed out that in the last paragraph of the article it is established that: "All modification to the internal regulation must be submitted to the approval of the Superintendency", which ratifies the indirect way in which it will perform its functions.

a) Requirements for the registration of emitting entities and securities; taking into consideration those pointed out in Article 8, as well as criteria that will permit determining the solvency of the company being registered and its shares, for which it can require the opinion of a risk classifying entity. In the case of securities, the requirements indicated in the Commercial Code must be observed and those contained in this law.

COMMENT: It is not necessary to determine the solvency of the stockholders, since nothing is attained with this information in order to evaluate a firm. It must be remembered that the

stockholders are responsible only for an amount equal to the one contributed to the company. On the other hand, it results convenient to imagine the manner in which this function will be performed when a firm with 500 stockholders, whether it has shares registered or not, wishes to emit bonds.

c) Regulations to determine the existence of groups and relations pertaining to a firm;

COMMENT: This power is very estranged from those of the stock exchange. It must be the authority that determines this situation through general character norms.

f) Margins for indebtedness and additional guarantees for stock exchange houses;

COMMENT: It is important and adequate for this disposition, but it does not fulfill the same function as in the banking system. Because in a subsequent article the possibility is eliminated in which the stockbrokers may perform operations on their own account, although it is important that it be added to the projection. The need to establish limits in regard to the operations that can be performed in proportion to its capital is not mentioned. In case the granting of this power is reconsidered, it is vital that this be included. It must be remembered that rules do not exist in any market to limit the amount of resources than can be captured to make direct operations, that is, when it acts on behalf of its clients without involving its own position.

g) Obligations of the stock exchange houses with their clients, including those derived by the investment recommendations that are made in them.

COMMENT: When the obligation of legalizing the contractual relationship between the stockbroker and the client is established, through the subscription of a mercantile commission contract, all the rights and obligations of both parties are specified in a clear manner and with legal force, particularly when it is in regard to discretionary accounts.

Art. 29: The entities registered in the Record of securities' emitting entities will provide the stock exchange where they are registered, quarterly information on what is contemplated in their internal regulation().

COMMENT: The writing is confusing because it is not clear if they are speaking about the internal regulation of the stock exchange or of the emitting entity. On the other hand, in the previous article nothing is mentioned as to the need to regulate the continuous information that they should give to the emitting entities or stockbrokers in order to maintain their registration, even though the law refers to the information contained in Article 8, which again, is incomplete.

Art. 30: With the approval of at least three fourths of the directors or administrators of the securities emitting company, a reserved character can be given to facts or background related to pending negotiations, which, if known, can impair the investors' interests in the company referred to. These decisions must be communicated to the respective stock exchange and the Superintendency on the next work day after its adoption. For this effect, a fact or essential information is what a businessman would consider important for his decisions.

COMMENT: The initiative of defining privileged information is very good. However, this is not only the one that impairs the investors' interests, but also that which can benefit them. An emitting entity must perform its negotiations freely, without need to notify them to the stock exchange or the

Superintendency. Privileged information is that which has not been made known to the public and which could affect positively or negatively, the quotation of the titles-securities that the emitting entity has, or moreover, pretends to emit. This notification will result dangerous to the firm because it will immediately fall in the hands of many persons and the probability of its knowledge increases. Furthermore, at a determined moment, all the information is privileged: amount of sale, known or projected profits, substantial increase or decrease of costs, investment or extension projects, new emissions of shares or debts, etc.. This is because all these elements alter the capacity of generating future flows. On the other hand, if the firm is analyzing the possibility of making new investments, it will have to inform of it before knowing the final result of the analysis and taking the decision.

The directors, administrators and every person who, because of this office or position in the company have access to information that has not been officially divulged to the public in fulfillment of this law, and which could influence in the prices of the securities, will keep strict reserve on it.

COMMENT: The definition contained in this paragraph is more correct than the previous one; nevertheless, it is important that in the disposition be included the directors and stock exchange employees, stock exchange agencies and Superintendency, who because of their position can have access to that information.

The persons mentioned in the previous sub-clause are forbidden to take advantage of said information in order to obtain, for themselves or others, advantages through the purchase or sale of securities. Likewise they must see that this does not occur through subordinates or third parties of their confidence.

COMMENT: It is convenient to add: "obtain advantages for themselves or through an intermediary" and that the application of the disposition be extended to the persons pointed out in the previous comment. It is worth mentioning that in many countries, the members of the supervising entity are forbidden by law to acquire shares of firms that are registered in the stock exchange, except when the investment is performed through investment funds.

The persons mentioned in the second and third sub-clauses who transgress what is established in this article, will return to the company all the profits that they would have obtained through transactions of securities of the same during the period in which the information was to be kept in reserve, as long as its responsibility is legally determined. The aforementioned is without impairment to the imposing of sanctions that, for unfulfillment, are contemplated in the present law.

COMMENT: If the disposition refers to a company as the emitting entity, it does not make sense, because it is not hindered. It is the investing public, who has the titles that would have been purchased, or to whom they were sold, whose interests are damaged. For this reason, if a repair is to made, it is to the impaired investing public. Due to the manner in which the market control is foreseen, it would be more difficult to detect the use of privileged information, since it is a fact that this is maybe the most complex supervision task and requires greater resources.

Art. 32: All the companies that are organized with the purpose of being a stock market house, in order to integrate themselves in a stock exchange, must acquire a share of the same, which can be done through private transactions or through the mechanism of making an underwriting offer for a period of up to sixty days, and for a price which is not inferior to the highest value between the average price of the transactions in the stock exchange of these shares during the last year and the updated accounting value on the date of the offer. If during this period it does not have a sales offer,

it may request of the respective stock exchange the emission of a share, paying a price equivalent to the highest value of those previously indicated. In case this is not possible, it will permit that the new stock exchange house use its premises, having to charge a tariff under the one charged by the existing stock exchange houses.

The decision that the stock exchanges adopt in this matter, will be spread upon record on the certification to which Article 10 of the present law refers.

COMMENT: The Superintendency is the one responsible of authorizing the middlemen. The stock exchange is an institution of the private sector that must make its decisions freely in regard to the acceptance of a new stockbroker or not. On the other hand, it is advantageous that, not being a stockholder, a stockbroker can have the same benefits of those that are, and furthermore that he does not have to pay a differentiated tariff. In view of this, any stockbroker would prefer not to be a stockholder.

Art. 33: A stock exchange can suspend or cancel the transactions of securities, when in its opinion, the investors' interests are in danger. This fact must be notified to the Superintendency, the last three working days after the situation has occurred.

COMMENT: It is important that the cases be clearly specified where the suspension can be performed and not let it be a complete discretionary function. Furthermore, in order to perform an efficient supervisory task, the Superintendency must be aware of the situation immediately.

CHAPTER III CLEARANCE OF STOCK EXCHANGE OPERATIONS

Art. 50: The parties that intervene in securities transactions performed in a stock exchange may submit their dispute to the arbitral decision of two arbitrators who must assign a third one in dissent. The assignment of the arbitrators will correspond to the parties in conflict during the next work day after the controversy has occurred.

The stock exchange will name the arbitrators designated by the parties who must give their decision within the next five days after their assignment.

COMMENT: In the legislations of more developed markets, the supervising entity acts as a referee and normally his decision is unappealable, without impairment of the actions that can be taken according to the civil and penal laws because they solve the conflicts quicker and the same criteria are always used to do so.

TITLE III STOCK EXCHANGE HOUSES

SOLE CHAPTER

Art. 53: The stock exchange houses can only perform securities intermediation operations on behalf of third parties pursuant to what is established in this law, being able to also perform complementary or related activities that by means of an instructive, the Superintendency authorizes by request of the stock exchange, such as: Subscription and securities placement operations and render council in securities matters.

The stock exchange houses can only take their own position when it is related to subscription and securities placement operations up to a term of one hundred eighty days, from the date of the registration of the emission at the Superintendency. Once this term has ended, they must liquidate the acquired securities. In exceptional cases, when the market conditions justify it, the Superintendency may prolong the term to liquidate the securities just once, and up to a maximum of ninety days .

COMMENT: It is vital that the possibility to act on its own account be added. It is also important that it be incorporated in an express manner that they can act as representatives of the indebtedness title holders, and can perform the custody and administration of the titles-securities of their clients. In reference to the term that is established allowing the stockbrokers to maintain the subscribed titles, it must be modified so that the term begins to run on the placement date, and not on the registration date, since these dates are not simultaneous and the placement is always performed after having obtained the registration. On the other hand, it is pertinent to clarify that the most important functions of the stockbrokers is to carry out placements of titles-securities, whether in the "underwriting" modality or in the "better effort" one. This first one is when the titles can be subscribed because the emitting entity is insured that they will all be placed among the public, and in case the market does not absorb them, the stockbroker is obliged to acquire them. Additionally, the placement can be done without making the underwriting valid for the totality of the emitted titles.

In case of bank branches and acceptance houses, they cannot make placement operations nor share subscriptions.

COMMENT: Under the concept of multiple banking system, the disposition does not make sense, since it would imply that the banks cannot perform investment bank operations. If by branches are understood companies in which a bank or acceptance house has stock participation, even though the limitation to banks and acceptance houses exists, there is no reason why its branches cannot perform the operation, since it would not affect the credit limits granted to the bank or acceptance house. If it has nothing to do with separate companies, then the amount of titles thus purchased could be computed within the limits established for the granting of credits. Finally, there does not exist any reason that justifies not being able to make placements in the better effort modality, that is, when the stockbroker obliges himself to place the titles among the investing public without guaranteeing the placement of the same, with which there is no risk.

Art. 54: The stock exchange houses must operate the stock exchange through the stockbrokers, which are particularly assigned.

The stockbrokers will act on behalf, and in representation of the stock exchange house that designates them and under its responsibility.

COMMENT: The need to fulfill the requirements to act as operator is not specified. For this reason, the need of the exam where the necessary knowledge is proven in order to act as such, is not established. The promotor figure is omitted. It is important that the authorization be required to perform any of the two functions, and within the requirements to obtain it, the need to present an exam be included.

Art. 58: The stock exchange houses are obliged to:

a) Keep a book of purchase and sale orders that it receives by any means, as well as other books and records that the law prescribes and those that the Superintendency determines, by proposal of each stock exchange;

COMMENT: It is important that a permission be given to keep these records by electronic means. Because the stock exchange secret must be kept, it is convenient that the use of codes to identify the clients in necessary cases be permitted. The part that says: "by proposal of each stock exchange" should be eliminated, because again it incorporates discretionality in case there is more than one stock exchange, and this implies that the regulations are not equal for all the participants.

b) Provide the respective stock exchange, with the periodicity which it establishes, the information on operations they perform;

COMMENT: This information must be provided on a daily basis to the Superintendency, because there is information that, due to conflict of interests, is not relevant for the stock exchange to have it.

c) Elaborate financial statements pursuant to the generally accepted accounting norms, which must be audited by external auditors registered in the Superintendency;

d) Publish its financial statements and the opinion of the external auditors, in two newspapers of national circulation, at least twice a year; one of them will be referred to the thirtieth day of June and the other to the thirty-first day of December of each year.

COMMENT: If the stockbrokers perform their accounting pursuant to the generally accepted norms, their activity will not be reflected adequately. For this reason, there must exist a special system. The disposition contained in sub-clause d) is adequate; nevertheless, in order for the supervision task to be performed adequately, they must deliver their non-audited financial statements to the Superintendency on a monthly basis.

g) Keep a record of the stockbrokers.

COMMENT: The disposition implies that the persons in charge of registering the operators are the same stockbrokers, but additionally, given that it is not specified, they must keep a record of all the operators that act in the market, which implies that there will be as many records as are stockbrokers.

TITLE IV THE SECURITIES AND THEIR NEGOTIATION

SOLE CHAPTER

Art. 62: Individual securities, such as bills of exchange, promissory notes, bills of lading, mortgages, bill of exchange invoices, and notes issued for loans, emitted by general deposit warehouses, will not be registered nor negotiated in the stock exchange.

COMMENT: By definition, the commercial papers are promissory notes which are emitted and divided so that the public may purchase them. If this restriction is maintained, this type of paper will

not be emitted. For example, in the Mexican legislation this instrument is defined as: "promissory notes called commercial paper". Notwithstanding, if the ample definition that the previous article establishes is applied, its emission will be possible with the simple changing of name. In some markets it is possible to negotiate the titles to which the article refers, in a special (sic) called "negotiation table", and it is always advised that the total risk is assumed by the contracting parties.

TITLE V DEPOSIT AND CUSTODY OF SECURITIES

SOLE CHAPTER

Art. 65: Companies specialized in the deposit and custody of securities may be organized as stock companies, subject to the commercial laws that are in force, with the previous authorization of the Superintendency.

The minimum capital will be of one million colones, and at least sixty percent of its capital must belong to the stock exchange, banks or acceptance houses.

Art. 66: The deposit and custody service of the securities will be rendered only by the stock exchanges, banks, acceptance houses or specialized institutions, organized according to what is established in the previous article.

COMMENT: Even though in Article 70 is established the administration of titles as one of the services that can be rendered, it is convenient that in this article it be added. There does not exist any reason why the stockbrokers cannot participate in, or form one of these companies in a majority manner. For example, the owners of the Securities Deposit Institute (INDEVAL - initials in Spanish) of Mexico, are stockbrokers and the institution is one of the most efficient ones of its kind. It is convenient to clarify that, normally, the stockbroker may be responsible for the custody and administration of his clients' titles; even though these are deposited in an institution of this kind. For example, when a title pays a right and the deposit institution collects it, it will give a check to the stockbroker for the total amount of the titles deposited in his account, and the stockbroker will be responsible for distributing it among his clients. With this, the operation becomes efficient and the administration costs are reduced. In the dispositions, the existence of macrotitles is not contemplated, which is essential for achieving the dematerialization of the same. Macrotitle is that which represents a complete series of titles emitted by the same emitting entity and that, therefore, grant equal rights.

TITLE VI THE AUDITORS AND CLASSIFICATION OF RISKS

CHAPTER II RISK CLASSIFICATION ENTITIES

Art. 80: To register in the risk classifying entities Record, the interested parties should request it in a written manner to the Superintendency, having to present the following information:

a) Corporation paper of the company, general data of members, administrators and employees who participate in said activities; and

b) Organization and administration outlines of the company, its mechanisms and procedures in function of which the classification will be performed and the symbols to assign risk categories to the different instruments, with the explanation of their meaning.

Art. 81: To be a member of the board of directors of a risk classifying company, the directors must fulfill the following requirements:

- a) Have a university degree in professions that are related to finances as well as proven experience in said areas;
- b) Having been approved by the Superintendency; and
- c) Not be an officer or employee of the Central Reserve Bank of El Salvador, the Superintendency, a stock exchange nor a stock exchange house.

COMMENT: It is important that requirements be established to determine the technical capacity of the employees that perform the classification, and not be limited to the directors, as Article 81 does. Additionally, a classifying company should have officers that have knowledge not only on areas related to finances, for example, engineering.

TITLE VII GENERAL NORMS

CHAPTER II PROHIBITIONS, RESPONSIBILITIES AND SANCTIONS

Art. 94: All capturing of resources in a customary and public manner is prohibited for those who are not authorized pursuant to the present Law and others that regulate this matter.

COMMENT: Even though the disposition is one hundred percent correct, when the existence of investment funds or companies is not contemplated, their performance is forbidden. It is important that some type of disposition be incorporated, even though it is transitory, which will permit them to function.

Art. 100: Without impairment of the punitive responsibility that may be deducted when incurring in a situation which is typified as a crime, they will suffer a fine of up to twice the amount of the respective operation or transaction, with a minimum of one hundred thousand colones:

COMMENT: Even though the disposition is adequate and just, it is convenient that a minimum amount is not established, because to modify it, the law has to be changed. It is suggested that the last sentence be modified for: "with a minimum amount that will be established by the Superintendency, through general character norms."

- a) Those that maliciously provide false framework, or certify false situations before the Superintendency, a stock exchange or the general public;
- b) The administrators and legal representatives of a stock exchange, who give false certifications on the operations that are performed in it;
- c) The stock exchange houses that give false certifications on the operations in which they would have intervened;

- d) The accountants and auditors that falsely give an opinion on the financial situation of a person who is subject to registration obligation pursuant to this law;
- e) The persons that infringe the prohibitions established in Article 91;
- f) The risk classifying companies that certify false situations;
- g) The persons that, with the purpose of inducing to error, divulge false or slanted news in the market, even though they do not pursue the obtainment of advantages or benefits for themselves or third parties;
- h) Those that use in their benefit, reserved information; and
- i) The administrators, who knowing or with the obligation to know about the solvency condition of the companies that are administered by them, agree upon, decide, or permit that a public offer be made of the securities emitted by these companies. If the offer has been performed, the fines could double.

COMMENT: Giving false information is not necessarily linked to an operation or transaction. For this reason it will be difficult to establish the fine, or it should be the amount that is pointed out as minimum. This principle can be applied throughout the Article, reason why it is suggested that it be reviewed completely, that is, activities that not necessarily are linked to an operation or transaction are mentioned, and there are cases in which, what could be considered an operation would imply an unreal fine, as is the case of considering the offer of titles based on a false opinion of the auditors as an operation, or on a classification based on false situations. The infringements that do imply operations are those established in sub-clauses b), c), e) and h); even though sub-clause i) could also be classified, if the real information is given to the public. In regard to the situation of the emitting entity, it will be responsible for deciding if the investment is performed or not, and it will assume the risk that this could imply. The following article, although correct, also sets a minimum amount for a fine. The same is suggested as for this Article.

ANNEX A

TERMS OF REFERENCE

BACKGROUND

The integration of Central American securities markets is one of the principal objectives announced by the Presidents of Central America as part of a regional financial integration process. Indeed, the text of the Declaration of Presidents meeting at their summit in Panama in early December, 1992, affirms the need for "a study to establish alternatives, showing actions, timeframes, and terms, to integrate the securities exchanges of Central America, in order that all kinds of exchange transactions can be undertaken between these countries". The Presidents tasked the Central American Monetary Council (CAMC) to prepare a proposal for a "new regulatory framework" to achieve the objective of regional financial integration.

ROCAP has been working in the field of securities exchange development and support for several years. It has provided grant assistance to FEDEPRICAP, the Federation of Private Sector Entities of Central America and Panama, principally to study ways that national securities exchanges could become more uniformly structured, and how local legislation could be harmonized on a regional basis, in order to eventually form a regional market. In the past six months, ROCAP support in this area has tapered off, FEDEPRICAP's efforts have tended to become more operational, tending to encourage the establishment of the Association of Central American Securities Exchanges (BOLCEN), acting as its temporary secretary, and examining from a private sector viewpoint such matters as private stock issue requirements and electronic data exchange potentials in the region.

In 1992, as the result of agreement between the Interamerican Development Bank (IDB) and the Central American Economic Cabinets, an integration assistance program was developed (PRADIC: Program to Support the Development and Integration of Central America). Its objectives: to promote integration through (a) greater coordination of multilateral actions and technical assistance to mobilize financial resources for development, and (b) designing, coordinating, and executing economic policies that re-integrate the region in the framework of international competition. The PRADIC project encompasses all aspects of analysis for integrating financial systems in the region, and thus includes the one of singular interest expressed at the last Presidential Summit, that of integrating the national securities exchanges. There thus now appears to be a unique convergence of interests for ROCAP/FEDEPRICAP and PRADIC/CAMC to coordinate their efforts in preparing the kind of analysis for capital market integration that has been mandated by the Central American Presidents. In the spirit of that mutuality of interests, PRADIC/CAMC has asked for ROCAP's assistance in preparing the analysis, offering their San José, Costa Rica offices and secretarial and administrative assistance.

ARTICLE I - TITLE

Economic Research Policy (Project N° 596-0147)

ARTICLE II - OBJECTIVE

The objective of this delivery order is to provide a contractor to examine the prospects for the integration of the national securities markets in Central America, drawing upon earlier studies, conducting inquiries through visits to each country with a national market, and making recommendations which include specific steps to be taken within a six to twelve month time span.

ARTICLE III - STATEMENT OF WORK

A. The analysis will undertake a diagnosis of the current legal, regulatory and judicial systems that directly and indirectly affect the cross-border exchange of equity and debt instruments subscribed to under the national securities exchange system of Central America, examining, among other things, the nature of the information exchange system that exists. The report will make appropriate recommendations applicable to each country to effect an integration of the national systems. The following are specific concerns to be addressed:

1. Analyze the European Community experience in advancing the integration of its exchanges;
Analyze the various stages through which reforms were affected;
Explain why these reforms were necessary;
Indicate whether these experiences are pertinent to the Central American situation and if so, how;

2. Undertake a Central America-wide diagnosis of each stock exchange, examining the institution in a general sense in terms of its institutional management and its financial and human resources. Indicate possibilities for technical assistance to strengthen these institutions.

3. Design phases during which time the national markets will integrate over a given period. Include recommendations with specific steps to be taken from July 1, 1993 to June 30, 1994.

Draw upon European and CARICOM (Caribbean Common Market) experiences, and other Latin American examples, as relevant.

4. Identify national policy measures where variances among countries have effected timely capital market integration; this analysis should cover laws, decrees, and government ministry institutions.

5. Identify the legal and regulatory obstacles that now impede transborder stock transactions: these transactions would otherwise form part of portfolios that would be quoted on national exchanges.

Also:

- Identify rules for equity and debt registration that will be recognized among all exchanges;

- Distinguish between public and private instruments, appropriate criteria for registration, classification, and acceptability of prospectus;

- Diagnose the obstacles and potentials for a strengthened secondary market system in Central America, where government and corporate debt instruments may be freely listed and exchanged among countries; analyze the implications for national fiscal policies. Provide a tentative design for the removal of obstacles and the implementation of activities to promote this market.

6. Identify distortions that result from national tax regimes which may affect cross-border capital movement related to equity/debt instrument exchange transactions. Propose appropriate harmonization measures at the regional level, and prepare an assessment of the possible effects of such reforms on the fiscal regimes for each country.

7. Describe the steps that must be taken to develop a regulatory framework on a regional basis for an integrated securities exchange system, including rules on insider trading, undertakings for collective investment in transferable America-wide passport enabling banks and brokerage houses to operate community-wide, and other prudential regulatory measures.

8. Examine and appraise the steps that have been or are being planned to facilitate information exchange within the region, not only for the promotion of greater and more diversified portfolios in debt and equity instruments, but to provide the maximum amount of reliable and complete information to evaluate investment risk.

B. The contractor shall first examine primary source material. This will include available published sources in Washington, D.C. regarding developments in Europe on the stock market integration, including prudential regulation and norms, and similar material available about Central America, the Caribbean, and relevant Latin American experiences in regionalization of capital markets. The

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Contractor shall then be expected to travel to Central America, or, if a Central American resident or national is contracted, the Contractor shall forward relevant material to that Central American contractor. The Contractor shall be briefed by ROCAP staff in Guatemala, shall prepare a tentative regional travel schedule while in Guatemala, and travel to San José, Costa Rica, to meet with and be briefed by the staff of the Central American Monetary Council. The Contractor shall prepare a final travel schedule working with the staff of PRADIC/CAM and, by phone or fax, with ROCAP.

The Council will provide office space and secretarial and administrative support.

The Contractor shall next meet with FEDEPRICAP staff in San José, Costa Rica and review all capital markets material available at the entity's headquarters that has been prepared over the past several years. The material includes, but is not limited to:

- The 1990 studies prepared for ROCAP/FEDEPRICAP by Carana Corporation titles (a) "Perspectives for the Development of a Regional Central American Securities Market", and (b) "Central American Capital Markets Program Options";
- The series of studies undertaken as part of a region-wide FEDEPRICAP, BOLCEN, and CAMC-sponsored Conference, "A New Axis for Central America Integration-Capital Markets", held September 11-13, 1991, in San José, Costa Rica.

The Contractor shall also review other relevant material including studies by BOLCEN and SIECA (for example, "Análisis de la Tributación que Afecta a la Formación de los Mercados de Capital en Centroamérica, y La Inversión Intena y Externa en las Actividades Productivas" - SIECA/CEIE/Trib. Cap/In. Fin. 004-90, author Raúl A. Gochez).

As next step, the Contractor shall undertake a series of interviews throughout the region, beginning in Costa Rica, to collect and analyze information, return to Costa Rica and prepare a preliminary draft report that includes conclusions and recommendations for actions. These interviews must include visits to Panama, Nicaragua, Honduras, El Salvador and Guatemala. It is important that this initial study not duplicate, but rather draw upon and refine available material, including earlier published conclusions and recommendations. The consultant should also ensure that his preliminary survey and conclusions reflect the activities in train or imminently planned by the private sector, and by FEDEPRICAP in particular.

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ANNEX C

LIST OF INTERVIEWED PERSONS

WASHINGTON

Ann Vorce, Commission of the European Communities Delegation.
María Montes, American States Organization, Office of Economic and Social Studies.
Charles Collyns, International Monetary Fund, Chief of Division
Jessee Wright, Interamerican Development Bank

GUATEMALA

Tham Truong, USAID /Guatemala, Director of EAPRI Office.
Kimberly Delaney, USAID/Guatemala, Trade & Investment Officer
Ana Vilma Pocasangre, USAID/Guatemala, Trade & Investment.
Ana Isabel Muyschondt, Investment and Discounts Fidelity, General Manager
Patricio Andrade Falla, Securities and Investment of the Nation, General Manager
Carlos Enrique Rossel Serré, National Agricultural Stock Exchange, General Manager.
Pluvio Mejicanos, Financial Harmonization Project, SIECA /ROCAP, Consultant.
Pedro Molina Arathoon, Global Stock Exchange, General Manager
Verónica Spross, National Economical Investigation Center (CIEN), associated investigator.
Frtiz Thomas, National Stock Exchange, General Manager
Jorge Alfonso Molina Segura, Bank Superintendency, Director II, Department of Bank and
Acceptance House Vigilance
Victor Manuel Mancilla Castro, Bank Superintendency, Alternate Chief
Leopoldo Sánchez Coronel, Interamerican Development Bank, Sectorial Specialist.
Edgar Alfredo Balsells Conde, Economical-Financial Consultant
Edgar González Castillo, General Manager of Banco del Café, and Former President of the Bank
Association
Carolina Roca Ruano, Treasury Department, Technical Secretary of Economical Cabinet.
María Antonieta Del Cid de Bonilla, Guatemalan Bank, Vice-President.
Lizardo Sosa, Investigation and Social Studies Association (ASIES), Investigator.

COSTA RICA

José Roberto López, Central American Monetary Council, PRADIC Project, Macroeconomical
Politics Harmonization, General Coordinator.
Mario Urpí Rodríguez, National Financial, Investment and Credit Board, President.
Rodrigo Bolaños Zamora, National Stock Exchange, General Manager
Carlos Arias Poveda, National Stock Exchange, Marketing and Development Assistant Manager
Damaris Ulate Ramírez, National Securities Commission, Manager
William Chinchilla, National Securities Commission, Assistant Manager
José Manuel Salazar Xirinachs, Private Entity Federation of Central America and Panama, Director
of Economical Development Programs.
Alvaro Sarmiento, Private Entity Federation of Central America and Panama, Economist

Carlos Mora De la Orden, Promerica, Capital, President
Luis Enrique Navarro Barahona, Securities Interfin, Stock Exchange Position, General Manager
Mario Gómez Pacheco, Costa Rican Banking Association, Executive Director.
Guillermo Masís Dibiasi, Stock Market of Costa Rica, Stock Exchange Position, President.
Rodrigo Solano, Stock Market of Costa Rica, Stock Exchange Position, General Manager
Francisco Lay Solano, Electronic Stock Exchange, President
William Calvo, Central Bank of Costa Rica, Director of Monetary Department
Claudio Mora Díaz, Central Bank of Costa Rica, Executive Presidency Assistant

PANAMA

Kermit C. Moh, USAID/Panama
Felipe F. Frederick, USAID/Panama, Office for the Private Sector Development.
Eryx Tejada Him, National Securities Commission, Executive Director
Miguel A. Lee, National Bank of Panama, General Administrative Assistant General
Roberto Brenes P., Stock Exchange of Panama, General Manager.
Omar A. Alvarado, Citibank, N.A., Vice-President.
Pilar de Alemán, Isthmus Bank, Corporative Bank Manager, President of the Stockbrokers Association.

HONDURAS

Guillermo Bolaños, USAID/Honduras, Financial Development Project Manager
Roldán Duarte M., Central Bank of Honduras, Chief of Public Credit and Open Market Operation Division.
Manuel Zerón R., Honduran Stock Exchange, Regional Director, Tegucigalpa
Roberto Oseguera Sosa, Central Bank of Honduras, Bank Superintendency, Chief of Inspection and Other Financial Institutions Division
Marco Tulio López, Central Bank of Honduras, Bank Superintendency, Coordinator of Inspection Visits to Credit Assistants.
Rigoberto Pineda, Central American Stock Exchange, General Manager
Ricardo Lozano Landa, Central American Stock Exchange, Marketing and Development Manager
Nicolás Mejía, Central American Stock Exchange, Operation and Administration Manager
Salvador Gómez, Atlántida Bank, First Vice-President and Acting General Manager
Edgar Madariaga, Financial Promotion, Manager, Former President of the Honduran Stock Exchange Position Board
Tatiana Casanova, Financial Promotion, Investment Promotor
María Lydia Solano, Banexpo, General Manager
Gustavo A. Raudales, Honduran Stock Exchange, General Manager
Edmond Bogran Acosta, Sogerin Bank, President
José Miguel Machado, Commerce Bank, Administration and Finance Manager
Héctor Emilio Turcios, Commerce Bank, Chief of Credit Department
Carlos Alpuche, Interbolsa, General Manager
Francisco Martínez, Honduran Stock Exchange Position Board, President.

NICARAGUA

Susan Merrill, Office Chief, Program, Economics and Private Sector, USAID/Nicaragua.
Thomas McAndrews, Private Sector Officer, USAID/Nicaragua.
Gary Linden, Mission Economist, USAID/Nicaragua.
Francisco Díaz Roa, Central Bank of Nicaragua, Financial Manager
Angel Navarro Deshón, Bank Superintendency and Other Financial Institutions, Superintendent.
Danilo Chavarria Avilés, Bank Superintendency and Other Financial Institutions, Vice-Superintendent
Juan Klingengerger, Bank Superintendency and Other Financial Institutions, Consultant
Uriel Cerna Barquero, Bank Superintendency and Other Financial Institutions, Legal Division Consultant
Claudia Fixiones, Bank Superintendency and Other Financial Institutions, Legal Division Consultant
Carolina Solórzano de Barrios, Stock Exchange of Nicaragua, General Manager

EL SALVADOR

Oscar Salinas, USAID/El Salvador, Project Manager
Guillermo Hidalgo Quehl, Stock Market of El Salvador, President
Gerardo Alvarez, Stock Market of El Salvador, General Manager
Danilo Montero, Interbursa, Stock Exchange, General Director
Rolando Duarte, Stock Exchange General Services, President
Gino Rolando Bettaglio, Central Reserve Bank of El Salvador, Second Vice-President
Oscar Portillo, Central Reserve Bank of El Salvador, Monetary Operation Department.
Carlos Antonio Meneses Escalante, Financial System Superintendency, Securities and Other Institution's Intendant.