

# 2007 INTERNATIONAL INSTITUTE FOR SECURITIES MARKET DEVELOPMENT

## NATIONAL SECURITIES COMMISSION OF PANAMA



## COUNTRY PRESENTATION

### I. INTRODUCTION

The Republic of Panama is the link that connects North and South America and the pathway between the Atlantic and the Pacific Oceans. Located between Costa Rica and Colombia, Panama became a Republic in 1903 and has a population of, approximately, 2,839,177. The country geographical location has been considered to be its principal natural resource.

The Isthmus of Panama became a bridge for international commerce since colonial times when was used as port of transshipment of merchandise to and from South America. The existence of the Panama Canal and the Colon Free Zone are examples of worldwide commercial predominance.

The Panama Canal, a product of the privileged geographical position, is considered one of the most important channels for world commerce, servicing an average of 38 vessels per day. The Canal and its surroundings are important factors in the national economy and large contributors to the government fiscal budget.



The advantages of the economic system in the country, besides its geographic position, reside in its dollar-based economy, with the presence of an international banking center fully integrated to the main financial world markets. Panama's Constitutions have established that the printing of currency paper is not mandatory since 1904. This same year, by way of Law Number 84 of June and Decree No. 74 of December 6<sup>th</sup>, it was established the Balboa as the monetary currency with a par value to the U.S. Dollar which was authorized as a legal currency. Since Panama does not print currency paper, it uses the U.S. Dollar in current monetary transactions. The Balboa is minted in coins only and its different denominations have the same physical dimensions of the U.S. Currency.

The National Bank of Panama, the state owned bank, lacks the principal attributions that characterize a Central Bank: the emission of currency paper and the regency of the banking system. It acts as a commercial bank under the supervision of the Superintendence of Banks. Anyhow, by virtue of legal dispositions and international agreements, the National Bank does exert some activities that are typical of a central bank:

- It is the state's financial entity by excellence.
- It is the Central Government's treasurer and fiscal agent. It serves as payment intermediary and tax collector.
- It solicits or executes financial programs for national development.
- It controls and regulates the banking system's Clearing House.
- It supplies, gathers and distributes U.S. dollar bills, task that carries out since 1979 under the new Canal treaty.

## **II. ECONOMIC INDICATORS**

According to the report published by Panama's Treasury Department (Contraloría General de la República) about economic performance, the production of consumer goods and services of the Panamanian economy, measured by the Gross Domestic Product (GDP), grew 8.1% during 2006 with respect to the previous year. GDP, valued at constant 1996 prices, registered a total of B/.15,141.9 millions (or B/.15.14 billion) in 2006, which corresponds to an annual increase of B/ 1,137.1 million (or B/.1.137 billion).<sup>(1)</sup>

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### III. OVERVIEW OF SECURITIES MARKET PERFORMANCE

#### Negotiated Volume:

A 34.1% increase in the total volume traded was experienced by the Panama Stock Exchange (BVP) during the year 2006, with a total of US\$ 2,254.3 millions (or US\$ 2.25 billion), as compared to the US\$ 1,681.3 millions (or US\$ 1.68 billion) traded during 2005. It must be highlighted that the amount traded during the year 2006 reached a new high in the history of the Panama Stock Exchange (BVP).

#### Trade Volume, by Type

(Volumen de transacciones, según valor)

In US\$ MM

2001- 2006

<b>Instrumento</b>	<b>2001</b>	<b>2002</b>	<b>2003</b>	<b>2004</b>	<b>2005</b>	<b>2006</b>
Corporate Bonds	224.4	320.5	230.8	249.0	346.3	798.9
Corporate Notes						12.0
Commercial Paper	71.5	89.1	91.5	47.5	356.8	497.5
Common shares	44.9	59.0	44.6	53.8	75.4	149.0
Preferred shares	102.3	78.7	8.6	138.4	87.2	107.8
Funds	11.7	31.6	82.7	101.5	138.5	292.6
Government	366.3	600.5	765.2	672.9	620.2	335.4
Others	11.3	-	-		0	
Repo's	214.3	234.5	210.6	80.4	56.9	63.1
<b>Total</b>	<b>1,046.7</b>	<b>1,413.7</b>	<b>1,434.0</b>	<b>1343.4</b>	<b>1,681.3</b>	<b>2,256.3</b>

The expansion of the volume traded in the Panama Stock Exchange (BVP) during the last year is explained by the following elements: 1) An increase in primary market volume by new issues in Fund shares, Corporate Bonds, Corporate Notes and Commercial Paper. 2) An increase in trading volume in the secondary market, 3) Growth in volume traded in Repo's.



As shown in the previous table, the largest trading volume corresponds to Corporate Bonds. The second place corresponds to Commercial Paper issued by the corporate sector.

The primary market still represents the main component of the volume negotiated by the BVP accounting for 67.6.0%, the secondary market represented 29.6 %, and Repo's represent 2.8 % of the total volume traded.

### Monthly Trading

In US\$

	2006	2005	% Changes
January	111,989,968	158,923,220	-29.5%
February	165,075,725	86,572,396	90.7%
March	131,384,470	81,939,337	60.3%
April	65,731,856	86,843,790	-24.3%
May	111,652,739	229,986,744	-51.5%
June	381,721,428	326,527,959	16.9%
July	126,666,070	129,518,659	-2.2%
August	98,050,652	141,480,355	-30.7%
September	227,531,174	148,630,444	53.1%
October	127,884,619	100,932,900	26.7%
November	166,939,158	62,515,981	167.0%
December	539,690,494	127,416,804	323.6%
<b>Total</b>	<b>2,254,318,353</b>	<b>1,681,288,590</b>	<b>34.1%</b>

### New Issuances:

During 2006, total issuances reached a sum of US\$ 1,576.0 millions (US\$1.54 billion), which represents a 97.2% increase with respect to the US\$ 799.0 million reached during the previous year.

### **New Registered Issuances - Year 2006.**

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<b>No.</b>	<b>Corporation</b>	<b>Type</b>	<b>Authorized Amount (B/.)</b>
1	Banco Cuscatlán de Panamá, S.A.	Corporate Bonds	60MM
2	La Hipotecaria, S.A.	Commercial Paper	40MM
3	Mundial Multi-Strategy Income & Growth Fund, S.A.	Fund shares	20MM
4	Mundial Global Diversified Fund, S.A.	Fund shares	20MM
5	Mundial Capital Preservation Fund, S.A.	Fund shares	20MM
6	Mundial Mortgage Backed Fund, S.A.	Fund shares	20MM
7	Sociedad Urbanizadora del Caribe, S.A.	Commercial Paper	5MM
8	Cochez y Compañía, S.A.	Corporate Bonds	25MM
9	Banco Continental de Panamá, S.A.	Short, Medium and Long term Notes	100MM
10	Panameña de Motores, S.A. (Panamotor)	Corporate Bonds	15MM
11	Banco Improsa, S.A.	Bonds	10MM
12	Gen Net U.S. Govenment Lease, S.A. (secondary market)	Preferred Stocks, B Series	10MM
13	Finanzas Generales, S.A.	Corporate Bonds	50MM
14	Primer Banco del Istmo, S.A.	Corporate Bonds	50MM
15	Banco Aliado, S.A.	Preferred Stocks, Cumulative	20MM



16	Fideicomiso Mercantil de Garantía- Derford View Properties, Inc.	Bonds	8MM
17	Grupo Financiero Delta Corp.	Corporate Bonds	20MM
18	Elektra Noreste, S.A.	Corporate Bonds	100MM
19	Banco Panameño de la Vivienda, S.A.	Preferred Stocks, Class A	15MM
20	Global Bank Corporation	Corporate Bonds	85MM
21	Finanzas y Créditos del Hogar, S.A.	Commercial Paper	2MM
22	Primer Banco del Istmo, S.A.	Corporate Bonds	50MM
23	La Hipotecaria, S.A.	Commercial Paper	35MM
24	Empresas Melo, S.A.	Corporate Bonds	10MM
25	Banco Continental, S.A.	Preferred Stock, Non-Cumulative	50MM
26	Aliado Leasing, S.A.	Corporate Bonds	20MM
27	Global Bank Corporation	Commercial Paper	100MM
28	Hipotecaria Metrocredit, S.A.	Corporate Bonds	3MM
29	Sociedad Urbanizadora del Caribe, S.A.	Rotative Corporate Bonds	12MM

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30	La Hipotecaria, S.A., de C.V.	Commercial Paper	35MM
31	Aliado Factoring, S.A.	Corporate Bonds	20MM
32	AES Panamá, S.A.	Corporate Bonds	300MM
<b>Total Registered Amount</b>			<b>1,330MM</b>

In the primary market, a total amount of B/.1,320 million (or B/. 1.32 billion) was registered in new issuances. This number corresponds to B/.938 million in Bond registries, B/.165 million in Equity registries and B/.217 million in Short Term Corporate Debt registries.

In public offering registrations for the secondary market, we authorized the registry of B/. 10 million in B Series Preferred Stock of Gen Net U.S. Government Lease, S.A.

Gen Net U.S. Government Lease, S.A is a U.S. corporation that did a public offering and initial registration of Preferred Stock in Costa Rica, a recognized jurisdiction. Registry of new issuances for an amount of B/.246 million was still pending by December 2006 (to the time of this writing, only B/.100 million in registry of new issuances was still pending).

### **Stock Market:**

The BVP stock index has had a continued positive tendency since the third quarter of 2001, but the largest percentage gain was recorded in the year 2006. The index went from 147.5 in 2005 to 244.7 in December 2006; as a result, the yield for the year was a record breaking 65.9%, though the reasons for such an increase are due to particular factors:

- Mergers and acquisitions of mayor banks whose shares were traded on the BVP
  - a) The purchase of Primer Banco del Istmo, S.A. by HSBC had a huge impact because it was one of the shares with highest trading volume.
  - b) The acquisition of Corporación UBC Internacional, S.A. (Banco Cuscatlán) by Citigroup, Inc. had the same effect.
  - c) Due to the ongoing mergers and acquisitions in the banking industry, Grupo Financiero Continental, S.A. (Banco Continental) and Empresa General de Inversiones, S.A. (Banco General) started to grab attention. These were two of



the largest private national banks still remaining. Ultimately, these two banks merged to be able to compete with the multinational banks that are gaining grounds.

- A second factor would be that as investors sold the stocks they had on mayor banks object of acquisitions, they decided to reinvest their money in other stocks traded on the BVP; as a result, publicly traded stocks had higher demand and the BVP stock index had another push upward

### Perfil del Mercado (Market Overview)

2001-2006

<b>(Market Information)</b>	<b>2001</b>	<b>2002</b>	<b>2003</b>	<b>2004</b>	<b>2005</b>	<b>2006</b>
Días hábiles en el año (Number of trading day)	250	245	246	249	245	246
Puesto de Bolsa (Members)	18	18	13	13	15	15
<b>Número de Valores Inscritos (Number of listed securities)</b>						
Acciones Locales (Local stock)	38	37	38	36	39	54
Acciones Extranjeras (Foreign stock)	0	0	0	4	5	4
Deuda Local (Local debt)	262	221	176	167	273	247
Deuda Extranjera (Foreign debt)	2	2	2	3	1	12
<b>Totales (Total)</b>	<b>302</b>	<b>260</b>	<b>216</b>	<b>210</b>	<b>318</b>	<b>317</b>
<b>Número de Emisores Inscritos (Number of listed issuers)</b>						
Compañías Locales (Local issuers)	122	115	93	73	77	86
Compañías Extranjeras (Foreigner issuers)	2	2	2	7	5	4
Gobierno (Panamá) (Government)	1	1	1	1	1	1
Gobierno (Extranjero) (Foreign Government)	0	0	0	0	2	2
<b>Totales (Total)</b>	<b>125</b>	<b>118</b>	<b>96</b>	<b>81</b>	<b>85</b>	<b>93</b>

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In terms of number of shares traded, during the year 2006, volume reached an amount of 10,433,185 shares versus 4,284,488 shares traded during 2005, a record 143.5% increase. In regards to dollar amounts, volume in the stock market was of US\$ 149 million in 2006 versus US\$ 75.4 million in 2005, a 97.6% increase.

### Market Capitalization

	2002	2003	2004	2005	2006
Capitalización del Mercado (en MM de US\$) – Market Cap (in MM US\$)	2,949.5	3,075.0	4,047.4	5,731.6	6,819.39
Precio/Ganancias/Acción -PE per share	22.0	19.3	17.3	18.5	17.2
Precio/Valor Libros/Acción – Price to Book per share	1.7	1.8	1.7	1.3	2.0
Rendimiento Corriente ( %)	1.61	1.8	1.9	1.9	2.05

The total market cap of the BVP, including all listed companies, increased from US\$5,731.6 millions in 2005 to US\$6,819.39 million in 2006 which represents an increment of 19%. For the year 2005, the total number of companies listed in the Panama Stock Exchange (BVP) was 85; in 2006, it was 94, which represents an increase of 9 companies during the year.

### **Members:**

During the year 2006 the broker-dealer with the highest trading volume was Banistmo Securities, Inc. with US\$ 2,256.6 million, the second place corresponds to Mundial Valores, S.A. with US\$2,179.7 million, and the third place to Wall Street Securities, S.A. with US\$2,116.3 million.

### **Over the Counter Operations**

The Decree Law No. 1 of 1999 establishes that all Securities Firms must report, within the next working day, all transactions involving any listed securities performed outside the Stock Exchange.



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## **Issuing and Trading of Government Securities**

Securities issued by the Panamanian government are exempt of the registration proceeding established in the Securities Law; however, they are subject to registration fees. Such issues need the approval of the National Economic Council and the Cabinet Council.

The Public Credit Office, under the guidelines of the Ministry of Economy and Finance, calls for regular auction dates on a monthly basis for both Government bonds and Treasury notes. For each auction, the specific instrument is announced along with the face value and maturity date.

All bids to acquire Government securities are presented on the day of the auction at the Panama Stock Exchange by the authorized agents (stock exchange seat members) on behalf of retail and institutional customers. These are classified by competitive and non-competitive bids. A competitive bid is when the bidder establishes the amount he or she wants to acquire and at what price. A non-competitive bid is when the bidder establishes only the amount he wants to buy, but is willing to accept the average weighted price resulting from the competitive bids accepted by the issuer. Once the proposals are received, registered and analyzed, the Minister of Economy and Finance or its authorized representative accepts or rejects according to the minimum price the government is willing to receive. Government entities that participate in the bidding can only present non-competitive bids and must accept the average weighted price.

The authorized agent must honor all proposals on behalf of its clients. The settlement process is established by the issuer according to the current rules applied by the central securities depository and the paying agent chosen by the government.

## **IV. THE PANAMA STOCK EXCHANGE, INC**

### **Structure and Capitalization**

Panama Stock Exchange (Bolsa de Valores de Panamá, S.A. or BVP), is a corporation organized under the Laws of the Republic of Panama (hereon "the Exchange" or BVP). Its shareholder base is made up mainly by local banks, including Banco Nacional de Panama (National Bank of Panama), as well as commercial, insurance and industrial corporations. It

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involves a wide variety of people ranging from stockbrokers to businessmen to all sorts of professionals.

The Panama Stock Exchange's authorized capital is one million dollars, divided into 180,000 shares. This capitalization level was due to the Panama Stock Exchange's interest in allowing a large and diverse number of shareholders, who participated in forming an administration capable of providing an efficient service. The administration itself was responsible of maintaining a data system that had enough storage capabilities and that could provide the public with easy access to information about all the listed securities.

### **Management**

In order to provide the Panama Stock Exchange with a broad base of individuals representing the diverse sectors of the country's economy, a Board of Directors made up of nine principals and nine substitutes was constituted; additionally, Board members are divided into four committees that oversee the Exchange: the Technical Committee, the Computer Data Committee, the Products Committee, the Investment Committee and the Promotional Committee.

### **Members**

Operations at the BVP are performed through qualified intermediaries who, with the Exchange's prior authorization, are entitled access to the floor when in session. These people, also known just as stockbrokers, act on behalf of institutions that have the right, through previous compliance of certain requirements, to buy and sell listed securities; in other words, licensed stockbrokers trade for the firms that own a seat (or are members) on the Exchange. Exchange Members have to be licensed Brokerage houses.

Exchange Members must be professionally capable and financially solvent, as they are not only responsible for the funds, securities, and clients they manage, they are also directly responsible for any trades they execute in the Exchange. They must be legally organized; for example, a corporation whose shares must be issued at face value in favor of individuals, except in the case of banks or public companies.

Besides, Exchange Members must also comply with the following requirements:



1. Engage solely and exclusively in trading securities in the Panama Stock Exchange;
2. Have, as their general agent or legal representative, an agent who has been duly authorized by the National Securities Commission of Panama;
3. Have a paid-in capital base of US\$100.000 and own 2,500 shares of the Bolsa de Valores de Panama, S.A.;
4. Have a professional proficiency needed in order to perform this type of activity;
5. To be the beneficiary of the fidelity and performance bonds demanded by the Panama Stock Exchange;
6. The Exchange Members will at all times be subject to the audits, inspections, and investigations the Exchange decides to execute, and their rights cannot be transferred to third parties without the BVP's prior approval; consequently, the Panama Stock Exchange assures the proper widespread participation of all interested parties, which must comply with all conditions.

### **Companies and Securities**

Any company that wants to have its securities quoted at the Panama Stock Exchange can apply for a listing. In order to do so, it must provide the Exchange with information regarding its corporate, administrative and financial structure, as well as proof of registration in the National Securities Commission. The Exchange reserves the right to refuse, suspend or cancel the listing of a company if it fails to comply with the Law or with the Exchange's information and security requirements.

### **Operations**

Securities will be traded at Panama Stock Exchange according to the type of activity and issue class, and the following securities:

1. Government Securities underwritten by the State;

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2. Government Securities nor underwritten by the State whose issue has been with Panama Stock Exchange;
3. Privately owned Securities issued by corporations voluntarily registered with the National Securities Commission;
4. Securities Commission and listed on the Panama Stock Exchange;
5. Public Offerings of privately owned Securities authorized by the National Securities Commission and listed on the Panama Stock Exchange;
6. Any other authorized by the Board of Directors;
7. The type of activity refers to whether they fall under the Primary Market or the Secondary Market;
8. Whenever an issuing corporation or its underwriter offers to sell an issue for the first time, it is a Primary Market operation. Whenever its owner offers a security, which has already been issued, for sale, it is known as a Secondary Market operation.

As to settlement time, transactions can be cleared

- at (T+3), exactly three days after the trade date.
- at Term, which means whenever the parties agree to deliver the money or securities other than T+3 (ex. T+2, T+4)
- at any future date, within the limits set by the Board of Directors, notwithstanding the fact that the parties may decide to settle the operation before the expiration of the agreed term.

Regarding how operations are performed, they can be cross or agreed. A cross operation is one where one seat or exchange Member acts as both buyer and seller, offering and demanding certain securities on behalf of different clients, and accepting the offers by himself. When offering and accepting a cross operation, the buyer and the seller may not be one and the same party. Agreed operations are those where the Exchange Member assumes only one position, whether to buying or selling.



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## **Trading Session**

On July 1999 the BVP's Electronic Market started operations for securities traded in the secondary market. By 2001, all trades done through the Exchange were fully electronic; therefore, trading was not done by open outcry anymore, where everything was done in a closed room or "floor", and transactions were passed by indicating in a loud clear voice the type of trade (buying or selling), the class of securities, the type of issue, the number or quantity of securities, the price, and the clearing and settlement information. Today, all aspects of securities transactions are done through the Exchange's electronic system.

On any particular day, the closing price of the securities quoted by the electronic system will be the price of the last trade or the price of the last bid or offer that, according to particular Exchange rules, can affect the closing price with respect to the previous day.

## **V. CLEARING, SETTLEMENT AND DEPOSITARY**

### **V. CLEARING, SETTLEMENT AND DEPOSITARY**

On May 1997, Central Latinoamericana de Valores, S.A. (LatinClear) began operations. Since then LatinClear provides all the services of a modern Central Securities Depository by having the support of an advanced automated system that performs custody, clearing and settlement operations easily and safely.

As of December 31, 2006, Central Latinoamericana de Valores, S.A. maintained a total volume under custody of US\$4,192.0 million. This amount, compared to the balance under custody for the year 2005 of US\$3,758.1 million, reflects an increase of 11.5%.

The custody composition, by type of instrument as of December 31, 2006, is detailed as follows: Corporate Bonds 19%, Commercial Papers 4%, Stocks 21%; Treasury Bills 6%; Treasury Notes 18%; Treasury Bonds 18%, Preferred Stocks and Funds 12%, Others 2%.

LatinClear administers equities, government bonds, corporate bonds, commercial paper and treasury certificates. All of the securities held at the depository are immobilized. As of February 12, 2001, all securities traded on the Panamanian Stock Exchange must be cleared and settled by LatinClear. At the end of the year 2006, LatinClear held 37% of the total

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capitalization of securities in Panama.

### **Ownership and Governance:**

Actually LatinClear is a public company, at the end of December 2006, Latin Clear had 62 stockholders including: brokerage houses (38.6 per cent), banks (17.6 per cent), Panama Stock Exchange (4.2 per cent), corporate entities (33.1 per cent) and individuals (6.5 per cent), none of whom holds more than 8.6 per cent of the issued or registered shares.

### **Services:**

LatinClear provides its participants safekeeping, clearing and settlement services, corporate actions services. Also provides its Participants the service to maintain one account at LatinClear for their own assets and separate accounts for their client's assets. The system is designed to receive securities and the strict controls to safeguard them.

Securities settlements are executed on a rolling T+3 cycles executed on a trade-by-trade basis at LatinClear.

LatinClear's Participants may access their accounts online, in real time, and access a number of electronic reports facilities to help participants validate and reconcile custody and clearing data.

### **Processing Cycles:**

#### **Settlement Model**

The linkage of delivery of and payment for securities in LatinClear settlement system follows the BIS Model 2 (gross settlement of securities transfers followed by net settlement of funds transfers).

#### **Processing Cycles**

Securities settlements are executed on a rolling T+3 cycle. Each day the Panama Stock Exchange sends the trading information to LatinClear via an electronic file. Brokers are committed to exchange trades upon completed pre-matching of instructions on T+0.



Participants have 24-hour access to the LatinClear system to track their securities position. Prior to any trades being accepted by LatinClear, there is verification that the selling broker holds the securities in LatinClear and that they are available and verification that the purchasing broker has sufficient credit with its settlement bank for meeting his obligation in his account at the Banco Nacional de Panama (BNP) on T+3. If either funds or securities are insufficient, the trade is not accepted. Funds are monitored constantly after T+0 to ensure that there are sufficient funds available to meet the financial obligations on T+3. The purchasing broker may, however, sell the securities for value T+3 or any later date.

Securities and cash settlement occurs simultaneous in T+3, around 8:30 a.m. Securities settlement takes place on a trade-by-trade basis at LatinClear, while the financial settlement is made on a multilateral net basis in same day funds on the books of the BNP. LatinClear executes the transfer of securities and uses the BNP for the financial settlement. Panama uses the US dollar as the settlement currency (the domestic currency is the Balboa which is equal to USD 1).

### **Securities**

On TD, before the trade is finalised, LatinClear verifies that the selling broker has sufficient securities. The purchaser can sell the securities for value T+3 or any later date.

### **Cash**

On trade day, before the trade is finalised, there is verification that the purchasing broker has sufficient credit with his settlement bank to meet his financial obligations. Limits on the level of obligations that each broker may accumulate are set, although there are agreements that some increases can be made, within certain limits. LatinClear sends a settlement report to BNP at 3pm SD-1 notifying brokers net settlement obligations. The cash settlement takes place on a net basis in sameday funds on the books of BNP at 8.30am on T+3.

On trade day, before the trade is completed, the credit of the purchasing broker is also verified with his settlement bank. The cash settlement takes place on a net basis in same-day funds on the books of the National Bank at 8:30 a.m. on T+3.

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### **Registration Model:**

LatinClear is recognized as the nominee, in regards to the issuers and maintains the books of registered holders. The law recognizes its books.

Since February 2001 when immobilization of securities in Panama became obligatory and when all securities are registered in the Street Name (Depository), registration occurs simultaneously with the transfer of securities on LatinClear's books, with Delivery Versus Payment.

### **Deposited securities:**

Security certificates which are centrally immobilized at LatinClear are in registered form in the name of the depository. Certificates are physically held within LatinClear's vault. Ninety nine percent of ownership is recorded by book-entry at the depository or the registrar.

Following the physical deposit of a registered security, the stock can be used to cover an outward delivery on the same day, provided the certificate is properly endorsed to LatinClear. Virtually all of the securities in LatinClear, December 31st., 2003 were in registered form, with less than one percent in bearer form.

### **Participant Accounts**

Participants are required to segregate assets held for their own benefit from those that they hold for their clients through separately designated participant accounts.

The depository holds shares in nominee name, and laws exist acknowledging the rights of beneficial owners with respect to shares registered in nominee name.

## **VI. NATIONAL SECURITIES COMMISSION**

### **Legal Framework and objectives**



Through Decree Law 1 of July 8, 1999, the National Securities Commission (Comisión Nacional de Valores) was created for the sole purpose to regulate securities markets in the Republic of Panama. The National Securities Commission is an autonomous body of the State with its own legal capacity and patrimony.

Its functions and main attributions are:

- Promote and strengthen the favorable conditions for the development of the securities market.
- Decide upon the requests for public offer registration and any other which are submitted before the Commission in accordance with the Decree-Law and to suspend or cancel those public offers which violate the provisions of the Law or its regulations.
- Issue, suspend, revoke and cancel the licenses of stock exchanges, clearing corporations, broker-dealer houses, investment advisors, principal executives, brokers, analysts, investment advisors and other licenses which the Commission must grant.
- Establish rules for good commercial standards and principles of ethics which must be adopted by its regulated subjects.
- Order the form and content of financial statements and other financial information of the register party before the Commission as well as to adopt the accounting principles and standards which must be used in their preparation.
- Examine, supervise and control the activities of the self-regulated organizations and its members.
- Carry out inspections, investigations, judicial proceedings, initiate joint class actions and impose penalties established in the Law.
- Issues opinions, adopt, amend and revoke regulations and recommend to the Executive Branch the approval of executive decrees which it deems necessary for the regulation of the Law.
- Register credit risk rating companies
- Adopt its internal regulation and to establish its administrative framework.

Decree Law No. 1 of 1999 creates a legal frame for the custody, clearing and settlement of securities, following the standards established by important international exchange centers

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of the world.

Title XI defines new mechanisms for the holding of securities in Panama and places our legislations at an equal level compared with other jurisdictions.

Titles XII and XIII of the Law describe activities that affect the transparency of the market, such as fraudulent or misleading practices, improper use of privileged information, false statements and omissions from issuers and offering parties and manipulations, among others. They also establish the civil responsibility of those who incur in these activities or infringe its provisions, making them liable for all the damages that such infringement causes.

Title XIII includes administrative sanctions such as fines that may be applied by the Commission to those who commit some of the prohibited activities described in Title XII up to one million \$1,000,000.00 depending of the violations and up to \$300.000.00 for those who infringe other articles of the Decree Law or its regulations. This article was modified by the article 8 of the Law 45 in June 4, 2003.

The Commission has held an intensive work since it had the challenge of regulating the new Decree Law that had gone into effect recently. Eighty two (82) regulations agreements have been developed so far under the new Securities Law. In addition, the Commission has settled its administrative position in certain matters issuing eighty nine (89) opinions.

### **Taxes**

The gains and losses arising from the purchase and sale of securities issued or guaranteed by the Nation, will not be subject to Income Tax, Dividend Tax and Complementary Tax. The gains and losses arising from the purchase and sale of securities registered in the Commission are also exempt whenever:

- It is made through a stock exchange or another organized market;
- It is the result of a merger or corporate reorganization, as long as the shareholders receive stock from the surviving corporation.

The interest paid or credited over securities registered in the Commission will cause a Fixed



Income Tax of 5%. Such revenues will not be part of the gross revenues, for there is no need to include them in the Revenue Statement. However, interest paid or credited over securities registered in the Commission and traded on a stock exchange or another organized market will be exempt of Income Tax.

### **Licensing of Securities Professionals and Regulated Subjects**

Title III of the Decree Law establishes the requirement of obtaining a License from the Commission in order to act as a Broker-dealer house or Investment Advisor, from and within the Republic of Panama, regardless of the rendering of their services over registered or unregistered securities in the commission. This legal requirement is also extended to those who act as Chief Executives, Brokers and Analysts.

This section also defines the scope of action of broker-dealer houses and investment advisors, and describes allowed activities for both. The Commission will also determine, by means of regulations, capital adequacy and liquidity requirements, according to the obligations and risks assumed by the securities firms. There are provisions regarding the operations of foreign securities firms, defined as those organized and constituted under other jurisdictions, with their main place of business located out of Panama, or those that have a license granted by the competent authority in the jurisdiction where they have their main place of business, the activities of these firms are also under the supervision of the Commission.

With regards to self-regulated organizations, a concept that covers stock exchanges or Clearing and Settlement organizations, the Decree Law establishes that obligation of obtaining a License from the Commission in order to engage in such businesses. The commission will regulate and supervise the operations of self-regulated organizations.

The Securities Law also sets minimum standards that self-regulated organizations must comply with in their internal regulations, which need to be approved by the Commission, as well as any addition, modification or elimination that affect them.

To December of 2006, the regulated subjects were 34 broker dealer houses, 322 brokers, 13 investment advisors (where 1 is a natural person), 12 investments managers, 2 self regulated organizations, and 5 credit risk rating companies.

## NATIONAL SECURITIES COMMISSION OF PANAMA

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A modification to the Agreement 2-2004, which establishes the requirements, proceedings and other related aspects of Licensing requested to financial intermediaries before the Commission, was also approved during the past year.

Those professionals applying for a license are required to take exams which are administered by the Commission monthly since February 2000.

### **New Issues of Securities**

In Title V and VI of the Decree Law, a series of definitions, standards and rules are established for registering securities before the Commission. Article 69 sets the mandatory registration of the following:

- a) Securities that will be subject to a public offering that requires to be authorized by the Commission;
- b) Shares of issuers domiciled in the Republic of Panama, that in the last day of the fiscal period have 50 or more shareholders domiciled in the Republic of Panama, that own no less than 10% of paid capital of such issuer (unless the shareholders that represent at least 75% of the issued and outstanding capital resolve to remain as an unregistered private corporation);
- c) Securities listed in a stock exchange in Panama.

The commission passed Regulation 06-00 on may 2000, which established the information standards and documents that are required to be presented with the registration submissions, according to each issue.

The Regulation incorporates the highest and most modern standards of information disclosure, with the purpose of granting investors with all the data they need to make properly informed decisions. Recommendations from such organizations such as IOSCO have been taken into consideration.

Regarding the report duties of the supervised, the Law has left it for the Commission to set the periodicity under which such financial reports shall be submitted, as well as its form and contents. Therefore, Article 71, requires, as a minimum, the following:



- a) An Annual Report, which must contain the audited financial statements and other information requested by the Commission;
- b) Interim reports, to be submitted with the frequency established by the Commission.

The Regulation 08-00 of May 2000, establishes the periodicity of said reports, stating that reports be presented:

- No more than two (2) months after the closing date of the trimester, for interim reports, and
- No more than three (3) months, after the closing date of the fiscal year, for audited annual financial statements.

The wider scope of financial data, as well as a discussion about operational results, financial situation and management is required by way of Regulation 18-00, with these reports. This new report is similar to the 10-K report to SEC.

### **Banks and Securities**

According to Articles 28 to 32 of the Securities Law (Decree Law 1 of 1999), Banks may engage in securities activities, provided that they obtain a License with the Commission. Therefore, banks in such situation will be subject to supervision from both regulatory institutions (Superintendence of Banks and National Securities Commission), within their areas of competence. Among the 34 Broker-Dealers licensed with the Commission, 22 are either banks or bank affiliates. Among the 12 investment advisors licensed with the Commission, 1 is a Bank affiliate, and among the 12 investment managers licensed with the Commission, 10 are Banks or bank affiliates.

The Superintendence of Banks issued a Regulation during 2000 establishing the limits that must be observed by banks when dealing with securities. The most important aspects covered are the following:

- a) Banks may not invest in securities issued by one individual or the corporation that is part of its particular economic group in amounts exceeding 25% of its capital resources;

## NATIONAL SECURITIES COMMISSION OF PANAMA

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- b) When the issuer is a related party, this limit decreases to 5%, with the possibility to increase to 10% when certain guarantees are involved;
- c) There is an accumulated limit of 75% to invest in securities issued by related parties of the capital resources of the Bank;

### **Rule Making**

Item 13 of Article 8 of the Decree Law establishes the authority of the Commission to "Recommend to the Executive Power the approval of Executive Decrees that are deemed necessary for the proper regulation of the Securities Law."

However, Article 10 establishes that the Commission may adopt decisions of general application, identified as Regulations, and Title XVI creates the administrative proceeding for the adoption of a regulation.

### **Recent regulations**

#### **Legislation governing mutual fund industry**

Incorporation and authorization of Investment Companies were formerly regulated by Decree No. 58 of October 27<sup>th</sup>, 1993, a regulation issued under the previous securities legislation.

During the period of time between the enactment of said Decree No. 58 of 1992 (first regulation on the matter) and the enactment of the Securities Law in 1999 that is presently in effect, less than 15 investment companies were registered in the Commission.

Presently, that figure has not varied significantly, only 26 investment companies (7 of them part of a "family" of funds managed by the same banking group and the other one, an additional fund to an already registered "family"), have registered under the new legislation.

Investment companies are presently governed by the provisions of the Securities Law (Decree Law 1 of 1999), in articles 103 – 145. The Commission is legally entitled to issue



regulations in order to develop aspects of the Law, which it does by means of “Agreements” (regulations).

The AGREEMENT 5-2004, of July 23, 2004, developed the provisions of Title IX, Decree-Law No. 1 of 1999 on Investment Companies and Investment Manager, established the procedures for applying to obtain the respective authorization and license and the rules for its functioning and operation.

The Securities Law (Decree Law 1 of 1999) and the Agreement 5-2004 defines the investment companies, the investment managers and the custodians, in the article 1 that will be transcript:

***Article 1. Scope of application***

*The present Agreement applies to:*

*1. **The Investment Companies**, defined as all juridical persons, trust or contractual agreement that, by means of issuance and sale of its own participation quotas, is dedicated to the business of obtaining money from the investing public, through unique or periodical payments, with the intention of investing and negotiating, directly or through investment managers, in securities, currencies, metals and commodities, real estate or any other property recognized by the Commission. The following are excluded from the scope of application:*

- a. The saving and capitalization system of retirement funds of the government employees created by Law 8 of 1997. However, the private organizations that manage the aforementioned saving systems shall apply for License as Investment Managers before the National Securities Commission.*
- b. The Investment Companies whose group of investors is limited to a number, not to exceed, twenty (20) persons, determined by its affiliation or association to a company, as long as, there does not exist any commercial activities or distribution or public contribution, the same as, those*

## NATIONAL SECURITIES COMMISSION OF PANAMA

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*companies whose participation quotas that were distributed by virtue of a contract celebrated between its participants where the admission of new investors is prohibited*

- c. Those other Investment Companies that the Commission considers appropriate to exclude from the application of Title IX of the Decree-Law 1 of 1999 and from the present Agreement, as long as said exclusion does not harm the interest of the investing public.*

*2. **The Investment Managers**, are those persons to whom an Investment Company delegates, particularly or jointly with other persons, the faculty to manage, handle, invest, and dispose of the securities and commodities of the Investment Company. The Investment Managers shall be able to render management services to the Investment Companies, but the rendering of these services such as, accounting, secretarial, permitting the usage of the directors or the domicile address, conduct business with shareholders of payments, registrations and transfers and other similar administrative services, will not make the person who provides the service an Investment Manager.*

*3. **The Custodians**, are those persons who keep custody of the money, securities or assets of another person.*

Another innovation of the recent agreement is the new regulation about different categories and legal structures permitted to the investment companies. Also exist the possibility to create a self managed investment company.

The Investment Companies could be open-ended or closed-ended according to the faculty attributed to the investor of requesting or not the redemption of his investment.

- 1. **Open-ended Investment Companies** are those who offer their investors the right to solicit a periodic redemption of their participation quotas, either partially or totally, at the net worth less the commissions, charges and expenses described in their prospectus. These Investment Companies shall issue a variable amount of participation quotas, without the need to file a new registration for the securities, as*



long as they weekly let know the National Securities Commission the number of the quotas issued, as a result of the total amount of the subscriptions to date minus the redemptions produced.

2. *Closed-ended Investment Companies* are considered those that do not offer their investors the right to request the redemption of their participation quotas before the liquidation of the Investment Company or that only allow the redemption in extraordinary circumstances in the terms granted in the Decree-Law 1 of 1999 and in the present Agreement. In fact, the investors shall exercise the right to redeem their investment when the Investment Company Manager is replaced.

*Closed-ended Investment Companies* can change to *Open-ended Investment Companies*, in accordance with the provisions set in their articles of incorporation or by the trust instrument or the contract through which they were constituted, as long as they comply with the rules of the Investment Companies of their category and in accordance with the procedures and publicity rules set and foreseen in this Agreement.

For example depending on the risk the article 3 of the Agreement 5-2004 distinguishes between real estate investment companies, investment companies in the money market and investment companies in futures and derivatives.

The article 3 provides as follows:

***Article 3. Categories of Investment Companies depending on the risk***

*Based on the nature of the securities that make up the portfolio, the Investment Companies shall be of variable income, fixed public or private income, as long as the percentage of the total investment of these securities in the portfolio exceeds eighty percent (80%), and the mixed Investment Companies, between two (2) or more of those categories, when they do not reach such percentage, in any of the types of assets indicated. Shall be distinguished, by the geographic origin of the securities in which they invest, national or international Investment Companies and, within the latter ones, by the territorial scope to which they are referred.*

## NATIONAL SECURITIES COMMISSION OF PANAMA

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The Fifth Chapter of the Agreement 5-2004 about Requirement of Capital and Liquidity Coefficients, states in the Article 40 the minimum total patrimony that will be applicable to the Investment Companies to solicit their registry to offer their shares or participation quotas in the Republic of Panama. They should count with a minimum total patrimony of twenty-five thousand Dollars (\$25,000.00), that corresponds to the capital and reserves of the shareholders of the company and is represented by the following accounts: capital duly paid to the date of the balance; greater value obtained in placement of shares of payment with respect to the nominal value; declared reserves; profits or losses generated in previous exercises and the earnings or loss generated in the exercise.

Another very important subject developed in this Agreement is the related to the investment managers. The requirements settled down to obtain and to conserve the license of investment manager and the obligations.

The article 66 states the requirement that the person applying for the granting of an Investment Manager license must comply and the conditions to obtain and maintain it.

They should dedicate exclusively to the Investments Manager business activities, should have a board of directors or its equal formed by not less than three members all of them persons of recognized professional or commercial reputation, to have the quantity of principal executives required by the organization business volume, whose must have the corresponding Licenses issued by the Commission, to have a Compliance Officer, who must hold a License of Principal Executive issued by the Commission, to have an administrative and accounting organization and technical.

Also it is require to the investment managers to have a minimum total patrimony of one hundred Fifty Thousand Dollars (\$150,000.00), that corresponds to the company's stockholders capital and reserves and is represented by the following accounts: paid up capital effective as of the date of the balance; best price obtained in the investment of payable shares with respect to the nominal value; declared reserves; profits or losses generated in previous exercises and the earnings or generated loss of the exercise.

The investment managers should follow the obligations established in Article 142 of the



Decree-Law 1 of 1999.

*The Investment Managers will have the obligation to administer, handle, invest and, in general, to carry out his obligations as Investment Managers subject to the terms of the contracts celebrated with the Investment Company and the objectives and the policies of investment established by the Investment Company. Investment Managers must employ in the performance of his obligations the diligence and care men ordinarily employ in their own businesses, and they will be responsible before the Investment Company and the participation quotas holders in case of not observing said diligence or care.*

The Agreement 5-2004 in the article 72 states other obligations that the Investments Manager should follow:

1. *Communicate to the National Securities Commission those changes in the conditions under which the authorization was granted that would be relevant in relation to the faculties and the supervisory labor of the National Securities Commission.*
2. *Inform to the National Securities Commission of the investments in which they materialize their own resources and on behalf of the funds and companies they administer.*
3. *The Investment Manager, their directors or managers and related parts can not acquire, rent, or usufruct directly or through other natural or legal persons, values or commodities which are property of the investment funds they administer, nor to alienate or rent his to them. They cannot lend money or grant guarantees to said funds, or vice versa.*
4. *Perform his functions in accordance to the terms of his contract, in accordance with the act of authorization or Internal Regulation of the Investment Company, which will be written up by the same Investment Company, and sent to the National Securities Commission.*

## NATIONAL SECURITIES COMMISSION OF PANAMA

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5. *Grant the Custodian, the corresponding constitutive public deed of the Investment Company, as well as the amendments or liquidation of the same.*
6. *Exercise all the inherent rights to the values that compose the portfolio of the Investment Company, for the exclusive benefit of the participants.*
7. *Determine the value of the representative participation of the Investment Companies patrimony.*
8. *Issue, in combination with the Custodian, the certificates of participation of the Investment Company.*
9. *Carry out the reimbursement of the participations, indicating to the Custodian the value in accordance with the established rules to the effect.*
10. *Select the values that must make up the portfolio of the Investment Company, in agreement with the foreseen in the authorization act or the internal procedures of the Investment Company, and order the Custodian the relevant purchase and sale of values.*
11. *Act as sub administrator of investment or subcontract administration services of investment, subject to the agreements that on that matter the Commission dictates.*
12. *Inform truthfully, sufficiently and opportunely to the participants of the funds and the public in general, the characteristics of the administrated funds of any fact or essential information related to him or of the funds he administers.*
13. *Inform in detail to the National Securities Commission jointly with the presentation of the financial statements of the Investment Company, on the fulfillment of the investment limits established in the Prospectus.*



14. *Elaborate the contract text that should be subscribed by the participants.*
15. *The administrator, his related persons, shareholders and employees, cannot control individually or jointly more than forty percent (40%) of the quotas of the fund that it administers. The management company will safeguard so that the mentioned maximum percentage is not be exceeded by collocations of quotas made by their account, or by the other indicated persons and if so happens, because the excess will not have right to vote in the assembly and, in addition, the National Securities Commission will establish the terms so that the persons who exceeded said percentage proceed to transfer their quotas, until they meet the fulfillment of the same, without prejudice of the administrative sanctions that to the object the National Securities Commission can apply. The transactions of the funds quotas carried out by the mentioned persons, must be informed in the same way they communicate the transactions the articles establish.*
16. *The Investments Manager is forced to order the Custodian responsibility in the exercise of his functions in name of the participants.*
17. *The Investments Manager will be responsible before the contributors or the shareholders for all the prejudice caused by the non-compliance of his legal obligations.*

### **Self-managed investment companies**

The article 14 of the Agreement 5-2004 states the requirements for the registration of self-managed investment companies:

*In the case of Investment Companies assuming their own management, they must comply with the following requirements:*

1. *To have a Board of Directors or its equivalent formed by no less than three (3) members where all of them are persons of recognized business or personal reputation. At least a third part of the members of the Board of Directors must*

## NATIONAL SECURITIES COMMISSION OF PANAMA

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*have knowledge and adequate experience in subjects related to the securities market or the financial sector in general. Such reputation, knowledge and experience shall be also indispensable in the other principal executives of the organization, as well as, in the case of the natural persons who represent legal persons in the Boards of Directors or its equivalent.*

*It shall be understood that possess honor status those who had practiced a personal path of respect towards the mercantile laws or others regulating economic activities and the businesses environment, as well as good commercial and financial practices, have commercial and professional reputation*

*In all cases, it shall be understood that those who have incurred in the following causes lack of reputation required to hold any positions:*

- a. That in the last ten (10) years have been sentenced in the Republic of Panama, or in a foreign jurisdiction, for crimes against the patrimony, crimes against the public faith, crimes relative to money laundering, crimes against the inviolability of the secret, for the preparation of false financial statements or have been condemned for any other crime involving a prison sentence of one (1) or more years.*
- b. Those who, in the last five (5) years, have had revoked an authorization or license to act as a member of a self-regulated organization, a broker-dealer houses, investment advisor, Investments Manager, principal executive, broker or analyst in the Republic of Panama or in a foreign jurisdiction.*
- c. Those who have declared themselves in bankruptcy, without been rehabilitated.*

*It will be understood that posses adequate knowledge and experience to perform their duties those who have carried out, during a term no less than two (2) years, functions of similar responsibility in other public or private organizations.*



2. *To count with a good administrative and accounting organization, and adequate human and technical means for the management and performance of the Investment Company in accordance with its Prospectus and its incorporation policy.*
3. *Internal conduct regulations, in agreement with the dispositions that are applicable in the Agreement No.5-2003 of June 25, 2003 of the National Securities Commission, where in, it clearly states, foresees the operational personal system of the officers, directors, principal executives, employees and proxies, as well as control mechanisms, which shall include, in particular, a personal operational system of its directors, officers, executives and employees of the entity and, in its case, the system of linked operations.*
4. *To appoint the person who will carry out the role of Compliance Officer, who will have the responsibility of supervising the self-managed Investment Company, its directors, executives and employees comply with their duties according to the Decree-Law No.1 of 1999 and its bylaws. Said person shall be any member of the organization and shall hold the license of Principal Executive of the National Securities Commission.*

*For the self-managed Investment Companies, constituted as a trust, the fiduciary must comply with the conditions set forth in previous paragraphs.*

*The self-managed Investment Companies will have to count with, at least, (1) one official or employee who has obtained the License of Principal Executive of Investment Manager who will be the person responsible of executing the policies of investments of the Investment Company.*

The Agreement 5-2004 has been modified by the following agreements:

- 2-2005 of March 9, 2005
- 1-2006 of February 6, 2006
- 2-2006 of March 29, 2006
- 9-2006 of December 22, 2006

## NATIONAL SECURITIES COMMISSION OF PANAMA

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**Agreement 2-2005 of March 9, 2005** (Conditions to conduct the business of purchasing and selling shares and participation quotas of funds or investment companies incorporated and managed abroad)

The chapter eighth about the conditions to conduct the business of purchasing and selling shares and participation quotas of funds or Investment Companies incorporated and managed abroad of the Agreement 5-2004 was totally changed and actually states the conditions, characteristics, and notifications requirements of funds or investment companies incorporated and managed abroad.

Only the broker dealer houses with a license issued by the National Securities Commission may conduct the business of purchasing and selling shares and participation quotas of funds or Investment Companies incorporated and managed abroad fulfilling the conditions, characteristics and notifications requirements.

### **Characteristics of funds or investment companies constituted and managed abroad**

Fund or investment companies constituted and managed abroad must have the followings characteristics:

1. Be authorized to realize public offering of shares or quota participation of fund or an investment company and be registered before the regulating entity of a regulated securities market.
2. Be managed by an Investments Manager authorize to act as that by a regulating entity of a regulated securities market.
3. Its Custodian must be authorize to act as that by a regulating entity of a regulated securities market.

### **Notification requirements**

The Broker Dealer Houses that dedicate to the business of purchasing and selling shares and participation quotas of funds or Investment Companies constituted and managed abroad that count with a distribution contract or without it, must carry out with the notification to the National Securities Commission, before proceed to put them in order of



the public. Those ones who don't have distribution contract and are purchase to the client's petition should not require to carry out with the established in the present article. Nevertheless, should reflect the information of the purchases carried out to diligence of the client in global way and separated of the purchases not demand in the Inform that is referred in the Article 60 of the present Agreement.

The broker dealer houses must present directly to the National Securities Commission, properly completed the Form SI-EX contained in the Annex No.1 in the present Agreement and which is an integral part of the same, accompanied by following documents:

1. Prove/evidence of registration and authorization to realize public offering of shares or quota participations of the fund or Investment Company constituted and managed abroad, of the Manager and the Custodian. It is obligation of the broker dealer houses that dedicate to the business of purchasing and selling shares and participation quotas of funds or Investment Companies incorporated and managed abroad to inform immediately to the Commission as soon have knowledge of any change that affect whatever of the evidences before quoted.
2. Indication that the broker dealer house mantain and shall mantain to disposition of the Commission and the clients, in physical or electronic way, the following:
  - a. The informative prospectus authorized to promote fund or Investment Company constituted and managed abroad.
  - b. Copy of the last annual report of the fund or Investment Company presented before the regulating entity in the origin country.
  - c. Copy of the contract or documents that support the legal relation, that will subscribed between the clients with the manager of the fund or Investment Company constituted and managed abroad or with the broker dealer house in the Republic of Panama, according to the case.
  - d. Copy of the contract of distribution subscribed between the manager of fund or Investment Company incorporated and managed abroad and the broker dealer

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house.

The notification shall understand perfected and shall take effect since the delivery of the documentation mentioned in the present article, except on the assumption that is referred in the third paragraph of the numeral 1 of this article.

In the inspections that the Commission carry out to the broker dealers houses that dedicate to the bussines of purchasing and selling shares and participation quotas of funds or Investment Companies incorporated and managed abroad, the Commission shall verify that maintains in order the documentation indicatted in the numeral 2 of this article.

*The Investment Companies that are not Investment Companies in the money market or Investment Companies in futures and derivatives, shall be able, however, to invest an irrelevant part of its assets, understood as such, those that do not exceed twenty percent (20%) of these, in such values or instruments, as long as it has been pointed out in its corresponding Prospectus, and they fulfill the rules set in this Agreement*

**Agreement 1-2006 of February 6, 2006** (It regulates the procedure to present requests to register investment companies that only offer shares outside Panama)

This agreement develop the article 133 of Decree Law 1 of 1999 establishing the register procedure, the financial information that this investment companies must file to the Commission and the method to cancel the register.

**Agreement 3-2006 of March 29, 2006** (It modifies the articles 60 y 66 of agreement 5-2004)

Agreement 3-2006 included in the article 60 of agreement 5-2004 the obligation to file to Commission a monthly global report of all purchases and sells of shares and participation quotas of mutual funds or Investment Companies incorporated and managed abroad that a broker dealer house did.

In the article 66, the agreement said, established a term of 15 calendars days to correct reduction in the minimum capital requirements.



## Agreement 9-2005 of December 22, 2006

Agreement 9-2005 introduced changes in the following subjects: *Categories of Investment Companies depending on the risk, investment politics, register and value of financial instruments, investment manager's obligations and the procedure to follow in the case that an investment manager has exceed the investment limits established by the Commission in this agreement.*

### Regulation of takeovers

Public tender offers directed to shareholders of registered issuers are regulated by Article 94 and subsequent of the Securities law. The Commission has also issued Agreement No. 7-2001, establishing the related procedures, and the information that the issuer has to provide and include in its Prospectus. The Commission is empowered to suspend the tender offer or the use of information material in connection with it.

República de Panamá  
COMISIÓN NACIONAL DE VALORES  
OFERTAS PÚBLICAS DE COMPRA DE ACCIONES  
Años: 2000 - 2006

Ofertante/Destinatario	Nacionalidad del Ofertante	Total de Acciones Ofrecidas	Forma de Pago		Mínimo de acciones ofrecidas	Precio de la Acción		Diferencia (%)	Aceptaciones Finales (%)	Monto Pagado (US\$)	Tercero No Vinculado	Costo del Tercero No Vinculado
			Efectivo	Acciones		Del Mercado al momento de ingreso en la CNV (US\$)	De la OPA (US\$)					
Banco del Istmo, S.A. / Primer Grupo Nacional, S.A. (15-05-2000)	Panamefeña	15,172,683	4,846,412.80	10,238,626.20	7,738,007	14.50	17.00	17.24	99.42	81,894,200	Central Latinoamericana de Valores, S.A.	N/D (d)
Corporación Incomi/ Accionistas (20-11-00)	Panamefeña(b)	4,412,062	100%	N/A	1,147,136	60.00	61.00	1.87	47.40	127,570,361	BNP Paribas	N/D (d)
Compañía de Cervezas Nacionales C.A., Bavaria S.A.; Latin Development/Cervecería Nacional, S.A. (20-11-2001)	Ecuador, Colombia y Panamá	15,359,202	100%	N/A	7,883,324	14.00	18.50	32.14	91.53	260,079,160	Central Latinoamericana de Valores, S.A.	Ante el evento que no llegase a alcanzar la cifra mínima establecida de la OPA y esta quedará sin efecto. Latin Clear cobrará por sus servicios la suma única de Treinta Mil Dólares (US\$ 30,000.00)
CA Beverage, Inc. / Accionistas Cervecería Barú-Panamá, S.A. (5-11-2002)	Panamefeña(c)	3,844,114	100%	N/A	S/C (a)	12.00	14.60	21.87	99.60	56,890,568	Banco General, S.A.	El agente recibirá como pago por los servicios que se compromete prestar al comprador bajo el Contrato de Agente de Pago lo siguiente: (i) la suma de Veinte Mil Dólares (US\$ 20,000.00), moneda de curso legal de los Estados Unidos de América pagaderos al momento de la firma del contrato de agente de pago en relación con la Oferta Pública de Compra de Acciones de Cervecería Barú-Panamá, S.A. (ii) 1/16 del 1% del pago total por las acciones entregadas y aceptadas de la Oferta.
Coca Cola de Panamá Compañía Embotelladora, S.A./ Accionistas (5-11-2002)	Panamefeña(c)	3,934,245	100%	N/A	S/C (a)	19.00	22.55	18.66	95.77	84,778,095	Banco General, S.A.	El agente recibirá como pago por los servicios que se compromete prestar al comprador bajo el Contrato de Agente de Pago lo siguiente: (i) la suma de Veinte Mil Dólares (US\$ 20,000.00), moneda de curso legal de los Estados Unidos de América pagaderos al momento de la firma del contrato. (ii) 1/16 del 1% del pago total por las acciones entregadas y aceptadas de la oferta.
Banco Continental /Accionistas de Grupo Wall Street Securities (9-2-2004)	Panamefeña	3,368,877	100%	N/A	1,718,028	16.00	16.65	4.08	99.60	56,884,118	Central Latinoamericana de Valores, S.A.	N/D (d)
Multi Holding Corporation/Accionistas (18-10-2004)	Panamefeña	16,885,737	100%	N/A	12,817,061	18.00	21.72	16.77	99.20	383,383,217	Central Latinoamericana de Valores, S.A.	Como única compensación por los servicios que se compromete prestar al oferente bajo el Contrato de Treinta y Cinco Mil Dólares (US\$ 35,000.00)
HSBC Asia Holdings B.V./Accionistas de Grupo Banísmo, S.A. (20-9-2006)	Holandesa	33,629,730	100%	N/A	21,859,325	48.50	52.63	9.85	99.98	1,769,579,700	Central Latinoamericana de Valores, S.A.	Como única compensación por los servicios que se compromete a prestar al Oferente, la suma de Ciento Setenta y Cinco Mil Dólares (US\$175,000)
<b>Total</b>										<b>2,789,055,482</b>		

- ( a ) Sin Condiciones en cuanto a cantidad mínima de acciones
- ( b ) Capital Colombiano
- ( c ) Capital Holandés, Costa Rica y Panamá
- ( d ) Información No disponible

Fuente: Comisión Nacional de Valores, Dirección Nacional de Registro de Valores e Informes de Emisores  
Preparado por: Galina Chávez y Camien Hernández  
Actualizado por: Yolanda G. Real S. y Jorge Navarro (29/12/06)

## NATIONAL SECURITIES COMMISSION OF PANAMA

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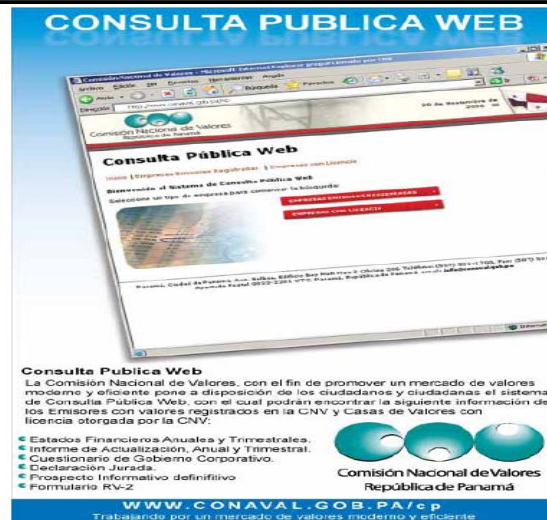
### **Oversight of self-regulatory organizations**

SRO's are legally subject to periodic inspections and reporting before the Commission, as well as investigations to determine violations of the Securities Law or its Regulations.

### **Electronic Filing**

On October 2003 the National Securities Commission has started an electronic filing system, so the regulated subjects can send the information on paper or by electronic media. A "Virtual Window" is under development that will allow all licensed brokers firms, investment managers, and companies with registered stocks to file their reports and financial statements through Internet.

We will receive two types of formats: structured information using Excel Worksheets (basically brokers firms and investment managers) and non-structured reports using Word and PDF Files. The reports with structured information will be sending to the database, where the data will be extracted and published in the Commission Web Site. The non-structured reports will be saved in the documental database and will be also available for the public. Both types of reports will be digitally signed for confidentiality and authentication purposes. The Commission is working in the system and in its implementation. The Public Consulting System was available to the investors on November 15, 2006. This is a web tool that people can use to get access to quarterly financial statements, audited financial statements, corporate government reports, final prospectus of registered issues and other relevant information. The web site is [www.conaval.gob.pa/cp](http://www.conaval.gob.pa/cp)



## **Sharing of Information with Foreign Regulatory Authorities**

As a matter of general practice, the Commission may share information that is publicly available in its files, or other public records, with local and foreign authorities. However, information obtained during the course of inspections or investigations may only be shared with the Judicial Power, in the case of Class Action, or with the Attorney General's Office, in case there are reasonable grounds to believe that there has been a violation of criminal law. All authorities are obliged to preserve the confidentiality of such information.

Article 22 of the Securities Law provides that the Commission may enter into regulations with Local or foreign, public or private entities, for the achievement of its objectives and functions.

The Commission may only order an investigation when there appears to be a violation of local Law or its regulations.

The Commission may compel the production of broker-dealer information/documents, but not of Banks (unless they are also licensed with the Commission). Also, the Commission may compel testimony and the production of documents by any person believed to have information necessary and relevant within the context of an investigation ordered to determine violation of the Securities law.

The Commission has signed Multilateral Memorandum of Understanding with the

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following countries in order to share information:

- El Salvador
- República Dominicana
- Honduras
- Chile
- Costa Rica
- Argentina
- España
- México
- Puerto Rico
- We are working to finish the conversation to sign MOU with Ukraine and Colombia.

The National Securities Commission also signed a MOU with the self regulate organization of Colombian Securities Market, in February of this year.

### **Recognized Jurisdictions**

The Agreement 8-2003 gives the Commission the power to approve an issue already registered in a recognized jurisdiction. It also allows the offering and listing of these securities in Panama.

The Agreements 11-2000, 3-2003 and 4-2005 establish as recognized jurisdiction the following countries: USA, France, Spain, Japan, Quebec and Ontario Province (Canada), Hong Kong, Holland, Mexico, Italy, Australia, Switzerland, Germany, U.K., El Salvador and Costa Rica.

## **VI. AUDITING AND ACCOUNTING STANDARDS**

By means of Agreement No. 2-2000 of May 22<sup>nd</sup>, 2000, the Commission resolved that all entities subject to filing financial statements (issuers and intermediaries) do so according to the IFRS issued by the International Accounting Standards Board or US GAAP as well as the International Auditing Standards. The mentioned Agreement applies to all reports



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submitted from the July 1<sup>st</sup>, 2000.

In addition to Agreement No. 2-2000, another Agreement was adopted that same year regarding the form and content of financial statements of registered issuers and licensed intermediaries, Agreement No. 8-2000 which was amended by means of Agreement No. 7-2002. One of the most important modifications this Agreement has is one instituting a mandatory declaration by the President, Treasurer and/or CFO of the company about the fairly presentation of the financial statements they report to the Commission. This Agreement also establishes that all registered entities, firms or institutions that must report to the Commission must consolidate their subsidiaries according to IFRS rules or US GAAP.

The Accounting Technical Board is the public entity (composed by members of the accounting profession and public officers), with the duty of investigating misconduct cases by accountants.

An Action was filed before Panama's Supreme Court of Justice questioning the Commission's jurisdiction for investigating or declaring responsibility on external auditors that carry out these duties for registered issuers or licensed intermediaries (the action was raised by a particular auditing firm on the context of an ongoing investigation). The main argument on the part of the external auditors is that the only competent authority with jurisdictional power is the Accounting Technical Board. The Supreme Court ruled it wasn't competent to review this case; however, the Court has confirmed fines imposed by this Commission to accounts, and to internal and external auditors

As part of its duties as a regulator, the Commission is authorized to require revisions or restatement of public companies' financial statements in accordance to prescribed accounting and auditing standards. These rules are included under Agreement 7-2002, which defines proper contents of financial statements, auditors' independence, and roles and responsibilities.

Since 2000, 14 cases against CNV Resolutions were solved by the Supreme Court of Justice. The most important judgment in 2005 was the one that concluded that the Commission has expressed powers to prescribe the form and content of the financial

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statements that registered entities must report to it (November 11, 2005).

### VIII. INTERNATIONAL SCOPE

The National Securities Commission of the Republic of Panama is a member of IOSCO and has responded to the following surveys:

1. Market Intermediaries
2. Secondary Markets
3. Collective Investments Schemes

#### **Details on the application of the Panamanian Securities Commission to the Iosco Multilateral Mou and the results**

The Panamanian CNV frequently receives requests for assistance in international cooperation and information sharing from foreign securities regulators that are conducting international investigations. The CNV is fully aware that there are legal limitations in becoming a signatory of the IOSCO MMOU.

The CNV have a legal limitation about the possibility of sharing no public information with foreign authorities.

In May, 2005 was signed a MOU between Panamanian regulatory entities of banks, securities and insurance.

- In November 6, 2003 Panamanian Securities Commission files its application to IOSCO and in January 2004 the complete application is sent to Verification team VI consisting of the US SEC, Swiss SFBC, Sri Lank SEC and Portugal CMVM.
- April 2004 Verification team VI forwards the first set of additional questions to the CNV.
- June 24 , 2004 Verification team VI receives responses.
- January 26, 2005 Co Chairs of the Screening Group forward note to the CNV informing that they are not in a position to recommend that Panama is accepted at this stage as a signatory of the IOSCO MMOU and offer an opportunity to be heard.



- They stress that the CNV is aware of this situation and the CNV wishes to be considered to be listed on Appendix B of the MMOU.
- January 27, 2005 CNV sends a letter accepting the conclusion by screening committee. The conclusions were the same reached by a self assessment conducted previously by the CNV.
- February 16, 2005, IOSCO Secretary General requests the CNV to confirm its commitment to try to obtain legal authority to be able to comply with the IOSCO MMOU.
- February 24, 2005 CNV confirms its commitment to try to obtain legal authority to be able to comply with the IOSCO MMOU.

Results of proceedings: Panama was included in Appendix B of IOSCO.

- CNV gives great importance to the international cooperation. It receives a great number of requests from foreign authorities when conducting investigations of international frauds.
- CNV considers it has taken the right initiative and with the right timing. CNV applied 2 years ago to the IOSCO MMOU, knowing that there are certain provisions in the current legal regime that limit the possibility of the CNV to comply with the IOSCO MMOU.
- CNV intention was, and still is, to produce an internal dialogue that allow the CNV to achieve the legislative changes needed to put the Panamanian securities legislation in compliance with the international standards.

Last year the Commission had two meetings with Ministry of Economics and Finances to explain the importance of achieving the legislative changes in the Decree Law 1 of 1999 required to include Panama in the Annex A or MMOU of IOSCO. Our arguments were heard, but we are still waiting the decision of the Ministry in this subject.

The Commission is also a member of COSRA (Council of Securities Regulators of the Americas) and of the Iberoamerican Institute for Securities Markets / Instituto Iberoamericano del Mercado de Valores (IIMV).

Regulators of Securities Markets of Central America and the Dominican Republic met in order to discuss the creation of a Council of Securities Regulators for Central America and

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Dominican Republic. The first meeting was on September, 2006 and the second one was on February 16, 2007.

Also in the last meeting, the necessity of a consolidate supervision of the financial groups that operate in different countries of the area and the development of an action plan to integrate de securities markets of the region was discussed.

### **Assessment International Monetary Fund (IMF), FATF and IOSCO (International Organization of Securities Commissions) and the implementation of the IOSCO Objectives and Principles of Securities Regulation.**

During the month of May 2005, was carried out the assessment of the International Monetary Fund about the fulfillment of the principles of the Financial Action Task Force (FATF)-AML/CFT (Anti-money laundering and combating the financing of terrorism) and the implementation of the Objectives and Principles of Securities Regulation of IOSCO (International Organization of Securities Commissions)

The assessment included two parts:

1. Assessment about the fulfillment of the Financial Action Task Force principles. It included the verification of the observance of the Forty Recommendations of Money Laundering and the Nine Special Recommendations on Terrorist Financing.
  - 1.1 The Anti-Money Laundering/Combating Terrorist Financing (AML/CFT) Methodology 2004, including the assessment criteria, is designed to guide the assessment of a country's compliance with the international AML/CFT standards as contained in the FATF Forty Recommendations 2003 and the FATF Nine Special Recommendations on Terrorist Financing 2001 (referred to jointly as the FATF Recommendations).
2. International Organization of Securities Commissions (IOSCO) and International Monetary Fund (IMF)



This assessment included the observance and or application of the IOSCO's principles, and it covered all the areas of the CNV.

The assessment used the 30 principles of securities regulation, which are based upon three objectives of securities regulation:

1. The protection of investors
2. Ensuring that markets are, fair, efficient and transparent:
3. The reduction of systemic risk

Also the principles are grouped into eight categories:

1. Principles relating to the regulator
2. Principles for Self Regulation
3. Principles for the enforcement of securities regulation
4. Principles for cooperation in regulation
5. Principles for issuers
6. Principles for collective investment schemes
7. Principles for market intermediaries
8. Principles for the secondary markets

The coordinators of this assessment were Mrs. Rosaura Gonzalez Marcos, Director of Legal Department, in the areas of the regulator (Administrative matters), Issuers (Department of securities registration) and Enforcement and Fiscalización, and Mr. Oliver Muñoz, ex legal advisor, in the areas of intermediaries (Department of markets), investment companies (Securities registration) and secondary markets.

### **Recommended Action Plan**

**There has been substantive progress regarding the regulation of the securities market in Panama, but further strengthening is recommended** in order to meet the IOSCO standards. The CNV's regulatory framework has been built up to (i) ensure protection for investors; (ii) ensure fair, efficient, and transparent markets; and (iii) reduce systemic risk, in accordance with international standards.

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### Summary Table of Compliance with IOSCO Principles

Assessment Grade	Principles Grouped by Assessment Grade	
	Count	List
Implemented	6	4, 6, 14, 19, 21, 27
Broadly Implemented	9	1, 5, 8, 9, 15, 16, 17, 18, 25
Partly Implemented	10	2, 3, 7, 10, 12, 20, 23, 28, 29
Not Implemented	5	11, 13, 22, 24, 26
Not applicable		

For more information access the Detailed Assessments of Observance of Standards and Codes for Banking Supervision, Insurance Supervision, and Securities Regulation in <http://www.imf.org/external/pubs/cat/longres.cfm?sk=20450.0>

#### The National Securities Commission

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April, 16th 2007