

VT 6 Draft Report

VERIFICATION TEAM VI

Report on the application of *Comisión Nacional de Valores de Panamá (CNV)* to the IOSCO Multilateral MOU

I - Introduction

Applicant

On November 6, 2003, the CNV (Panama) filed its application to become a signatory to the IOSCO Multilateral MOU (“MMOU”). On January 30, 2004, the complete application was forwarded to Verification Team VI consisting of the US-SEC, Swiss SFBC, Sri-Lanka SEC and Portuguese CMVM. The VT6 has forwarded the first set of additional questions to the CNV on April 2004, and received the response on June 24, 2004. The CNV’s application and response to the additional questions included the Appendix B questionnaire and an appendix with the applicable laws, regulations and rules.

List of Supporting Material Presented by the Applicant

1. *Acuerdo 4-1998 - Acuerdo Marco para la celebracion y ejecucion de acuerdos o entendimientos con entes supervisors extranjeros*, Superintendencia de Bancos, regulating the agreements to be made with foreign counterparties, for bank supervision and exchange of information.
2. *Acuerdo 4-2001, Prevención de Lavado de Dinero*, Comisión Nacional de Valores, establishing rules of conduct for the financial intermediaries in order to prevent money laundering.
3. *Acuerdo 5-2003, Normas de Conducta*, Comisión Nacional de Valores, regulating the transaction records and fees.
4. *Decreto Ley 1 de 1999, Ley del Mercado de Valores*, establishment of CNV and legal framework of the securities market (amended by Laws 42-2000, 29-2001, 11-2002 and 45-2003).
5. *Decreto Ley 9 de 1998, Ley Bancaria*, establishment of Superintendencia de Bancos and reform of the bank legal framework
6. *Decreto Ejecutivo 124 de 2002, Normas de transparencia para la gestion publica*, develops Ley 6-2002 on transparency rules.
7. *Ley 6 de 2002, Normas de transparencia para la gestion publica*, establishes the transparency rules for public administration.
8. *Ley 7 de 1999, Tratado de Asistencia Legal Mutua (TALM) España*, Agreement on Legal Assistance and Judicial Cooperation signed with Spain.
9. *Ley 20 de 1991, Tratado de Asistencia Legal Mutua (TALM) EE.UU*, Agreement on Legal Assistance and Judicial Cooperation signed with the United States of America

10. *Ley 20 de 1993, Convencion de las Naciones Unidas contra el Trafico ilicito de estupefacientes y sustancias sicotropicas*, the United Nations Convention against illicit drug dealing.
11. *Ley 22 de 2002, Represion de la financiacion del terrorismo*, International Agreement against terrorism financing.
12. *Ley 32 de 1927, Ley de Sociedades Anónimas*, Company Law
13. *Ley 39 de 1995, Tratado de Asistencia Legal Mutua (TALM) Centroamerica*, Agreement on Legal Assistance and Judicial Cooperation signed with the Republics of Central America
14. *Ley 42 de 2000, Ley de Prevención de Lavado de Dinero*, law establishing rules to prevent money laundering.
15. *Ley 45 de 2003, Delitos Financieros*, law amending DL 1 of 1999, on financial crimes.
16. *MoU de 20 SET 2002*, Cooperation Agreement between CNV (Panama) and SV (El Salvador)

II - Verification Team VI - Contact Information¹

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III - Recommendation

After reviewing the questionnaire responses, the response to the additional questions and the supporting material, Verification Team VI concludes that the CNV is not able to comply with all the provisions of the MMoU.

¹ The Sri Lanka Securities and Exchange Commission did not participate in the verification of this application.

VT6's conclusion that the CNV is not able to comply with all the provisions of the IOSCO MMoU is based on the following reasons:

- Although the law requires specific records to be maintained (according to answers to question 6) the CNV is not able to fully comply with the MMoU provision cited in question 1, since it has not the ability to obtain information and records pertaining to bank accounts, due to bank secrecy law as explained in question 1a).
- CNV is not able to fully comply with the MMoU provision cited in question 3, since it has not the ability to share information and records pertaining to bank accounts with foreign authorities due to bank secrecy law as explained. Nor may the CNV disclose information on a registered issuer or a licensed person obtained in connection with an inspection or investigation.
- Concerning questions 3 and 5, the CNV cannot initiate an investigation or inspection solely on behalf of a foreign authority but only for the purposes of its own investigations. The CNV must have an independent interest in a matter. CNV recognizes this to be an important constraint on Decree Law 1 of 1999.
- CNV has not full ability to provide to foreign authorities information and records, in response to requests concerning the purposes referred to in Question 4 a) to 4d) of the Questionnaire, since information obtained in the course of an investigation or inspection is considered as restricted.
- CNV is not able to fully comply with the MMoU provisions cited in question 7) since it is not empowered to receive sworn statements in response to a request made by a foreign authority
- CNV is not able to fully comply with the MMoU provisions cited in question 8) since CNV has no power to obtain bank records and share non-public information.

IV – Questionnaire Response Evaluation

1. Please identify and explain the general or specific provisions of your laws, rules and regulations (and provide copies of these provisions) that enable you, or a separate governmental body in your jurisdiction, to obtain:

(a) contemporaneous records sufficient to reconstruct all securities and derivatives transactions, including records of all funds and assets transferred into and out of bank and brokerage accounts relating to those transactions.

Applicant's Response

The CNV has the power to obtain the records of transactions in securities and derivatives necessary to reconstruct a securities or derivatives transaction, provided that they are under the control of persons directly regulated by the Commission, i.e. securities firms, investment managers, investment advisers, securities exchanges and central securities offices in the Republic

of Panama, pursuant to Decree Law 1 of July 8, 1999, which creates the CNV and regulates the securities market in the Republic of Panama.

According to article 23 of Decree Law 1 of 1999, banking entities are allowed to deal with securities once they get a broker-dealer license from CNV. CNV has jurisdiction over branches of foreign financial intermediaries as well as of foreign banks established in Panama, as long as they have a license granted by the CNV in order to deal with securities.

Under article 32 of Decree Law 1 of 1999, banking entities with an international banking license granted by the Superintendency of Banks may obtain a broker-dealer license to deal with securities and carry out business from Panama, that is to say, not within Panamanian territory.

The reason for this limitation relies on the features of their banking license.

1) Considering Article 32, will CNV have any control on those transactions and obtain records and other information needed, if a foreign authority starts an investigation?

Article 33 of Decree Law 1 of July 8, 1999, states that securities firms and securities brokers must keep their books, records and other transaction documents in the form prescribed by the Commission.

By Order 5-2003 of June 25, 2003², the CNV has regulated all matters relating to the standards of conduct and the recording of transactions applicable to securities exchanges, securities firms and their brokers.

Article 9 of the above Order provides that securities firms must maintain a record of transactions broken down by broker in strict chronological order of receipt of the corresponding orders. For these purposes, the entities must have the means necessary to know the precise moment (date and time) of receipt of the orders, as well as of the transfer orders for the securities represented by such orders, through annotations on the account or any certificates that they receive or execute on their own behalf or on behalf of third persons.

2) Does the CNV request this information in connection with an inspection or investigation?

As to article 11, it states that the order file and the transaction record must be available to the CNV at all times and that the Commission may also request that the information contained in such files and records be submitted in writing or electronically. Failure to comply with this requirement subjects the securities firm to a fine of B/.200.00.

3) Is CNV able to obtain records from or related to non-regulated entities, e.g. individuals/entities engaged in securities activity in Panama, for instance boiler rooms, even though the investors in question are non-resident of the country?

²Article 27 of Order 5-2003 provides that it will enter into force 12 months from its publication in the *Gaceta Oficial*, which took place on July 3, 2003 (*Gaceta Oficial* No. 24836), and its compliance will be effective six months later – January 2005.

CNV is able to compel financial intermediaries to reconstruct any securities transaction and duly authorized to request and obtain records from intermediaries in accordance with article 264 of Decree Law 1-1999, during the course of an ordinary inspection.

The legal powers that permit the Commission to effectively exercise supervision and oversight of compliance with the above-mentioned obligations arise from article 263 and 264 of the Securities Law (Decree law 1 of 1999) (among others).

In the same way, as regards the records of transactions carried out through a securities firm or an investment manager, the Commission has the power to inspect and examine all of the documentation and information necessary to reconstruct the transactions present in such firms, in the Central Securities Office or in the Securities Exchange.

However, the inspection power placed by the law on the Commission does **not** extend to other entities that may be associated with a securities or derivatives transaction, as for example a bank. Article 59 (Information on Liabilities) of the banking law (Decree Law 9 of February 26, 1998) states that *"the Office of the Superintendent may obtain from each bank consolidated information regarding its liabilities that make it possible to establish its liquidity and to identify unusual geographic concentrations or distributions of deposits that expose the bank to excessive risks. The Office of the Superintendent may not request the identify of the banks' depositors except when the deposits guarantee assets that are subject to analysis or supervision by the Office of the Superintendent."*

Therefore CNV does not have the independent ability to obtain information concerning bank account movements on securities. CNV may request information concerning the client, however, only through the *Superintendencia de Bancos*, which has the power to obtain those records in the course of its inspections and functions. The information obtained is classified and subject to secrecy by article 84 of the Bank Law, unless in the course of a criminal investigation.

Article 264 of Decree Law 1-1999 provides that the CNV may request assistance to the *Superintendencia de Bancos* during the course of an inspection made to a banking entity which also holds a license issued by the CNV. CNV and *Superintendencia de Bancos* have not signed any Agreement on Cooperation and Exchange of Information (or MOU) in light of this provision.

4) How is it possible for the Superintendencia to obtain reserved information and share it with CNV considering the law stipulates that it is subject to secrecy and there is no MoU between SdB and CNV?

Also pertinent is article 85 of the Banking Law (Decree Law 9 of 1998), pursuant to which *"Banks shall disclose information regarding their customers and their transactions only with the consent of said customers, except in response to the formal request of a competent authority in accordance with the law."*

It is VT6's understanding that the CNV does not have the power to obtain bank records which would enable CNV to reconstruct all securities and derivatives transactions, as required by Paragraph 7b)ii of the MMoU.

After reviewing the answer given and the supporting documentation, it is VT 6's understanding that CNV is not able to comply with the MMoU provision cited in question 1a).

1. (b) records for securities and derivatives transactions that identify:

(1) the client:

- i. name of the account holder; and***
- ii. person authorized to transact business;***
- (2) the amount purchased or sold;***
- (3) the time of the transaction;***
- (4) the price of the transaction; and***
- (5) the individual and the bank or broker and brokerage house that handled the transaction.***

Applicant's Response

The information in point (1) may be requested from the customers and recorded by the securities firm at the time agreements with the client are concluded, pursuant to the provisions of article 5 of CNV Order No. 4 of 2001, "*Establishing the standards of conduct that are to be observed by securities exchanges, central securities offices, securities firms, securities dealers and investment managers to prevent the crime of money laundering within the meaning of Law 42 of October 2, 2000*".

This obligation to obtain identification of the client is further contained in item 1 of article 11 (relating to the identification of customers) of Order 5-2003, which states that, when the customer is a natural person, brokers must require the presentation of an official Panamanian identity document or a confirmed copy of the person's passport or an identification document valid in the country of origin that includes the holder's photograph.

In addition, when a customer is a legal person, in accordance with item 2 of article 11, brokers must require documentation to establish the existence of the company and who represents it, its name, address, duration and date of establishment and the powers of attorney of the persons acting in its name, which must be evidenced in one of the following forms: (a) presentation of the original certificate issued by the Public Records Office; (b) result of a search carried out in the Public Records Office, with the signature of the official and the date and time it was performed; and (c) access to the database of the Public Records Office and a printout of the required information.

Persons authorized to trade in a securities account may be identified in the account agreement. Under Acuerdo 4-2001, now broadened and reinforced by Acuerdo 5-2003, CNV is authorized to request information about real beneficial owners of a securities account.

Finally, it is important to point out that, according to the provisions of item 3 of the above-mentioned article 11, "if there are indications or a certainty that the customers whose identification is required are not acting on their own behalf, the firms must obtain accurate information in order to ascertain the identify of the persons on whose behalf they are acting."

As to points (2) to (5), the recording of this information is required in the Standards of Conduct of Securities Firms, in accordance with Order 5-2003, article 6 (Content of Orders), article 8 (Standards Relative to the Recording of Orders), article 9 (Recording of Transactions) and article 10 (Standards Common to the Recording of Orders and the Recording of Transactions) being relevant to this subject.

This information should also be available at all times to the CNV, which may request it in connection with an inspection or an administrative investigation ordered pursuant to the provisions of article 263 of Decree Law 1 of 1999.

Moreover, article 14 of Order 5 of 2003 reiterates the obligations of brokers to identify their customers correctly. In this regard, the standard provides that, when the customers are not institutional, information should be requested on their investment experience, objectives, financial capacity and risk preference.

Verification's Team Assessment

It is VT6's understanding that the CNV is able to comply with the MMoU provision cited in question 1b).

1. (c) information located in your jurisdiction identifying persons who beneficially own or control non-natural persons organized in your jurisdiction.

Applicant's Response

Issuers and intermediaries are required to provide information regarding its controlling shareholders, in light of the definition of control embedded in article 1 of Decree Law 1 of 1999, meaning that only shareholders controlling 25% or more of the share capital thus having voting rights are considered as being controlling shareholders.

5) What is the CNV's power to obtain the identity of non-controlling shareholders? Please provide the Law or Regulation stipulating the obligation of share owners of listed companies to inform CNV concerning direct or indirect acquisitions of share capital.

On the other hand, according to article 19(V)(A) of Acuerdo 6-2000 (which regulates Securities Issuance Registration Proceedings), issuers are obliged to disclose transactions with related parties. For the purposes of this provision, related parties are the following:

- Any director, officer, executive or manager of the issuer (applying for registry of a securities issuance) or its controller entity.
- Any person designated or nominated as director, officer, executive or manager of the issuer (applying for registry of a securities issuance) or its controller entity.
- Any beneficial owner of 5% or more of the share capital issued and standing of the issuer or its controller entity.
- The spouse and individuals related (family) of any of those persons indicated in the foregoing paragraphs.
- Any corporation or entity having common officers or directors with the issuer or its controller entity.
- Any corporation or entity in which a director, officer, executive or manager of the issuer owns 20% or more of the share capital.
- Any corporation in which the issuer or its controlling entity owns 20% or more of the share capital.

In addition, Article 19(V)(B) provides that the issuer shall describe any deal or transaction, during the last fiscal year, prior to the application of registration, in which the issuer, its controller and related parties have direct or indirect interest, with indication of their name, relationship with the issuer, the nature of the deal or transaction and the amount.

As regards a legal person constituted as a corporation (governed by the provisions of Law 32 of February 25, 1927), in principle there is no general record of the actual owners of such legal persons or of the persons who exercise control over the legal persons.

6) While there is no general record, what are the CNV's powers to obtain information on beneficial owners – both controlling and non-controlling – of corporations, including those that may not be issuers?

No single authority in Panama keeps a general registry of owners. The CNV and the Panamanian Public Registry do not keep these records. However, as mentioned earlier, the CNV is able to obtain information concerning the identity of controlling shareholders of both intermediaries and issuers.

As regards businesses subject to special regulations (banks, insurance companies, securities firms), special laws provide for the obligation to identify the makeup of the shareholdings of the persons engaged in these activities.³

³The legal regime of the securities market (Decree Law 1 of 1999) contains article 29 (Shareholders of Securities Firms): The shares of securities firms shall be issued as registered shares. Securities firms shall inform the Commission of the names of the effective owners of the shares that have control of the securities firm and shall obtain the prior consent of the Commission to make any shareholding change that affects the control of the securities firm.

In the securities market, all information related to final owners (Decree Law 1 of 1999 used the term "effective owner") or to the persons who exercise control over legal persons established in the Republic of Panama who maintain investment accounts in securities firms authorized by the CNV must be requested and duly recorded at the time the contracts to open accounts are concluded, in accordance with the provisions of Order 4 of 2001, as indicated in the previous answer.

Law 25 of June 12th, 1995, regulates Private Interest Foundations (PIF). These are legal entities that have a legal structure very similar to a trust; however, they are considered juridical persons for all legal purposes. They are non-profit entities, however, they are authorized to make business but not in a habitual manner, neither as a commercial entity.

CNV may indeed obtain information about the beneficial owners of PIF, in accordance with Acuerdo 4-2001.

Verification's Team Assessment

It is VT6's understanding that the CNV is not able to comply with the MMoU provision cited in question 1c).

2. Please identify and explain the general and specific provisions contained in your laws, regulations and other standards (and submit a copy thereof) empowering this agency, or another government agency in your jurisdiction, to take a statement from a person or, when this is permitted, to take a statement under oath.

Applicant's Response

Article 263 of Decree Law 1 of 1999, as amended by Law 45 of June 4, 2003 (better known as the "Financial Crimes Law") states that the CNV is empowered to compel any person, when necessary and relevant in connection with an administrative investigation, to submit documents or information or to make statements under oath to the Commission (the text of the provision is reproduced in the answer to question 1 above). The CNV may compel any person to submit a sworn statement

7) Does this mean only in case of a violation of Panama's securities laws? Is it possible for CNV to take voluntary statements on behalf of a foreign authority, even if there is no direct interest from CNV?

The legal regime of banks (Decree Law 9 of 1998) contains this obligation in article 71 (Prohibition Against Operating Without Prior Authorization) and as a power of the Superintendent (article 17, item 5).

The legal regime of insurance companies (Law 59 of July 29, 1996) contains this obligation in article 15 (documents that must be attached to an application for authorization to operate as an insurance company), item 3.

before the CNV, whenever the CNV has sufficient reasons to believe that a violation of securities law has or may have occurred.

Likewise, within the context of the inspecting and monitoring regulated subjects, the Commission may issue to the persons it regulates notifications to appear to make a statement (article 264 on ordinary inspections, the text reproduced in the answer to question 1 above).

Also CNV may obtain voluntary statements from individuals who are not directly regulated by the CNV. The Commission usually does so during the course of initial or preliminary investigations, before initiating a formal investigation under article 263.

In the area of criminal law, the Prosecuting Attorney has like powers to compel any person to make sworn statements in investigations related to the commission of any criminal conduct associated with the securities market, including: insider trading (article 393-E of the Criminal Code); failure or refusal to provide information for the purpose of concealing situations of illiquidity (article 393-F of the Criminal Code); and manipulation of the market (article 393-G of the Criminal Code).

8) Are the powers of the Prosecuting Attorney relevant? Does this mean that if a securities authority needs to refer its matter to its domestic criminal authorities, then statements taken by the CNV cannot be used and instead the Prosecuting Attorney needs to take the statements?

Verification's Team Assessment

It is VT6's understanding that the CNV is able to comply with the MMoU provision cited in question 2).

3. Please identify and provide an explanation of the general and specific provisions contained in your laws, regulations and other standards (and submit a copy thereof) empowering this agency to submit to other foreign authorities:

- a) The information referred to in paragraph 1(a) above;**
- b) The information referred to in paragraph 1(b) above;**
- c) The information referred to in paragraph 1(c) above;**
- d) The information obtained in the exercise of the powers described in question 2 above; and**
- e) The information and documentation found in the records.**

Applicant's Response

There is no express provision in Decree Law 1 of 1999 that authorizes the CNV to submit information to or share information with foreign regulatory entities regarding the up-to-date records that are sufficient to reconstruct all securities and derivatives transactions, including the

record of all funds and assets deposited in or withdrawn from a lending entity or a company or a securities office that are related to said transactions.

In the local legal environment and in accordance with item 2) of article 267 of Decree Law 1 of 1999, information and documents that have been obtained by the Commission in an investigation, inspection or procedure to produce⁴ relative to a violation of the Decree Law or the regulations issued pursuant thereto are confidential and subject to restricted access. Nevertheless, the Commission may submit said information and documents to courts in a class action or to the Public Prosecutor if there are sound reasons to believe that a violation of the criminal law has taken place, but the institutions that receive said information or documents are required to keep them confidential.

9) In the course of an investigation and taking the assumption that reserved information can only be obtained through a court order, will a foreign authority have access to it or is that information under judicial confidentiality?

This same provision states further on that the Commission shall take the necessary measures to maintain the confidentiality of all information and documents that must be kept confidential in accordance with said article and that it shall reveal the information it is required to reveal by a competent authority of the Republic of Panama pursuant to the law.

In accordance with this provision, article 209 of Decree Law 1 of 1999 provides for penalties against those who fail to observe this confidentiality obligation. . In the event said person is a Commissioner or an employee of the Commission, he or she shall be immediately removed from his or her position.

Other alternative measures, but in the judicial sphere, would be possible, but would be based on the assumption that the request for assistance comes from a foreign court. The following laws would be relevant in this regard:

10) In order to obtain bank records to reconstruct securities transactions is it necessary that the request of assistance comes from a foreign court, or is it necessary to have a signed Judicial Protocol?

- Law No. 10 of June 18, 1991, "approving the Additional Protocol to the Interamerican Convention on Letters Rogatory, signed in Montevideo, Uruguay, on May 8, 1979";
- Law No. 20 of July 22, 1991, "approving the Treaty Between the Republic of Panama and the United States of America on Mutual Legal Assistance in Criminal Matters, signed in Panama on April 11, 1991";
- Law 11 of July 7, 1994, approving the Mutual Legal Assistance Treaty Between Panama and the Government of the United Kingdom of Great Britain and Northern Ireland related to drug trafficking.
- Law 39 of July 13, 1995, approving the Treaty on Mutual Legal Assistance in Criminal Matters between Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua and Panama.

⁴Article 265 of the Decree Law of 1999 on Procedures to Produce was repealed by Law 45 of 2003.

- Law 42 of July 14, 1995, approving the Agreement on Mutual Legal Assistance and Cooperation between Panama and Colombia.
- Law 40 of June 30, 1998, approving the Treaty on Mutual Legal Assistance Between Panama and Mexico (in criminal matters). G.O. 23581 of July 8, 1998.
- Law No. 7 of May 3, 1999, "approving in all parts the agreement between the Republic of Panama and the Kingdom of Spain on Legal Assistance and Cooperation in Criminal Matters."
- Law 14 of March 13, 2001, approving the Statute of Rome of the International Criminal Court.
- Law 22 of May 9, 2002, approving in all parts the International Agreement of the United Nations for the Suppression of the Financing of Terrorism.

These types of Agreements (so called “Mutual Legal Assistance Treaties” - MLATs) are basically for the purposes of criminal investigations. Therefore, unless the Agreement provides otherwise, the supervisory foreign authority may obtain the needed information only through a petition made by the Office of the Public Prosecutor.

11) Could the CNV obtain the assistance of the Public Prosecutor on behalf of a foreign authority so that the foreign authority can obtain the information described in the MMoU? If so, what is the process for doing so and what are the conditions, if any?

CNV cannot initiate an investigation or inspection solely on behalf of a foreign authority, but only for the purposes of its own investigations. CNV recognizes this to be an important constraint on Decree Law 1 of 1999. The Commission informed the VT6 that it always provides cooperation and share information with foreign authorities to the extent permitted by Decree Law 1 of 1999. For instance, CNV has informed VT6 that it has provided important information concerning public corporate records and also has obtained voluntary information from persons willing to cooperate in an ongoing investigation initiated by a foreign entity. Nonetheless, CNV cannot compel any person to submit documents or statements unwillingly, but only during the course of one of its investigations.

12) If the CNV already has its own investigation and a foreign authority requests documents gathered in the CNV's investigation, can the CNV share them to the foreign authority? Or does Article 267 of Decree Law 1 prevent this sharing?

In accordance with article 267 of Decree Law 1 of 1999, information that has been obtained by the Commission in an investigation or inspection relating to a violation of that decree law or the regulations issued pursuant thereto is confidential in nature.

Consequently, all information thus obtained related to the customer who holds the account, the amount bought or sold, the time of the transaction, the price of the transaction and the physical person, banking institution or intermediary who participated in the transaction may not be provided to a foreign authority. It can only be provided to a foreign authority through the corresponding judicial channels.

The information referred to in 3c) may be requested by the CNV, the Office of the Public Prosecutor or the Judicial Branch in the exercise of their respective areas of competence.

The information present in the public records or files of an issuer of securities registered with the Commission or of a natural or legal person having a license issued by the Commission may be disclosed to foreign authorities.

The CNV is not authorized to disclose information that deals with industrial or commercial secrets, such as patents, formulas etc., or information on a business or its finances the confidentiality of which is protected by law and is not required to be made public. Nor may the CNV disclose information on a registered issuer or a licensed person obtained in connection with an inspection or investigation.

13) Does any of the information described in the MMoU fall under “industrial or commercial secrets”?

Verification’s Team Assessment

It is the VT6’s understanding that the CNV is not able to fully comply with the MMoU provision cited in question 3, since it has not the ability to share information and records pertaining to bank accounts with foreign authorities due to bank secrecy law as explained in question 1a) above, as well as it has not the ability to share information and records obtained in the exercise of the powers described in question 2 above, with foreign authorities due to the secrecy law as explained before.

- 4. Please identify and explain the general and specific provisions contained in your laws, regulations and other standards (and provide a copy thereof) that enable the agency to provide the information and documents referred in question 3 above to other foreign authorities as a response to a request relating to the following:**
- a) Privileged information, price manipulation, information relating to a false or misleading practice or any other fraudulent or manipulatory practice regarding securities or derivatives, including inducive practices, management of investment funds and customer orders.*
 - b) Registration, issuance, offer or sale of securities and derivatives and the information requirements related thereto.*
 - c) intermediaries, including investment and trading advisers which require authorization or registration, collective investment institutions, securities companies and agencies and entities empowered to maintain the records of account annotations.*
 - d) Markets, securities exchanges and liquidation and compensation companies.*

Applicant's Response

Decree Law 1 of 1999 (i.e. the Securities Law) does not contain any standards that expressly empowers the Commission to provide the information referred to in question 3 above to other foreign authorities in response to a specific request. On the contrary, the provisions of Decree Law 1 have already been cited as maintaining the confidentiality of and restricting access to information and documentation obtained during investigations and inspections. Therefore, the CNV may provide to or share with foreign authorities only that information that is not confidential in nature and that is present in its public files.

It should be noted that, pursuant to article 22 of the above-referenced decree law, the Commission may conclude agreements with public or private entities, domestic or foreign, for the purpose of performing its functions. This provision has served as the legal basis for concluding interagency agreements and memoranda of understanding with foreign regulatory authorities (such as is the case with the memoranda of understanding recently signed with the Republic of El Salvador and the Dominican Republic on September 20, 2002, and August 5, 2003, respectively). However, the CNV may not depart from the literal meaning and the spirit of the provisions contained in Decree Law 1 of 1999 when signing legal instruments of this kind.

14) Please clarify that even if there is an MOU, the CNV is prevented from sharing information with foreign authorities under Article 267 of Decree Law 1.

Relevant to this subject are the new legal provisions adopted in Law 45 of 2003, which add articles to the Criminal Code (financial crimes) and raise to the level of a crime conduct such as: i) destruction, hiding or falsification of accounting records and information, ii) improper use of privileged information and iii) manipulation of registered securities.

By virtue of the above, the legal assistance mechanisms referred to in the response to question 3 a) above could be used if the necessary legal conditions were met.

All documentation related to the process of registering a security or derivative, their issuance and the sales procedure⁵ is information accessible to the public in the public reference files of the issuer, and the Commission could share it with foreign authorities, along with the periodic reports that the issuers are required to submit to the Commission.

15) What information would be non-public? Is the basis for being unable to share Article 267?

However VT6 feels that if any of the above information is considered as non-public, CNV will not be able to share it with foreign counterparties.

To the extent that the information on such intermediaries, advisers and collective investment

16) Can the information be shared if the foreign authority seeks it for its investigation? What specific information or documents have restricted access?

⁵Provided that, with regard to specific information, such information does not fall into any of the categories of confidential information referred to in article 267 of Decree Law 1 of 1999, in particular the provisions of item 1.

vehicles is not information obtained in the course of inspections or investigations, such information or documents may be shared with foreign authorities. For example, all the information and documents submitted during the license application procedure could be shared, except for any specific information or document considered to enjoy restricted access.

To the extent that the information on markets, securities exchanges and liquidation and compensation companies is not information obtained in the course of inspections or investigations, such information or documents may be shared with foreign authorities. For example, all the information and documents submitted during the license application procedure could be shared, except for any specific information or document considered to enjoy restricted access.

Verification's Team Assessment

It is the VT6's understanding that the CNV is not able to fully comply with the MMoU provisions cited in question 4), since it has not the ability to share information and records referred in question 3) obtained in the exercise of the CNV powers described above, with foreign authorities due to the secrecy law as explained before.

5. Please identify and explain the general and specific provisions contained in your laws, regulations and other standards (and supply a copy thereof) which enable this agency to provide the cooperation referred to in paragraph 4 above to foreign authorities, regarding of whether there is a particular interest in the matter.

Applicant's Response

We refer to the answer to questions 3 and 4 above. It must be repeated that the CNV is empowered to provide to foreign authorities only information of a public nature, pursuant to the provisions of article 267 of Decree Law 1 of 1999.

However, in the criminal area, the Office of the Public Prosecutor has the power to carry out exchanges of information in response to applications for international assistance requested by foreign authorities for the purpose of criminal conduct covered by mutual legal assistance treaties (TALM) signed by Panama with said countries or those which, like Panama, have signed the Vienna Convention of 1988 (ratified by Law 20 of 1993).

17) Would CNV deny providing the assistance requested by a foreign counterpart based on the fact that a violation of the laws and regulations of Panama has not occurred?

Even if the CNV can assist a foreign authority because a violation of the laws and regulations of Panama has occurred, would the CNV be prevented from doing so by Article 267?

Verification's Team Assessment

6. *Please identify and explain the general and specific provisions contained in your laws, regulations and other standards (and provide a copy thereof) that require the following information and documentation to be maintained (include a mention of the period for which said information and documentation must be maintained):*
- a) *The information referred to in paragraph 1(a) above.*
 - b) *The information referred to in paragraph 1(b) above.*
 - c) *The information referred to in paragraph 1(c) above.*

Applicant's Response

At the legislative level, Decree Law 1 of 1999 provides in general that intermediaries keep their books and records in accordance with the rules handed down for this purpose by the Commission (article 33, 37 and 43). At the regulatory level, articles 3 and 12 of Order 4-2001 of February 19, 2001, which adopts standards of conduct applicable to the subjects regulated by the CNV for the purpose of preventing money laundering, provide that documents regarding transactions and the identify of customers must be maintained for a minimum of five years.

For its part, item 5 of article 11 of Order 5-2003 of June 25, 2003⁶, provides that the entities (meaning securities firms, investment advisers and other intermediaries authorized to carry on business related to the securities market) must maintain, from the time they establish relations with the customer and for five years after such relations end, copies of the documents required for the identification of the customers.

Verification's Team Assessment

It is VT6's understanding that the CNV is able to comply with the MMoU provision cited in question 6).

⁶ Article 27 of Order 5-2003 provides that it will enter into force 12 months from its publication in the *Gaceta Oficial*, which took place on July 3, 2003 (*Gaceta Oficial* No. 24836), and its compliance will be effective six months later – January 2005

7. Please identify and explain the laws, regulations or other domestic standards (and provide copies thereof) that provide for the secrecy or blockage of the following documentation or information when it is obtained on behalf of foreign authorities or for purposes of being provided to them:

- a) The information referred to in paragraph 1(a) above.*
- b) Information referred in to paragraph 1(b) above.*
- c) Information referred to in paragraph 1(c) above.*
- d) Information referred to in answer 2 above.*
- e) Information referred to in paragraph 3(e) above.*

Applicant's Response

Article 267 of Decree Law 1 of 1999 establishes the general rule applicable with regard to the confidentiality of information.

The above provision provides that any information and any document submitted to the Commission or obtained by it will be of a public character and may be examined by the public, unless:

- (1) It concerns industrial or commercial secrets, such as patents, formulas etc., or information on the business or its finances the confidentiality of which is protected by law and which is not required to be made public in order to comply with the purposes of this decree law.
- (2) It has been obtained by the Commission in an investigation, inspection or procedure to produce related to a violation of this decree law or the regulations issued pursuant thereto. However, the Commission may submit such information and documents to courts in a class action proceeding or to the Office of the Public Prosecutor if there are sound reasons to believe that a violation of criminal law has occurred, but the institutions that receive said information or documents will be required to keep them confidential.
- (3) At the request of an interested party, the Commission has agreed to keep it confidential because there are sound reasons to do so and because divulging such information or document is not essential to protect the interests of the investing public.
- (4) It concerns information or documents that the Commission orders must be kept confidential.

The Commission will take the necessary measures to maintain the confidentiality of any information and any document that must be kept confidential in accordance with this article. The Commission must reveal information requested of it by a competent authority of the Republic of Panama in accordance with the law. Also CNV refers to the secrecy clauses contained in articles 84 and 85 of the Banking Law, which is translated at the end of this report.

Consequently, this information is considered confidential in nature if it is obtained by the Commission in connection with an inspection or investigation and may be supplied by the CNV only at the request of the Office of the Public Prosecutor or the judicial branch.

The CNV is empowered to take testimony under oath from persons only within the context of an investigation it has ordered. Consequently, the CNV is not empowered to take sworn statements in response to a request made by a foreign authority.

In the performance of its inspection functions, it may require the presence of any person it regulates in order to take a statement.

Answering to question 7e) The CNV stated that it is empowered to provide to other entities, including foreign entities, information of a public nature that is present in its records. This is the case, for example, with financial reports provided to the Commission by a registered securities issuer or an intermediary holding a license issued by the CNV. Or it may certify if a certain natural or legal person is an issuer of securities registered with the CNV or has a license issued by the CNV.

Within the framework of international cooperation, the CNV could provide foreign authorities with public information available in other public entities, such as the records of the Public Registry of the Republic of Panama. In this context, the CNV could provide, among other things, the following information: the date of registration and current status of a legal person and the names of the directors and officers that appear in the Public Registry.

It should also be noted that the final part of article 89 of the Commercial Code of the Republic of Panama provides as follows: *"No authority is authorized to require a businessman to provide copies or reproduction of his books (or a part thereof), correspondence or other documents in his possession. When it take steps to obtain any data in this regard, the corresponding procedure to produce shall be ordered. A businessman who supplies a copy or reproductions of the contents of his books, correspondence or other documents to be used in a foreign lawsuit in compliance with the order of an authority that is not an authority of the Republic of Panama shall be fined no more than B/.100.00."*

As seen, the above provision poses an obstacle to the provision of information or documentation when it is being obtained on behalf of foreign authorities or for the purpose of providing it to such authorities.

18) Please clarify whether we can conclude that information cannot be shared with a foreign authority where the foreign authority is investigating a violation of its laws.

Verification's Team Assessment

It is VT6's understanding that the CNV is not able to comply with the MMoU provisions cited in question 7), since CNV is not able to obtain information on behalf of a foreign authority.

8. *Please identify and explain the general and specific provisions (and supply a copy thereof) contained in your laws, regulations and other standards that may restrict or limit under the following assumptions the use by foreign authorities of information and documents supplied by virtue of paragraphs 1(a)-(c), 2 and 3(e) above.*

a) When it concerns assuring compliance (including the investigation of possible noncompliance) with the laws and regulations with reference to:

a. 4(a) above

b. 4(b) above

c. 4(c) above

d. 4(d) above.

b) When it concerns a civil or administrative procedure, when it concerns cooperation in supervisory and oversight activities carried out by self-regulated bodies or when it concerns assistance in a criminal proceeding.

Applicant's Response

Provisions described in Chapter II of Title III of Decree Law 9 of 1998 (commonly referred to as Panamanian Banking Law) introduce the concept of “consolidated supervision”, in light of which the Superintendency of Banks is authorized to share information with foreign regulatory authorities of foreign banks established in Panama (articles 27, 28, 29, 30 and 31). To the contrary, Panamanian Securities Law does not include this type of provision. These provisions have been developed by the Office of the Superintendent of Banks through Order 4-98 of October 7, 1998.

CNV is authorized to share information with foreign authorities upon the basis of a bilateral MOU, for example, but only to the extent permitted by Panamanian Securities Law.

19) What kind of information can the CNV share and what uses can the foreign authorities make of the information? What impact does Article 267 have on the bilateral MOUs?

See the above answer and the answers to questions 3(a) and 5 above with regard to assistance in a criminal proceeding.

Verification's Team Assessment

It is the VT6's understanding that the CNV is not able to fully comply with the MMoU provisions cited in question 8), since CNV has no power to obtain bank records and share non-public information.

9. Please identify and explain the general and specific provisions (and provide a copy thereof) contained in your laws and regulations and in any other standards providing for the confidentiality of:

- a) Requests for assistance received from foreign authorities, the content of such requests and any aspect that may arise in connection with such request, including consultations between the authorities and voluntary cooperation (as set forth in paragraph 11(a) of the Multilateral Memorandum of Understanding).**
- b) Documents and information received from foreign authorities.**

Applicant's Response

There is no provision of the Securities Law that specifically provides for the confidentiality of requests from assistance from foreign authorities, their contents or any aspect that may rise in connection with such requests. However, in accordance with the above-mentioned article 267, the CNV is authorized to regulate what type of information must be kept confidential.

20) Would information identified in 9 a) and 9 b) be the type of information that could be kept confidential under Article 267?

In the local legal environment and in accordance with item 2) of article 267 of Decree Law 1 of 1999, information and documents that have been obtained by the Commission in an investigation, inspection or procedure to produce⁷ relative to a violation of the Decree Law or the regulations issued pursuant thereto are confidential and subject to restricted access. Nevertheless, the Commission may submit said information and documents to courts in a class action or to the Public Prosecutor if there are sound reasons to believe that a violation of the criminal law has taken place, but the institutions that receive said information or documents are required to keep them confidential.

21) In the course of an investigation and taking the assumption that reserved information can only be obtained through a court order, will a foreign authority have access to it or is that information under judicial confidentiality?

This same provision states further on that the Commission shall take the necessary measures to maintain the confidentiality of all information and documents that must be kept confidential in accordance with said article and that it shall reveal the information it is required to reveal by a competent authority of the Republic of Panama pursuant to the law.

In accordance with this provision, article 209 of Decree Law 1 of 1999 provides for penalties against those who fail to observe this confidentiality obligation. In the event said person is a

⁷Article 265 of the Decree Law of 1999 on Procedures to Produce was repealed by Law 45 of 2003.

Commissioner or an employee of the Commission, he or she shall be immediately removed from his or her position.

However, in 2002, the Law n° 6 of January 22 was passed, setting forth standards for transparency in public actions. The action of habeas data is established and other provisions are set forth. Article 14 of this law provides *that the information defined as being of restricted access, such as memoranda, notes, correspondence and documents related to diplomatic, commercial and international negotiations of any kind and documents, records and copies that friendly nations provide to the country in criminal and police investigations and investigations of any other kind, may not be disclosed for a period of ten years from the date it is classified as such, unless the reasons that justified its restricted access cease to exist before the end of the period of restriction.*

22) Please clarify whether this provision would cover information in question 9 a) and 9 b)

Regulations pursuant to Law 6 of 2002 were issued by the Executive through Executive Decree No. 124 of May 21, 2002.

It is important to bear in mind the basic rule regarding disclosure of non-public information: Only competent authorities (that is to say, the Office of the Public Prosecutor and Judicial Courts) are authorized to obtain non-public information). Foreign authorities can only request non-public information by complying with the necessary legal requirements (MLAT requests, or rogatory letters, et al)

23) Does this mean that the prosecutor and judicial courts can access information in question 9 a) and 9 b)? What can they use the information for – e.g., securities cases, tax cases, private party litigation, etc?

In the specific context of the bilateral Memoranda of Understanding signed by the CNV and other foreign entities, these agreements contain confidentiality clauses relating to the requests for assistance received by the other party (see MOU's signed by the Office of the Superintendent of Securities of El Salvador and the Office of the Superintendent of Securities of the Dominican Republic.

Demands of non-public information are not only permitted to criminal courts, but also to all judicial courts. Therefore, a civil or commercial court may obtain non-public information held by the CNV.

24) Law 6-2002, article 14 refers to *habeas data* . Are there any circumstances in which CNV may face a legally enforceable demand to disclose non public information provided by a foreign authority? In this case, what steps can the CNV take to assert protections against it?

Verification's Team Assessment

TRANSLATION OF SOME REFERRED PARTS OF THE LAW
(kindly provided by CNV – Panama)

Decree Law n° 1-1999 (Securities Law)

Article 209: Fines for divulging confidential information

"Any securities firm, investment advisor, investment manager, self-regulated organization, member of a self-regulated organization or any director, official or employee of any of the above, or any securities broker or analyst or any Commissioner, employee or outside consultant of the Commission who improperly discloses confidential or privileged information that he or she has received in the discharge of his or her duties shall be penalized with a fine of no less than B/.1,000 and no more than B/.100,000.00, without prejudice to the civil and criminal penalties that may be appropriate. For the purpose of determining the amount of the fine to be imposed in each case, the Commission shall take into consideration, among other factors, the intent of the person who committed the offense, whether or not there is a recurrence, the benefit obtained and the damage caused. In the event said person is a Commissioner or an employee of the Commission, he or she shall be immediately removed from his or her position."

Article 263 (Investigations)

"When in the exercise of the powers set forth in articles items 6 and 8 of article 8 of this Decree Law, the Commission has reasonable grounds to believe that a violation of this decree law or the regulations issued pursuant thereto has taken place or may take place, it may request from registered persons subject to reporting to or being audited by the Commission all information it considers necessary, whether in the form of documents or statements, on the matters that are the subject of this decree law and the regulations issued pursuant thereto.

"In order to obtain the above information or documents or to confirm their accuracy, the Commission may examine them, require the production of the accounts and documents, records and correspondence that justify each entry or account and examine the records and other documents that contain the company's decisions. The power of examination shall extend to any subsidiary of the company or any affiliate over which the registered company or company subject to reporting exercises control as defined in this decree law. Registered persons or persons subject to reporting shall be required to make available to the Commission the books, records and documents that are requested from them that the Commission considers necessary, regardless of the form they are in, including computer programs and magnetic or optical files or files of any other kind.

"The Commission may, when it is necessary and relevant to such investigations, compel any person to submit documents or information or make sworn statements to the Commission. If the person does not submit the documents or information or does not make the statements requested by the Commission, or does so evasively or incompletely, the Commission may request that the law courts order said person to appear before it and do

as requested. Failure to comply with the order of the court shall be deemed to be contempt."

Article 264 (Regular Inspections)

"The Commission may perform periodic inspections of self-regulated organizations, the members of self-regulated organizations, securities firms, investment managers and any other person to which a license has been granted for the purpose of verifying that such persons are duly complying with the provisions of this decree law and the regulations issued pursuant thereto.

"The Commission may request the assistance of the Office of the Superintendent of Banking inspecting, with regard to securities matters, the persons described in the above paragraph which, because they have a banking license, are also subject to the inspection and audit of the Office of the Superintendent of Banking. In these cases, the Commission may exchange confidential information regarding said persons with the Office of the Superintendent of Banking and that office and its personnel shall be required to keep said information confidential pursuant to the present decree law."

Decree Law 9 - 1998 (Bank Law)

Chapter II of Title III of Decree Law 9 of 1998

Article 27 - Foreign Banks with an international license

Branches or subsidiaries of foreign banks with an international license shall be subject to the supervision of the Office of the Superintendent and to the other applicable rules in accordance with this Decree Law and its regulations and extensions. Nevertheless, such branches shall observe the liquidity and capitalization requirements and other technical conditions established by law and by the foreign regulatory entity, for which purpose said regulatory entity shall exercise the appropriate consolidated supervision.

Article 28. Foreign banks with a general license.

Foreign banks with a general license shall be supervised in a consolidated manner by the corresponding foreign regulatory entity, without prejudice to their being subject to the provisions of this Decree Law.

Article 29. Inspection by foreign supervisory entities

Solely for purposes of supervision, foreign supervisory entities may request information from and make inspection visits in Panama to the branches and subsidiaries of the foreign banks over which they exercise consolidated supervision.

"The information received shall be strictly confidential and may not be revealed by the foreign supervisory entity without the prior authorization of the Office of the Superintendent. The Office of the Superintendent shall require sufficient guarantees of said confidentiality.

"The foreign supervisory entity shall provide the Office of the Superintendent with a copy of all reports and documents it prepares as a result of the inspection.

Article 30.

The Office of the Superintendent shall supervise in a consolidated manner the foreign branches or subsidiaries of Panamanian banks.

Article 31. Agreements or understandings with foreign supervisors

The Office of the Superintendent shall reach agreements and understandings with foreign supervisory entities that permit the consolidated supervision referred to in this chapter and that assure that the relations between the former and the latter are based on principles of reciprocity and confidentiality and are strictly limited to the purposes of banking supervision. Such agreements shall specify the criteria applicable to inspections and the exchange of information and cooperation between them."

Article 59 (Information on Liabilities)

"The Office of the Superintendent may obtain from each bank consolidated information regarding its liabilities that make it possible to establish its liquidity and to identify unusual geographic concentrations or distributions of deposits that expose the bank to excessive risks. The Office of the Superintendent may not request the identify of the banks' depositors except when the deposits guarantee assets that are subject to analysis or supervision by the Office of the Superintendent."

Article 84 (Information on a Bank's Customers)

"The information relating to a bank's individual customers obtained by the Office of the Superintendent in the exercise of its functions may only be revealed to the competent authority pursuant to the legal provisions in force within the course of a criminal proceeding.

"The Office of the Superintendent, including all of its personnel and the outside auditors, consultants and inspectors designated by it, shall keep confidential all information submitted to the office or obtained in accordance with this decree law and, consequently, they may not reveal it to third persons, except in the case of a competent authority pursuant to the provisions of this article.

"Public officials who, because of the positions they hold, have access to the information dealt with in this article, shall be required to maintain due confidentiality even when they have ceased to discharge their functions."

Article 85 (Banking Secrecy of Banks)

"Banks shall disclose information regarding their customers and their transactions only with the consent of said customers, except in response to the formal request of a competent authority in accordance with the law.

"Banks may, at the bank's discretion, disclose information on their customers to the institutions that act as central credit offices."

Acuerdo 4-2001 (Establishing the standards of conduct that are to be observed by securities exchanges, central securities offices, securities firms, securities dealers and investment managers to prevent the crime of money laundering within the meaning of Law 42 of October 2, 2000)

Article Three: General obligations applicable to regulated subjects for the purpose of preventing money laundering.

"Regulated subjects shall be subject to the following requirements in the exercise of their activities:

"a. ...

" ...

"f. To maintain for a minimum of five years documents regarding transactions and the identify of customers."

Article Five (Specific Obligations with Respect to the "Know Your Customer" Policy Applicable to Regulated Subjects)

"1. Proof of the identity of a customer requesting any type of service through verification of the existence of both physical and legal persons, for which purpose the following data may be requested:

"A. Proof of the customer's identity:

"1. Required at the time the account is opened: Name in full, date of birth, marital status, profession, office or occupation of the account holder in the case of a physical person

"2. Complete registration information for a legal person.

"3. Address, domicile and residence or corporate place of business.

"4. Telephone numbers, mailing address, e-mail address.

"5. Verified copy of the identity document, passport or other personal identity document suitable for accurately identifying the person's identity.

"6. Proof of the customer's movements should be required as set forth in his or her travel document (entry stamps in the passport in the case of persons resident abroad who are present in Panama for the purpose of opening the account). In the event the customer is not present, the procedures and formalities necessary to assure his or her identify shall be carried out before the account is opened.

"7. The customer should be required to indicate if he or she is acting as an intermediary for someone else who is the true beneficiary of the transaction and, if the answer is yes, the beneficiary should be suitably identified in such a

way as to satisfactorily establish and document whether he or she is truly the direct or indirect effective owner of the account.

"8. In the case of trusts and legal persons, including corporations with registered or bearer shares, the regulated subject shall require the corresponding certifications that demonstrate the incorporation and duration of the companies and trusts through a certification of existence with a validity of no more than 30 days, as well as the identification of the officers, directors, attorneys-in-fact and legal representatives of said companies and trusts.

"9. The information submitted by the customers or the representatives of legal persons or trusts on the identity of the ultimate beneficiaries of the accounts shall be kept in strict confidence and may be submitted only to the domestic legal or administrative authorities duly empowered to request it.

"2. Any other document that is considered necessary to determine the customer's identity.

"B. Identification of the Investor's Profile

"a. Sources of income

"b. Investment experience

"c. Objectives

"d. Financial capacity and risk preference

"e. Asset analysis (changes in assets and liabilities recorded for at least the last two years in order to determine the existence of unknown sources of funds)

"f. Statement of direct and indirect beneficiaries of the transaction

"g. Statement of related persons

"h. Business or banking references

"i. Any other information considered suitable for determining the investor's profile

"For the purposes of this article, the customer is considered to be any natural or legal person for whose account the transaction with the regulated subject is carried out, once, occasionally or habitually, regardless of the existence of more general contractual relations established in advance between the parties. The duty of identification referred to in the previous paragraph shall include the actual owners, even though indirect, of the investment accounts.

"The process of identifying the customer shall be considered complete when the above-mentioned information has been verified by the regulated subject. Such verification should be performed initially when the account is opened and should be updated annually during the business relationship, for which purpose a written record should be kept in the file of all the measures taken to satisfactorily identify the customer. The regulated subject shall include in its agreements the responsibility of the customers to keep the information required in this article up to date."

Article Twelve: Period for the maintenance of documents

" Regulated subjects shall maintain for a period of five years documents that satisfactorily verify the performance of the transactions and the identity of the subjects who have carried

them out or who have established business relations in which obtaining said identification was required.

"The forms and documents referred to in this article shall be submitted on request to the inspection and analysis official authorized for this purpose by the Commission.

"This period is without prejudice to the fact that the Executive Branch may change it by regulation."

Law 6 of 2002 (Standards for transparency in public actions)

Article 14.

"The information defined in this law as being of restricted access may not be disclosed for a period of ten years from the date it is classified as such, unless the reasons that justified its restricted access cease to exist before the end of the period of restriction.

"The following information shall be considered of restricted access when it is so declared by a competent official in accordance with the present law:

- "1. Information relative to national security dealt with by security agencies.*
- "2. Commercial secrets or commercial information of a confidential nature obtained by the government as the product of regulation of economic activities.*
- "3. Matters related to proceedings or legal matters brought forward by the Office of the Public Prosecutor or the judicial branch which are accessible only to parties to the proceeding until such time as they are subject to a judgment.*
- "4. Information that relates to investigatory proceedings carried out by the Office of the Public Prosecutor, the Forces of Public Order, the Technical Judicial Police, the Bureau of Customs, the National Security and Defense Council, the Office of Audit of the Controller General of the Republic, the Office of Financial Analysis for the Prevention of Money Laundering, the Free Competition and Consumer Affairs Commission and the Public Services Regulatory Agency.*
- "5. Information on the existence of mineral and petroleum deposits.*
- "6. Memoranda, notes, correspondence and documents related to diplomatic, commercial and international negotiations of any kind.*
- "7. Documents, records and copies that friendly nations provide to the country in criminal and police investigations and investigations of any other kind.*
- "8. ...*
- "9. ...*

In the event the relevant authorities consider that the restricted nature of the information listed in this article should be continued, it shall be the responsibility of the executive, legislative or judicial branch, as applicable, to issue resolutions extending for up to ten additional years the restriction on the information mentioned in this article. In no case may the restricted nature exceed 20 years from the date of initial classification and the

information shall be disclosed if the reasons that justified its restricted access cease to exist before the completion of the additional restriction period. ..."

1) Considering Article 32, will CNV have any control on those transactions and obtain records and other information needed, if a foreign authority starts an investigation?

Yes, the CNV can obtain records and other information regarding these transactions.

According to Article 21 of Decree Law 9 of 1998 (Banking Law), an international license is that which allows a Bank to conduct transactions to be perfected, consummated or to take effect abroad, from an office established in Panama.

Likewise, Panamanian tax law provides that transactions carried out among persons not domiciled in Panama shall not be deemed as perfected or consummated within Panamanian territory and thus are tax-exempted.

Consequently, the provision embedded in Article 32 is based upon banking and tax laws.

2) Does the CNV request this information in connection with an inspection or investigation?

Yes, the CNV is able to request this information in connection with an inspection or investigation.

3) Is CNV able to obtain records from or related to non-regulated entities, e.g. individuals/entities engaged in securities activity in Panama, for instance concerning foreign securities traded in boiler rooms, even though the investors in question are non-resident of the country?

Yes, the CNV is able to obtain records from non-regulated entities or individuals. As provided in Article 266, whenever the CNV has knowledge of or well founded reasons to believe that a natural person is exercising activities relating to the gathering of funds or acting as intermediary without the corresponding license or authorization, the CNV has powers to examine books, accounts and documents belonging to any such person in order to determine the existence of the aforementioned facts. Any unjustified refusal to present any such books, accounts or documents shall be considered as basis to presume that the person is in fact doing business concerning securities without having the corresponding license or authorization.

4) How is it possible for the Superintendencia to obtain reserved information and share it with CNV considering the law stipulates that it is subject to secrecy and there is no MoU between SdB and CNV?

The CNV may request directly information from banks, since banking secrecy provisions do not apply in the case of investigations undertaken by the CNV, pursuant to Article 263 of Decree Law 1 of 1999.

In addition, as provided in Article 264 of Decree Law 1 of 1999, the CNV may request the assistance of the Office of Inspections at the Superintendency of Banks, with regard to securities matters involving banking entities holding a broker-dealer license. In these cases, the CNV may exchange confidential information regarding said persons with the Office of Inspections at the Superintendent of Banking and that office and its personnel shall be required to keep said information confidential.

5) What is the CNV's power to obtain the identity of non-controlling shareholders? Please provide the Law or Regulation stipulating the obligation of share owners of listed companies to inform CNV concerning direct or indirect acquisitions of share capital.

The CNV has the power to obtain the identity of controlling shareholders of shareholders of issuers of securities registered with the CNV, as provided in Article 9 (Section VI) of *Acuerdo* 6-2000 of August 19th, 2000. However, the CNV is not able to obtain information regarding non-controlling shareholders.

6) While there is no general record, what are the CNV's powers to obtain information on beneficial owners – both controlling and non-controlling – of corporations, including those that may not be issuers?

The CNV is able to obtain the name of controlling shareholders at the moment of receiving a securities registration filing from a corporation or entity. Any changes of control must be reported immediately by the issuer, in light of Article 77 of Decree Law of 1999. In addition, this information must be included in the annual update report called "Informe de Actualización Anual", as provided in *Acuerdo* 18-2000 of October 11th, 2000. However, nothing prevents the CNV from requesting information from issuers of registered securities regarding non-controlling shareholders.

7) Does this mean only in case of a violation of Panama's securities laws? Is it possible for CNV to take voluntary statements on behalf of a foreign authority, even if there is no direct interest from CNV?

Indeed, it is possible for the CNV to take voluntary statements on behalf of a foreign authority, even though there is no violation of Panama's securities laws. Nonetheless, the CNV is not able to compel any person to give a statement, except in the case of a formal investigation proceeding, pursuant to Article 263 of Decree Law 1 of 1999.

In addition, Article 89 of the Commercial Code of Panama of 1917 states "merchants who provide copies or reproductions of records, correspondence and other documents to be used in a foreign litigation, following an order issued by a foreign authority, shall pay a penalty of no more than one hundred balboas (B/.100.00) [which is the equivalent to US\$ 100].

8) Are the powers of the Prosecuting Attorney relevant? Does this mean that if a securities authority needs to refer its matter to its domestic criminal authorities, then statements taken by the CNV cannot be used and instead the Prosecuting Attorney needs to take the statements?

The statements taken by the CNV cannot be used during the course of a criminal investigation. The Prosecuting Attorney needs to take the statements needed for the purposes of the criminal investigation.

9) In the course of an investigation and taking the assumption that reserved information can only be obtained through a court order, will a foreign authority have access to it or is that information under judicial confidentiality?

Reserved information can only be obtained from competent authorities, such as the judicial courts or the Public Prosecutor. Therefore, a foreign authority shall comply with the formal requirements (rogatory letters, MLAT petitions) in order to request reserved information, pursuant to Article 267 of Decree Law 1 of 1999.

10) In order to obtain bank records to reconstruct securities transactions is it necessary that the request of assistance comes from a foreign court, or is it necessary to have a signed Judicial Protocol?

The CNV may request such information for the purposes of its own inspections or investigations. However, if the request is made by a foreign authority, it shall be made through the formal channels (MLAT request, for example).

11) Could the CNV obtain the assistance of the Public Prosecutor on behalf of a foreign authority so that the foreign authority can obtain the information described in the MMoU? If so, what is the process for doing so and what are the conditions, if any?

The CNV is not able to obtain the assistance of the Public Prosecutor on behalf of a foreign authority.

12) If the CNV already has its own investigation and a foreign authority requests documents gathered in the CNV's investigation, can the CNV share them to the foreign authority? Or does Article 267 of Decree Law 1 prevent this sharing?

Article 267 of Decree Law 1 of 1999 prevents this type of sharing. However, such information can be obtained from a foreign authority in a formal manner by making a MLAT request or a rogatory letter.

13) Does any of the information described in the MMoU fall under "industrial or commercial secrets"?

No. "Industrial or commercial secrets" are commonly referred to as "trade secrets". According to Black's Law Dictionary, a trade secret is "a formula, process, device or business information that is kept confidential to maintain an advantage over competitors; information – including a formula, pattern, compilation, program, device, method, technique, or process – that (1) derives independent economic value, actual or potential, from not being generally known or readily ascertainable by others who can obtain economic value from its disclosure or use, and (2) is the subject of reasonable efforts, under the circumstances, to maintain its secrecy.

14) Please clarify that even if there is an MOU, the CNV is prevented from sharing information with foreign authorities under Article 267 of Decree Law 1.

Yes, Article 267 of Decree Law 1 of 1999 prevents the CNV from providing reserved information to foreign authorities, even if there is a MOU between both authorities.

15) What information would be non-public? Is the basis for being unable to share Article 267?

Yes, Article 267 is the basis for being unable to share information with counterpart authorities. Article 267 of Decree Law 1 of 1999 describes what is to be considered as "non-public information". Non-public information are the following: (1) industrial or commercial secrets (trade secrets), (2) information obtained through an investigation, an inspection or an exhibitory proceeding related to a violation of Decree Law 1 of 1999; notwithstanding, the CNV may submit such information and documents before the judicial courts or the Public Prosecutor in case that it has sound reasons to believe that a violation of criminal law has been produced, but the institutions receiving said information or documents shall be bound to maintain reservation about them; (3) information the CNV has agreed to maintain under secrecy, upon request of the interested party; (4) information the CNV has determined by Order to be kept confidential.

16) Can the information be shared if the foreign authority seeks it for its investigation? What specific information or documents have restricted access?

Foreign authorities can seek for reserved information described in Article 267, however, they shall make a formal request by means of a MLAT request or a rogatory letter.

17) Would CNV deny providing the assistance requested by a foreign counterpart based on the fact that a violation of the laws and regulations of Panama has not occurred?

Even if the CNV can assist a foreign authority because a violation of the laws and regulations of Panama has occurred, would the CNV be prevented from doing so by Article 267?

The CNV is not able to provide non-public information under any circumstances. Article 267 prevents the Commission from providing such type of information.

18) Please clarify whether we can conclude that information cannot be shared with a foreign authority where the foreign authority is investigating a violation of its laws.

The information cannot be shared under any circumstances, unless the request is made in a formal manner, in accordance with the provisions of a MLAT or by means of a rogatory letter.

19) What kind of information can the CNV share and what uses can the foreign authorities make of the information? What impact does Article 267 have on the bilateral MOUs?

The CNV is able to share public information concerning regulated subjects (entities or individuals), such as the following: (1) the type of license held by the individual or entity; (2) financial statements of regulated entities; (3) name of the members of the board of directors and top corporate executives; (4) identity of controlling shareholders, etc.

In addition, the CNV may provide public information concerning issuers of registered securities, such as the following: (1) type of securities registered at the National Securities Commission; (2) financial statements of regulated entities; (3) name of the members of the board of directors and top corporate executives; (4) identity of controlling shareholders, etc.

Article 267 is the rule preempting any MOU signed by the CNV.

20) Would information identified in 9 a) and 9 b) be the type of information that could be kept confidential under Article 267?

The provision contained in Article 267 sets forth the general rule concerning non-public information. Since information described in questions 9 a) and 9 b) are not included in such provision, they shall not be deemed as non-public information. However, as mentioned in our answer to question 15, the CNV may determine in an *Acuerdo* that certain information shall be kept confidential. The CNV has not adopted any order.

As a result of a consultation made by the CNV, the Office of the Solicitor General (which is also the General Advisor on legal matters involving the Public Administration) issued a non-binding opinion on April, 11th, 2002, recommending the CNV not to make use of the authority provided by Article 267 (4). Such authority, as explained by the Solicitor General, contravenes the provisions of Law 6 of 2002.

21) In the course of an investigation and taking the assumption that reserved information can only be obtained through a court order, will a foreign authority have access to it or is that information under judicial confidentiality?

A foreign authority can obtain reserved information by making a formal MLAT request or through a rogatory letter. The information is not subject to judicial confidentiality.

22) Please clarify whether this provision would cover information in question 9 a) and 9 b)

Please refer to answer to question 20.

23) Does this mean that the prosecutor and judicial courts can access information in question 9 a) and 9 b)? What can they use the information for – e.g., securities cases, tax cases, private party litigation, etc?

Yes, judicial courts and the Public Prosecutor's Office are able to obtain this information from the CNV, for the purposes of criminal investigations and private party litigation.

24) Law 6-2002, article 14 refers to *habeas data*. Are there any circumstances in which CNV may face a legally enforceable demand to disclose non public information provided by a foreign authority? In this case, what steps can the CNV take to assert protections against it?

No. The CNV is not compelled to provide reserved information to non-competent authorities (provided that competent authorities are judicial courts or the Public Prosecutor's Office). Likewise, the CNV is not able to provide information obtained during an investigation to any person other than those individuals or entities involved in the investigation (related parties). As a result of a writ of *Habeas Data* filed against the CNV, on April 23rd, 2003 the Supreme Court of Justice upheld the authority of the CNV to deny requests of non-public information (obtained during an investigation) made by non-related parties. This decision was the result of (*Alcabo Holdings v. Roberto Brenes, Commissioner*