Association
Henri Capitant

DRAFT EUROPEAN BUSINESS CODE

BOOK 9

FINANCIAL MARKETS LAW

Working groups (in alphabetical order) :

Michèle GREGOIRE,	Professor at the Université Libre de Bruxelles, Lawyer at the Cour de Cassation, Co-Director
Matthias LEHMANN,	Professor at the University of Vienna, Co-Director
Iris BARSAN,	Senior Lecturer at Université Paris-Est Créteil,
Thierry BONNEAU,	Professor at Paris-Panthéon-Sorbonne University,
Anne-Claire ROUAUD,	Professor at the University of Paris 1 - Panthéon Sorbonne.

BOOK 9: FINANCIAL MARKETS LAW

Article 9.1 - Notions of regulated market, MTF and OTF

1. A "regulated market" is a multilateral system which brings together or facilitates the bringing together of multiple third-party buying and selling interests in financial instruments – in the system and in accordance with its non-discretionary rules – in a way that results in a contract, in respect of the financial instruments admitted to trading under its rules and/or systems, and which is authorised and functions regularly in accordance with the law applicable to it.

2. A "multilateral trading facility" or "MTF" is a multilateral system, operated by an investment firm or a market operator, which brings together multiple third-party buying and selling interests in financial instruments – in the system and in accordance with non-discretionary rules – in a way that results in a contract.

3. An "organised trading facility" or "OTF" is a multilateral system, which is not a regulated market or an MTF, operated by an investment firm or market operator, and in which multiple third-party buying and selling interests in bonds, structured finance products, emission allowances or derivatives are able to interact in a system that results in a contract.

Article 9.2 - Notions of financial and non-financial counterparties

1. A "financial counterparty" is a financial institution subject to prudential supervision. Financial counterparties also include central banks, central counterparties, clearing houses and central securities depositories.

2. A "non-financial counterparty" is any other professional which is not a financial counterparty.

TITLE 1: FINANCIAL PRODUCTS

Article 9.1.1 - Financial products

For the purposes of this Code, financial products are those financial instruments defined by national law, as well as the European financial products defined below.

CHAPTER 1: NATIONAL INSTRUMENTS

Article 9.1.1.1 - National instruments

The national financial instruments include equity securities, debt securities and the derivatives listed below.

SECTION 1: EQUITY SECURITIES

Article 9.1.1.1 - Equity securities

Equity securities are securities issued by and giving title to the share capital of companies which are allowed, under their national law, to issue negotiable equity securities.

SECTION 2: DEBT SECURITIES

Article 9.1.1.2 - Debt securities

Debt securities are bonds issued by legal entities which are allowed, under national law, to issue negotiable instruments.

SECTION 3: DERIVATIVES

Article 9.1.1.3 - Derivative contracts

1. Derivatives are financial contracts whose value derives from an underlying asset or value.

2. The derivative contracts referred to in this article are those mentioned in points 4 to 10 inclusive in Section C of Annex II to Directive 2014/65/EU of 15 May 2014 on markets in financial instruments.

CHAPTER 2: EUROPEAN INSTRUMENTS

SECTION 1: GENERAL RULES GOVERNING SECURITIES

Article 9.1.2.1.1 - Registration

European transferable securities are registered in an account held by an authorised intermediary or recorded on a distributed ledger.

Comment: This provision follows the model of article L213-2 of the French Monetary and Financial Code, with adjustments to reflect the European nature of the instrument. However, the scope of this section also includes securities traded on a regulated market or other trading venue (multilateral trading facility or organised trading facility).

Article 9.1.2.1.2 - Transfer of securities

1. Financial securities are transferred by book-entry or registration in a distributed ledger.

2. The transfer of ownership of financial securities results from the registration of these securities in the purchaser's securities account or from the registration of these securities in a distributed ledger to the benefit of the purchaser.

3. No one may claim for any reason whatsoever a financial security whose ownership has been acquired in good faith by the holder of the account in which these securities are registered or by the person identified via the distributed ledger.

Comment: Paragraph 1 of this provision follows the model of article L211-15 of the French Monetary and Financial Code.
Paragraph 2 follows article L211-17 paragraph 1 of the French Monetary and Financial Code.
Paragraph 3 replicates article L211-16 of the French Monetary and Financial Code.

Article 9.1.2.1.3 - Protection of subscriber's rights

1. No seizure, even as an interim measure, is permitted on accounts opened with a central depository.

2. No forced execution or protective measure may be taken against an intermediary in respect of financial securities registered in an account opened in his name in the books of another intermediary, when they are not the property of the first intermediary.

Comment: This provision is inspired by article L211-11 of the French Monetary and Financial Code. Court receivership is one of the interim measures covered by the text.

Article 9.1.2.1.4 - Insufficient securities

1. In the event of the opening of insolvency proceedings against an intermediary or of the unavailability of financial securities due to force majeure, the administrator verifies that all the financial securities held in an account with another intermediary in the name of the defaulting intermediary are sufficient in number for the defaulting intermediary to be able to guarantee the rights of the account holders.

2. If the number of such securities is insufficient, they are allocated proportionally among the account holders concerned, who may have the securities returned to them transferred to a securities account held by another intermediary or by the issuer.

3. The defaulting intermediary is obliged to compensate the damage suffered by each holder if he is responsible for the securities' insufficiency.

Comment: Paragraphs 1 and 2 of this provision are inspired by article L211-10 paragraphs 1 and 2 of the French Monetary and Financial Code.
Paragraph 3 of this provision follows the model of § 7 paragraph 2 of the German Depotgesetz.

Article 9.1.2.1.5 - Pledge

The pledge of a securities account or a financial security is made by a statement signed by the account or security holder.

Comment: This provision is inspired by article L211-20 paragraph 1 of the French Monetary and Financial Code.

SECTION 2: EUROPEAN BONDS

§ 1: Notion, scope of application

Article 9.1.2.2.1.1 - Notion

The European bond is a negotiable security representing a claim against the legal entity issuing it.

Each security of the same issuance confers the same debt rights for the same nominal value.

Comment: Paragraph 1 of this provision is inspired by article L213-1 paragraph 1 of the French Monetary and Financial Code. The reference to the "fonds commun de titrisation" (securitisation mutual fund) has been deleted, as these funds are normally legal entities. It has been added that the security is a negotiable instrument.
Paragraph 2 reflects the principle of equivalence of securities, which is recognised, for example, in Article L213-5 of the French Monetary and Financial Code.

Article 9.1.2.2.1.2 - Choice by the issuer

*The provisions of this chapter are applicable when the issuer chooses them in accordance with articles [*** reference to preliminary title ***].*

Article 9.1.2.2.1.3 - Relationship with national law

1. The provisions of this section take precedence over all provisions of national law, including mandatory rules.

2. Supervision, tax and accounting provisions remain applicable.

Article 9.1.2.2.1.4 - Gap filling

1. Questions relating to capacity are governed by the applicable national law.

2. All other matters not governed by the following provisions are governed by the common principles of European Union contract law.

Comment: The regime does not include any provisions on the capacity of parties to enter into a contract. This issue is governed by the relevant rules of national law. Conflicts of law relating to incapacity are partially resolved by the Rome I Regulation (article 13).
For general rules of contract law, such as those relating to the conclusion of a contract or the consequences of non-performance, reference is made to the common principles of European Union contract law, to be elaborated by the courts when interpreting the present Code (the Principles of European Contract Law drawn up by the "Lando Commission" may provide a model/source of inspiration).

§ 2: Issuance

Article 9.1.2.2.2.1 - Authorisation

The European bond may be issued by any legal entity, public or private, authorised to issue bonds in accordance with the applicable law.

Comment: The autorisation to issue may be based on national law or European Union law, as the case may be.

Article 9.1.2.2.2.2 - Market information

At the time of each issuance, the issuer must make available to subscribers the terms and conditions of the issue and the prospectus in compliance with European law.

§ 3: Contents

Article 9.1.2.2.3 - Application of European loan provisions

*The rights and obligations arising from the European bond are governed by the provisions * [section on the European loan], with the exception of articles 8.2.1.1.2.1 [on pre-contractual information], 8.2.1.1.2.4 [on the obligation to provide information on the total cost] and 8.2.1.1.5.3 paragraph 3 [on termination of the contract in the event of a significant deterioration in the borrower's situation].*

Comment: This article refers to the provisions on European loans, since a bond is a negotiable instrument representing a loan.

§ 4: Change in the terms of the issuance contract

Article 9.1.2.2.4.1 - Modification

The issuer has the right to amend the issuance contract without the consent of the bondholders in order to correct a material error.

Comment: Paragraph 3 is inspired by article L213-6-3, V of the French Monetary and Financial Code. However, we have removed the exception made by L213-6-3, VI of this Code for securities issued by the French State, since there is no reason to prohibit the latter from correcting a material error.

Article 9.1.2.2.4.2 - General body of bondholders

1. The modalities of the bondholders' meeting is to be specified in the issuance contract, which shall set out the rules governing representation at the bondholders' general meeting, as well as the quorum and majority applicable to their decisions.

2. The issuance contract may also stipulate that bondholders appoint an agent to represent them if the issuer is subject to insolvency proceedings.

3. The bondholders' group may amend the stipulations of the European bond. The issuance contract may specify the scope of the powers of the bondholders' group.

4. In the absence of a provision concerning the bondholder's meeting, bondholders have the same rights as non-bondholder creditors when the issuer is involved in a merger, demerger, capital reduction, incorporation as a European company or transfer of its registered office to another member state.

Comment: Paragraph 3 is inspired by article L213-6-3, I and IV of the French Monetary and Financial Code.

§ 5: European covered bonds

Article 9.1.2.2.5.1 - Definition

European covered bonds are bonds issued by credit institutions and secured by first-ranking mortgages or equivalent collateral in favour of bondholders who have a direct and exclusive right to the assets pledged as collateral.

Article 9.1.2.2.5.2 - Protection of bondholders

European covered bonds must be paid at maturity and, in the event of default by the issuing institution, must be paid in priority to all other claims, whether or not they are secured by privileges or collateral. Until the holders of European covered bonds have been paid in full, no other creditor of the issuing institution may claim any right whatsoever over the assets and rights of the issuer, notwithstanding any legal provision to the contrary.

SECTION 3: EUROPEAN FUND SECURITIES

§ 1: UCITS

Article 9.1.2.3.1.1 - Definition

UCITS – Undertakings for Collective Investment in Transferable Securities – are organisations with the sole purpose of collective investment in transferable securities traded on a regulated market or in other liquid financial assets (money market instruments and deposits with credit institutions), whose units are, at the request of the holders, repurchased or redeemed, directly or indirectly, out of those undertakings' assets.

Article 9.1.2.3.1.2 - UCITS forms

UCITS can take the form of a company, a fund or a trust.

Article 9.1.2.3.1.3 - Separation of functions

The assets of a UCITS are managed by a fund manager and held by a depositary. Nobody can be both manager and depositary at the same time.

Article 9.1.2.3.1.4 - Manager's duties

The manager must manage the assets prudently, honestly and professionally, in the sole interest of the unitholders.

Article 9.1.2.3.1.5 - Depositary duties

The depositary is responsible for the safekeeping of the assets. In the event of loss, and barring unforeseeable and irresistible circumstances, it is liable to compensate investors for any losses they incur.

Article 9.1.2.3.1.6 - Unitholder information

Before the subscription of their units, and throughout the life of the UCITS, unitholders must be informed of the management policy and the risks associated with the assets held by the said UCITS.

§ 2: AIFs

General rules

Article 9.1.2.3.2.1 - Definition

AIFs – Alternative Investement Funds – are funds whose sole purpose is collective investment in assets other than those making up UCITS.

Article 9.1.2.3.2.2 - Reference to UCITS rules

Subject to the provisions of this § 2, rules on UCITS apply to AIFs.

***Article 9.1.2.3.2.3** - Unitholder information*

AIFs unitholders must be provided with enhanced information on the risks associated with the assets held by said funds.

Special rules

Article 9.1.2.3.2.4 - Venture capital funds

Venture capital funds must primarily invest in unlisted companies (neither on a regulated market nor on a multilateral trading facility) with a maximum of 499 employees, or in SMEs listed on an SME growth market as defined by MiFID.

Article 9.1.2.3.2.5 - European social entrepreneurship funds

European social entrepreneurship funds must primarily invest in companies whose main objective is to produce positive and measurable social effects, provided that the companies offer services or goods that generate a social benefit and use a method of producing goods or services that is the realisation of its social objective.

Article 9.1.2.3.2.6 - European long-term investment funds

European long-term investment funds are funds made up of securities issued by companies not admitted to trading on a regulated market or a multilateral trading facility and/or by companies listed on these markets whose market capitalisation does not exceed € 500,000,000.

§ 3: Money market funds

Article 9.1.2.3.3.1 - Definition

Money market funds, which can be either UCITS or AIFs, are funds made up of money market instruments.

§ 4: Securitisation

Article 9.1.2.3.4.1 - Definition

Securitisation entities are entities whose purpose is to assume risks, notably by acquiring receivables held by credit institutions. The acquisition of receivables is financed by the issuance of units or shares underwritten by the public.

Article 9.1.2.3.4.2 - Separation of functions

The assets of securitisation entities are managed by a manager and held by a depositary. No one can be both manager and depositary.

Article 9.1.2.3.4.3 - Transfer of receivables

The receivables are transferred to the securitisation entity from the date specified in the deed of assignment. The assignment is enforceable against third parties from the same date and without formality.

Article 9.1.2.3.4.4 - Investor protection

Investors must be informed of the risks and may benefit from protection mechanisms, for instance collateral arrangements set up by the manager.

SECTION 4: EUROPEAN DERIVATIVE CONTRACTS

§ 1: Notion, scope of application, general principles

Article 9.1.2.4.1.1 - Notion

The European derivative contract is a forward transaction for the management of financial risks between two or more professionals, at least one of whom must be a financial counterparty.

Comment: A broad definition has been chosen, without listing all possible contracts. The reference to "financial risks" should be understood to include commodity futures contracts. In line with the Code's scope of application, the parties to the contract must all be professionals. The requirement of at least one financial counterparty is inspired by the Directive on financial collateral arrangements.

Article 9.1.2.4.1.2 – Master and individual contracts

The European derivative contract can take the form of a master agreement with several individual contracts, or a single contract.

Comment: This article reflects the fact that derivative contracts are in practice concluded using model master agreements drawn up by professional associations.

Article 9.1.2.4.1.3 - Selection

1. *The European derivative contract regime only applies if the parties have chosen it. The choice must be express. It is not subject to any particular form.*
2. *The choice can be made at any time. The rights of third parties are not affected by a change of regime.*
3. *A partial selection of the European derivative contract provisions is excluded.*

Comment: The European derivative contract regime is optional. The rules of national law remain applicable if the parties have not expressly chosen it.
The second paragraph is inspired by the Rome I Regulation (article 3 para. 2).
The European derivative contract regime is a whole. It is not possible to apply the European and national rules in part and selectively. This does not exclude the possibility to deviate from certain provisions by exercising contractual freedom (see article 9.1.2.4.1.6).

Article 9.1.2.4.1.4 - Relationship with national law

1. The provisions of this section take precedence over all provisions of national law, including mandatory rules.

2. National rules of supervisory law, tax law and accounting remain applicable.

Comment: European derivative contract rules are part of the supranational law of the EU. As such, they preclude any Member State provisions that fall within their scope. In particular, the national law exception cannot be invoked against the European derivative instrument. The regime also excludes the application of national rules imposing pre-contractual liability for failure to inform as well as rules of tort law.

Article 9.1.2.4.1.5 - Gap filling

1. Questions relating to capacity are governed by the applicable national law.

2. All other matters not governed by the following provisions are governed by the common principles of European Union contract law.

Comment: The regime does not include any provisions on the capacity of parties to enter into a contract. This issue is governed by the relevant rules of national law. Conflicts of law relating to incapacity are partially resolved by the Rome I Regulation (article 13).
For general rules of contract law, such as those relating to the conclusion of a contract or the consequences of non-performance, reference is made to the common principles of European Union contract law, to be elaborated by the courts when interpreting the present Code (the Principles of European Contract Law drawn up by the "Lando Commission" may provide a model/source of inspiration).

Article 9.1.2.4.1.6 - Contractual freedom

The parties may adapt the European derivative contract regime, subject to the conditions set out in this section.

Comment: The choice of the European derivative contract regime leads to the applicability of its provisions.
The parties are free to adapt the rules on the European derivative contract to their needs.

Article 9.1.2.4.1.7 - Independence of the European derivative contract from the underlying transaction

The validity and execution of the European derivative contract are independent of the underlying transaction, unless otherwise stipulated.

Comment: The independence of the derivative contract from the underlying contract is a classic principle, and is retained here as such. The provision does not preclude exceptions, for example in the case of fraud affecting both contracts simultaneously.

§ 2: Conclusion of the contract

Article 9.1.2.4.2.1 - Consensual contract

The European derivative contract is formed as soon the parties consent to it.

Comment: The provision of funds is not a condition of contract formation. Forced execution of the contract is possible.

Article 9.1.2.4.2.2 - Evidence

The European derivative contract is issued on any durable medium.

§ 3: Obligations of the parties

Article 9.1.2.4.3.1 - Pre-contractual information

1. The financial counterparty within the meaning of article 9.2 paragraph 1 must draw the attention of the other party, when the latter is not a financial counterparty, to the risks of the contract, having regard to his personal situation.

2. This obligation does not apply to central counterparties, settlement institutions and clearing houses.

Article 9.1.2.4.3.2 - Primacy of contractual stipulations

The mutual obligations of the parties are governed exclusively by the provisions of this section, the stipulations of the contract and the common principles of European Union contract law.

§ 4: Close-out netting

Article 9.1.2.4.4.1 - Definition

1. Close-out netting is the operation whereby, with the occurrence of an event determined by the parties, such as the insolvency of one of the parties, the European derivative contract is terminated early and all the reciprocal obligations of the parties, due or to become due, are set off accordingly, so that the remaining balance constitutes the sole obligation existing between the parties.

2. Close-out netting only takes effect if expressly provided for contractually. It may occur between two or more European derivative contracts.

3. Close-out netting does not affect collateral pledged as security for the netted obligations.

Comment: This provision is inspired by article 7 of the UNIDROIT Principles on the Operation of Close-out Netting Provisions (2013) and article L211-36-1 of the French Monetary and Financial Code.

Article 9.1.2.4.4.2 - Effectiveness in the event of insolvency proceedings

1. The opening of insolvency proceedings in respect of one of the parties does not impede close-out netting nor the realisation of collateral arrangements.

2. This article is without prejudice to the application of special rules for the resolution of failing financial institutions.

Comment: The first paragraph of this provision is inspired by article 7 of the UNIDROIT Principles on the Operation of Close-out Netting Provisions (2013) and article L211-36-1 of the French Monetary and Financial Code. It seemed clear to us that the authorities responsible for administering insolvency proceedings are not authorised to require performance by the other party of any obligation subject to close-out netting, and at the same time to refuse to perform any obligation owed to the other party that would also be subject to close-out netting.
The second paragraph is inspired by Article 8 of the UNIDROIT Principles on the Operation of Close-out Netting Provisions (2013). The Union's resolution regime is found in Directive 2014/59/EU establishing a framework for the recovery and resolution of credit institutions and investment firms (so-called "BRRD"). Articles 68 and 71 of the BRRD contain exceptions to the effects of netting clauses. The exception for these cases is also in line with article 25 of Directive 2001/24 on the reorganisation and winding up of credit institutions.

§ 5: Reporting and clearing obligations

Article 9.1.2.4.5.1 - Obligation to trade on a trading platform

Transactions in certain categories of derivatives, with the exception of intra-group transactions, must be concluded on a trading platform (regulated market, MTF or OTF).

Comment: This obligation is laid down in the MiFID (article 28). Its scope, initially modelled on that of the EMIR clearing obligation, is currently being adjusted to take the modification of the scope of the clearing obligation by the EMIR REFIT regulation into account.
A list of derivatives subject to this obligation and the platforms on which they are likely to be traded is published by ESMA on its website.

Article 9.1.2.4.5.2 - Obligation to clear through a central counterparty

1. OTC derivative contracts belonging to specified categories must be cleared by a central counterparty when the parties' positions exceed certain thresholds.

2. Every twelve months, a non-financial counterparty may calculate the average of its positions in relation to the clearing thresholds. Contracts entered into for hedging purposes are not included in this calculation. The non-financial counterparty is then subject to the clearing obligation only for those categories of OTC derivatives for which the threshold has been exceeded.

Comment: Derivatives transactions concluded on a regulated market are necessarily cleared by a central counterparty.
The clearing obligation is imposed by the EMIR regulation (article 10 for non-financial counterparties and article 4 bis for financial counterparties).

A register of the categories of derivatives subject to the clearing obligation and the central counterparties authorised or recognised to clear them is published by ESMA on its website.

Transparency

Article 9.1.2.4.5.3 - Reporting obligation

1. The elements of any derivative contract, as well as any modification or termination of the contract, are reported to a trade repository (by the parties themselves or by the central counterparty where applicable).

2. When the derivative contract is concluded between a non-financial counterparty not subject to the clearing obligation and a financial counterparty, the latter is solely responsible for declaring the contract, on behalf of both counterparties.

3. The reporting obligation does not apply to intra-group transactions where at least one of the counterparties is a non-financial counterparty.

Comment: This obligation is set out in the EMIR regulation (article 9) and detailed in level 2 texts.

Risk mitigation techniques for non-cleared derivatives

Article 9.1.2.4.5.4 - Bilateral risk management

For derivatives that are not cleared by a central counterparty, the parties must put in place risk mitigation measures including timely confirmation of transactions, marking-to-market on a daily basis the value of outstanding contracts and, except for intra-group transactions under certain conditions, exchange of collateral.

Comment: These obligations are set out in the EMIR regulation (article 11) and detailed in level 2 texts.

TITLE 2: MARKET FINANCING

CHAPTER 1: LISTING SECURITIES ON A MARKET

SECTION 1: COMMON ADMISSION REQUIREMENTS

Article 9.2.1.1.1 - Investor information

1. The issuer draws up a prospectus for investors. The prospectus contains information about the issuer, the instrument issued and the investment risks. The information must be clear, exhaustive and accurate.

2. The issuer updates the information contained in the prospectus if circumstances change.

3. The issuer distributes the prospectus to the public and makes it available free of charge to all interested parties.

Comment: The aim is to give the investor a clear picture of the opportunities and risks of the investment. The information will be accessible to investors free of charge and will be kept up to date.

SECTION 2: SPECIFIC ADMISSION REQUIREMENTS

Article 9.2.1.2.1 - Scope of application

This section applies to issuers who:

a) have applied for or have approved the admission of their financial instruments to trading on a regulated market; or

b) in the case of an instrument traded exclusively on an MTF or OTF, have approved the trading of their financial instruments on the MTF or OTF, or have requested the admission of their financial instruments to trading on an MTF.

§ 1: Regulated markets

a. **General requirements**

Article 9.2.1.2.1.1 - Issuer consent

The express agreement of the issuer of the equity or debt securities is required, unless the securities are already admitted to trading on another European regulated market.

Comment: This article is inspired by article 51(5) MiFID II.

Article 9.2.1.2.1.2 - Free negotiability of securities

Securities must be freely negotiable.

Comment: Article 46 Directive 2001/34/EC for shares; Article 51(1) MiFID II for transferable securities; Delegated regulation (EU) 2017/568.

Article 9.2.1.2.1.3 - Categories of securities

1. The securities must be of the same class and confer identical rights.

2. The application for admission must relate to all securities of the same class existing or to be issued within the scope of the application for admission.

Comment: This provision corresponds to Article 49 and 56 Directive 2001/34/EC on the admission of securities to official stock exchange listing and on information to be published on those securities.

Article 9.2.1.2.1.4 - Market rules

The market rules that establish the criteria for admitting securities to trading must be clear and transparent. They ensure that any financial instrument admitted to trading on a regulated market is able to enjoy fair, orderly and efficient trading.

Comment: Article 51(1) MiFID II; Delegated Regulation (EU) 2017/568.

b. **Special requirements on the admission of shares**

Article 9.2.1.2.1.5 – Annual financial statements

1. The company must have published or filed, in accordance with national law, its annual financial statements for the three financial years preceding the request for admission.

2. The market operating entity may exempt issuers from such requirement if their situation justifies it and if investors have the necessary information to form an informed opinion about the issuer's situation.

Comment: Article 44 Directive 2001/34/EC.

Article 9.2.1.2.1.6 - Liquidity

1. The foreseeable market capitalisation of the shares for which admission is sought or, if this cannot be assessed, the company's capital and reserves, including profit or loss from the last financial year, must be at least one million euro.

2. A sufficient number of shares must be distributed to the public not later than the time of admission. A sufficient number of shares shall be deemed to have been distributed when 25 % of the issuer's capital is distributed to the public.

Comment: See Articles 43 and 48 Directive 2001/34/EC.

c. **Special requirements on the admission of corporate bonds**

Article 9.2.1.2.1.7 – Bonds requirements

1. The nominal amount of the issue must be at least EUR 200,000, unless national law allows a lower amount.

2. The minimum issue size of EUR 200,000 does not apply to continuous issuance programs for which the issue size has not yet been determined.

Comment: Article 58 Directive 2001/34/EC.

§ 2: Non-regulated markets

Article 9.2.1.2.2.1 - Issuer consent

The issuer's consent is not required when the equity or debt securities are already admitted to trading on a regulated market.

Comment: Article 18(8) MiFID II. Where a security admitted to trading on a regulated market is also traded on a non-regulated market without the issuer's consent, the issuer is not subject to any additional financial disclosure requirements.

Article 9.2.1.2.2.2 - Market rules

The rules that establish the criteria for admitting securities to trading must be transparent and non-discriminatory.

Comment: Article 18(2) and (3) MiFID II.

CHAPTER 2: TRANSPARENCY OBLIGATIONS

SECTION 1: GENERAL RULES

Article 9.2.2.1.1 - Scope of application

This section applies to issuers who :

a) have requested or approved admission of their financial instruments to trading on a regulated market; or

b) in the case of an instrument only traded on an MTF or OTF, have approved the trading of their financial instruments on an MTF or OTF, or have requested admission to trading of their financial instruments on an MTF.

Comment: The scope of these obligations is defined identically by Regulation No. 596/2014 on market abuse (MAR) for the public disclosure of inside information (Article 17(1)) and for managers' transactions (Article 19(4)).
For the purposes of this section, emission allowance market participants are considered to be issuers of securities.

§ 1: Inside information

Article 9.2.2.1.1.1 - Public disclosure obligation

An issuer shall inform the public as soon as possible of inside information which directly concerns that issuer.

Article 9.2.2.1.1.2 - Delayed disclosure

1. An issuer may, on its own responsibility, delay disclosure of inside information provided that:

a) immediate disclosure is likely to prejudice the legitimate interests of the issuer;

b) the delay of diclosure is not likely to mislead the public; and

c) the issuer is able to ensure the confidentiality of that information.

Where the confidentiality of that inside information is no longer ensured, article 9.2.2.1.1.1 applies ipso jure. The existence of a sufficiently accurate rumor is considered a breach of confidentiality, which will then be presumed to be no longer ensured.

2. An issuer which is a credit or financial institution may, on its own responsibility, delay the publication of inside information if:

a) that disclosure entails a risk of undermining the financial stability of the issuer and the financial system;

b) it is in the public interest to delay the disclosure;

c) the confidentiality of that information can be ensured; and

d) the competent authority has consented to the delay of diclosure. The issuer must prove that the conditions set out in points (a) to (c) have been met.

Article 9.2.2.1.1.3 - Disclosure of information to a third party

1. When an issuer, or a person acting on their behalf or for their account, discloses any inside information to any third party in the normal course of the exercise of an employment, profession or duties, the issuer must make complete and effective public disclosure of that information as soon as possible.

2. This article shall not apply if the person receiving the information owes a duty of confidentiality, regardless of whether such duty is based on a law, regulation, articles of association, or contract.

Comment: This article is based on article 17 MAR. The ad hoc disclosure rules oblige the issuer to inform the public as soon as possible and in a transparent way about major developments affecting the company. The publication of inside information also serves to prevent insider trading and maintain the smooth operation of markets, according to Recital 49 MAR.

§ 2: Information on managers' transactions

Article 9.2.2.1.2.1 - Scope of application

The obligations of this section apply once the total amount of the transactions of the persons concerned has reached the threshold set out in level 2 texts.

Article 9.2.2.1.2.2 - Transparency obligation

1. Persons discharging managerial responsibilities, as well as persons closely associated with them, shall notify the issuer and the competent authority of any transaction conducted on their own account in relation to the issuer's shares, debt instruments, derivatives or other linked financial instruments.

2. The same persons notify emission allowance market participants and the competent authority of any transactions conducted on their own account involving emission allowances, auctioned products based on them or derivatives linked thereto.

3. Such notifications shall be made promptly and no later than three business days after the date of the transaction in a way that allows a timely access to such information on a non-discriminatory basis throughout the Union.

Comment: This provision requires managers to disclose their personal transactions in accordance with article 19 of MAR.
The term "manager" refers to people with managerial responsibilities and those close to them.

'Person discharging managerial responsibilities' means a person within an issuer, an emission allowance market participant or another entity, who is:

a. a member of the administrative, management or supervisory body of that entity; or
b. a senior executive who is not a member of the bodies referred to in point a), who has regular access to inside information relating directly or indirectly to that entity and power to take managerial decisions affecting the future developments and business prospects of that entity;

'person closely associated' means:

a. a spouse, or a partner considered to be equivalent to a spouse in accordance with national law;
b. a dependent child, in accordance with national law;
c. a relative who has shared the same household for at least one year at the time on the date of the transaction concerned; or
d. a legal person, trust or partnership, the managerial responsibilities of which are discharged by a person discharging managerial responsibilities or by a person referred to in point a), b) or c), which is directly or indirectly controlled by such a person, which is set up for the benefit of such a person, or the economic interests of which are substantially equivalent to those of such a person.

SECTION 2: RULES SPECIFIC TO REGULATED MARKETS

§ 1: Periodic information

Article 9.2.2.2.1.1 - Annual financial report

1. The issuer shall make public its annual financial report at the latest four months after the end of each financial year and shall ensure that it remains publicy available for at least 10 years. The annual report shall comprise:

a) the financial statements;

b) the management report; and

c) statements made by the persons responsible within the issuer as defined in paragraph 2.

2. The persons responsible within the issuer, whose names and functions shall be clearly indicated, must certify that, to the best of their knowledge, the financial statements prepared in accordance with the applicable set of accounting standards give a true and fair view of the assets, liabilities, financial position and profit or loss of the issuer and of the undertakings included in the consolidation. They must also certify that the management report includes a true and fair review of the development and performance of the business and the position of the issuer and the undertakings included in the consolidation, together with a description of the principal risks and uncertainties that they face.

Article 9.2.2.2.1.2 - Financial statements

1. The financial statements must be prepared in accordance with applicable international accounting standards.

2. They shall contain at least a condensed balance sheet and condensed profit and loss account and explanatory notes on these accounts. In preparing the condensed balance sheet and the condensed profit and loss account, the issuer shall follow the same principles for recognising and measuring as when preparing the annual financial reports.

3. The financial statements shall be audited. The audit report, signed by the persons responsible for auditing the financial statements, shall be disclosed in full to the public together with the annual financial report.

Article 9.2.2.2.1.3 - Groups of companies

Where the issuer is required to prepare consolidated accounts, the audited financial statements shall comprise those consolidated accounts and the annual accounts of the parent company drawn up in accordance with the national law of the Member State in which the parent company is incorporated. Where the issuer is not required to prepare consolidated accounts, the audited financial statements shall comprise the annual accounts prepared in accordance with the law of the Member State in which the company is incorporated.

Article 9.2.2.2.1.4 - Half-yearly financial reports

1. The issuer of shares or debt securities shall make public a half-yearly report covering the first six months of the financial year as soon as possible after the end of the relevant period, but at the latest three months thereafter. The issuer shall ensure that the half-yearly financial report remains available to the public for at least ten years.

2. The half-year financial report shall comprise:

a) a condensed set of financial statements ;

b) an interim management report; and

c) the statements of the persons responsible within the issuer referred to in article 9.2.2.2.1.1 paragraph 2.

3. The interim management report shall include the significant events that have occurred during the first six months of the financial year, and their impact on the condensed set of financial statements. It shall also include a description of the principal risks and uncertainties for the remaining six months of the financial year. For issuers of shares, the interim management report shall also include major related parties transactions.

4. If the half-yearly report has been audited, the audit report shall be reproduced in full. The same shall apply in the case of an auditors' review. If the half-yearly financial report has not been audited or reviewed by auditors, the issuer shall make a statement to that effect in its report.

Article 9.2.2.2.1.5 - Reporting in the extractive industries or primary forest exploitation

Issuers operating in the extractive industry or the logging of primary forests shall draw up an annual report on payments made to governments. The report shall be published no later than six months after the end of each financial year, and shall remain available to the public for at least ten years. Payments to governments shall be reported on a consolidated basis.

§ 2: Continuous disclosure

Article 9.2.2.2.2.1 - Obligation to notify the crossing of thresholds

1. When a person, alone or together with other persons, crosses, directly or indirectly, a threshold provided for by European or national law, he or she must notify the issuer and the competent authority.

2. This obligation applies to any transfer of shares admitted to trading on a regulated market and to which voting rights are attached, or to any transfer of instruments whose effect is equivalent to a transfer of ownership of such shares.

Comment: Article 9.2.2.2.2.1 lays down the general rule on disclosure of major shareholdings. It is based on articles 9, 11, 13a, 19(3) and 20 of the Transparency Directive (TrD) (Directive 2004/109/EC), articles 7 to 12 of Directive 2007/14/EC and ESMA/2005/1598.

Disclosure of changes in major shareholdings in companies which have issued shares admitted to trading on a regulated market is intended to enable investors to acquire or dispose of shares in full knowledge of changes in the voting structure; it should also enhance the effectiveness of control over companies issuing shares and the overall market transparency of important capital movements (see Recital 18 TrD).

TITLE 3: MARKET TRANSACTIONS

CHAPTER 1: INVESTOR PROTECTION

SECTION 1: OBLIGATION OF INTERMEDIATION

Article 9.3.1.1.1 - Obligations of financial intermediaries

1. To carry out a transaction on a trading venue, the investor must use a company approved as a financial intermediary by the materially and territorially competent authorities, barring restrictive legal exceptions.

2. The financial intermediary is subject to structural, governance and operational requirements, as well as to specific pre-contractual and contractual obligations towards the investor aimed at protecting the latter's interests.

Article 9.3.1.1.2 - Purpose of the contract between the investor and the financial intermediary

1. The contract concluded between the investor and the financial intermediary may not have as its principal object anything other than the reception and transmission of orders, the execution of orders on behalf of clients, dealing on own account, portfolio management or investment advice.

2. The contract concluded between the investor and the financial intermediary may include other services if they are ancillary to the main purpose.

Comment: See Article 2 of MiFID II, as well as Delegated Regulation (EU) 2017/592.

SECTION 2: FINANCIAL INTERMEDIARIES' PRE-CONTRACTUAL AND CONTRACTUAL OBLIGATIONS TO INVESTORS

Article 9.3.1.2.1 - Fair, clear and not misleading information

1. The financial intermediary shall provide the potential investor with fair, clear and not-misleading information on the characteristics of his company, the methods of market analysis on which he relies or intends to rely, all costs and related charges inherent in his services, as well as the terms and conditions for the payments made by the investor.

2. When the information provided by the financial intermediary is of a marketing nature, it shall be identified as such.

Article 9.3.1.2.2 - Scope of information provided to investors

1. When the contract is negotiated, the financial intermediary provides the potential investor, free of charge, in a comprehensible form and on a durable medium, with the information needed to make an informed decision, concerning the scope of the service offered, the characteristics of the financial instruments concerned and any associated risks.

2. Before entering into a contract, the financial intermediary must, depending on the type of product or service offered, obtain information on the customer's profile to ensure that the offered product or service is suitable for the customer. In application of his professional obligations, the financial intermediary provides the investor with relevant information, taking into account the investor's profile and the proposed product or service.

Article 9.3.1.2.3 - Content of the contract between the investor and the financial intermediary

1. The contract concluded between the investor and the financial intermediary contains a precise description of the service to be performed by the financial intermediary, the financial instruments concerned and their characteristics, the envisaged type of transactions, as well as the rights and obligations of the parties and the terms and conditions of their performance.

2. The financial intermediary provides the investor with all pre-contractual and contractual documents relating to the negotiation, conclusion, performance and termination of the contract, in a comprehensible form and on a durable medium, and keeps them under his responsibility for as long as is necessary to perform the contract and, where applicable, to deal with any dispute relating to it. This form is mandatory and sanctioned by nullity of the contractual documents when the investor's profile indicates that he or she does not have sufficient skills or recent experience of financial markets.

Article 9.3.1.2.4 - Performance of the contract by the financial intermediary in the investor's best interests

1. The financial intermediary performs its obligations in accordance with the best interests of the investor.

2. Unless expressly stated otherwise, the investor's best interests are assessed primarily on the basis of the financial results obtained for the investor as a result of the service provided by the financial intermediary.

3. The financial intermediary ensures at all times and under all circumstances that the service is carried out at the lowest cost to the investor.

Article 9.3.1.2.5 - Avoidance of conflicts of interest

1. The financial intermediary ensures that no direct or indirect conflict of interest hinders the execution of the contract in accordance with the best interests of the investor.

2. When the occurrence of a direct or indirect conflict of interest cannot be avoided, the financial intermediary informs the investor concerned of this in a transparent and

immediate manner, and performs the service only with the investor's specific and informed consent, subject to compliance with measures intended to reduce the harmful consequences of the conflict of interest for the investor.

3. The financial intermediary keeps a record of the measures taken in the event of a conflict of interest, in a comprehensible form and on a durable medium, and makes it available to the investor free of charge.

Article 9.3.1.2.6 - Safekeeping of cash

1. The financial intermediary shall, on its responsibility, keep cash paid in by, or intended for, the investor or a third party expressly indicated by the investor, in a special account separate from its own assets.

2. The financial intermediary retains this cash only to the extent and for the time necessary to execute the contract in accordance with the best interests of the investor, and then returns it to the investor or pays it to the third party expressly indicated by the investor.

CHAPTER 2: TAKEOVER BIDS

Article 9.3.2.1 - Definition

A "takeover bid" is an offer made by any person, acting alone or in concert with other persons, made to the holders of the securities of a company to acquire all or some of those securities, which has as its objective the acquisition of control of the offeree company.

Article 9.3.2.2 - Anti-takeover defences

In the event of a takeover bid, the board of directors or management of the offeree company must refrain from any action likely to cause the bid to fail, except with the prior authorisation of the general meeting of shareholders. This prohibition applies in the period between the launch of the bid and the publication of its outcome. Exception is made for the search for other offers.

Article 9.3.2.3 - Mandatory bid

1. Any person who, acting alone or in concert with other persons, acquires 30% of a company's shares or voting rights, is obliged to make an offer to purchase all the shares.

2. The bidder must offer the security holders a fair consideration.

3. The obligation to make such an offer does not apply where control has been acquired following a voluntary offer in accordance with paragraph 2 of article 9.3.2.4.

Article 9.3.2.4 - Squeeze-out and sell-out procedures

1. A person acquiring shares carrying at least 90% of the voting rights may require minority shareholders to sell their shares at a fair price.

2. When an offer has been made to all holders of securities of the target company for all of their securities, a holder of remaining securities may require the offeror to buy his or her securities at a fair price.

3. These rights must be exercised within three months of the end of the offer acceptance period.

Comment: This article summarizes articles 15 and 16 of Directive 2004/25/EC of the European Parliament and of the Council of April 21, 2004 on takeover bids (Takeover Directive).

CHAPTER 3: SHORT SALES

SECTION 1: GENERAL RULES

Article 9.3.3.1.1 - Scope of application

This section applies to shares admitted to trading on a regulated market or MTF and to sovereign debt securities.

Article 9.3.3.1.2 - Notion of short sale

A "short sale" is the sale of a financial instrument which the seller does not own at the time of entering into the agreement to sell. A short sale also includes the situation where at the time of entering into the agreement to sell the seller has borrowed the share or debt instrument or has agreed to borrow it in order to deliver it at the time of settlement.

Article 9.3.3.1.3 - Notion of net short position

1. The net short position is the position remaining after deducting the long position from the short position held.

2. A short position is the position resulting from the short sale of a financial instrument, as well as any transaction which creates a derivative instrument or relates to the respective financial instrument and which confers a financial advantage in the event of a decrease in the price the instrument in question.

3. A long position is the position resulting from the holding of a financial instrument, as well as any transaction which creates a derivative instrument or relates to the respective financial instrument and which confers a financial advantage in the event of an increase in the price of the financial instrument.

Comment: See article 3 of Regulation (EU) No. 236/2012 of the European Parliament and of the Council of March 14, 2012 on short selling and certain aspects of credit risk swaps (SSR).

SECTION 2: TRANSPARENCY OBLIGATIONS

Article 9.3.3.2.1 - Transparency measures

1. Any person holding a net short position in financial instruments governed by this Chapter shall notify the competent authority and shall disclose details of that position to the public where it exceeds a threshold set by regulation.

2. Publication is carried out electronically, in accordance with regulatory procedures, and must in all cases ensure fast access to information on a non-discriminatory basis.

Comment: Codification of Article 2(1)(h), (j) and Article 5 SSR.

SECTION 3: PROHIBITIONS

Article 9.3.3.3.1 - Prohibition of uncovered short sales

Any short sale of a financial instrument is prohibited when the seller has not taken the necessary steps to transfer ownership of financial instruments of the same class in order to be able to deliver the financial instruments at maturity.

Comment: Includes the definition of Article 2(1)(b) SSR by taking over the prohibition principle included in Article 12 SSR, also includes the rules for sovereign default swaps in Article 14(1) SSR, etc. This provision, as well as the following provisions of this chapter, are generally intended to apply both to transferable securities and debt instruments, and to related derivatives.

Article 9.3.3.3.2 - Exceptions for certain transactions

Notwithstanding the preceding articles, the following types of transactions are notably authorised:

a) market-making activities,

b) primary market operations,

c) stabilisation operations,

in accordance with current financial regulations.

Comment: Article 5 MAR; as provided for in Articles 17 and 18 SSR.

TITLE 4: MARKET INTEGRITY

Article 9.4.1 - Scope of application

1. This Title applies to financial instruments traded on a trading venue (regulated market, MTF or OTF) or which have been the subject of a request for admission to a regulated market or MTF, as well as to financial instruments whose value depends on that of such

an instrument. It also applies to emission allowance market participants, emission allowance auction platforms and products based on emission allowances.

2. This title deals with market abuse, namely insider dealing and market manipulation. They may give rise to criminal or administrative sanctions under the Market Abuse Regulation and national legislation transposing the Market Abuse Directive.

CHAPTER 1: PROHIBITION OF INSIDER TRADING

Article 9.4.1.1 - Prohibition of insider dealing

1. A person must not:

a) engage or attempt to engage in insider dealing;

b) recommend or induce insider dealing by another person; or

c) unlawfully disclose inside information.

Comment: This provision establishes the principle of the prohibition of insider dealing and the unlawful disclosure of inside information.

Article 9.4.1.2 - Notion of insider trading

1. Insider dealing arises where a person possesses inside information and uses that information by acquiring or disposing of a financial instrument to which that information relates. The use of inside information by cancelling or amending an order concerning such an instrument where the order was placed before the person concerned possessed the inside information, shall also be considered to be insider dealing.

2. In relation to auctions of emission allowances or other auctioned products based thereon, the use of insider information shall also comprise submitting, modifying or withdrawing a bid.

3. The use of recommendations or inducements constitute insider trading when the person using the recommendation or inducement knows, or ought to know, that it is based on inside information.

Comment: This definition defines the various forms of insider trading and the persons presumed to possess inside information.

Article 9.4.1.3 - Inside information

1. "Inside information" is information of a precise nature, which has not been made public relating to the issuer or the financial instrument, which would be likely to have a significant effect on the prices of those financial instruments or on the price of related derivative financial instruments. Information is likely to have a significant influence on the price of financial instruments when a reasonable investor would be likely to use it as part of the basis for his or her investment decision.

2. An intermediate step in a protracted process shall be deemed to be inside information if, by itself, it satisfies the criteria for inside information set out in paragraph 1.

3. For persons charged with the execution of orders concerning financial instruments, any information conveyed by a client relating to the client's pending orders in financial instruments is also deemed to be inside information.

Comment: This provision defines the notion of inside information for issuers of financial instruments, commodity derivatives and investment services providers responsible for executing client orders (for the purposes of preventing front-running).

Article 9.4.1.4 - Exceptions

1. For the purposes of article 9.4.1.2, a person is not considered to have used inside information when

a) it is a legal person and no natural person who had an influence on its decision was in possession of the inside information;
b) he is a market maker or a person authorised to act as counterparty for the instrument in question and the transaction is made legitimately in the normal course of the exercise of its function;
c) when the transaction is carried out to ensure the performance in good faith of a due obligation resulting from an order placed before the person concerned obtained inside information; or
d) when the person has obtained that inside information in the conduct of a public takeover or merger and uses that inside information solely for the purpose of proceeding with that transaction.

2. The mere fact that a person knows that he or she has decided to acquire or dispose of financial instruments does not in itself constitute inside information.

3. The fact of having revealed privileged information to another person is not considered to be a disclosure within the meaning of article 9.4.1.1 when this revelation takes place in the normal exercise of an employment, a profession or duties.

Comment: This provision lists the various cases that may be considered as legitimate behavior under the prohibition of insider trading.

Article 9.4.1.5 - Insider list

1. The issuer draws up a list of all persons who have access to inside information and who are working for them under a contract of employment, or otherwise performing tasks through which they have access to inside information, such as advisers, accountants or credit rating agencies.

2. It takes all reasonable steps to ensure that any person on the insider list acknowledges in writing the legal and regulatory duties entailed and is aware of the sanctions applicable to insider dealing and the unlawful disclosure of inside information.

Comment: The obligation to keep a list of insiders applies both to issuers and any person acting on their behalf.

Article 9.4.1.6 - Contents of the insider list

The insider list shall include at least :

a) the identity of any person having access to inside information;

b) the reason for including that person in the insider list;

c) the date and time at which that person obtained access to inside information; and

d) the date on which the insider list was drawn up.

Comment: This provision imposes a standardised format for the insider list.

Article 9.4.1.7 - Updating and storage

1. The issuer shall update the insider list promptly in the following circumstances:

a) where there is a change in the reason for including a person already on the insider list ;

b) when there is a new person who has access to inside information and needs, therefore, to be added to the insider list; and

c) where a person ceases to have access to inside information.

2. Each update shall specify the date and time when the change triggering the update occurred.

3. The insider list shall be retained for a period of at least five years after it is drawn up or updated.

Article 9.4.1.8 - Exception

Issuers whose financial instruments are admitted to trading on an SME growth market shall be entitled to include in their insider lists only those persons who, due to the nature of their function or position within the issuer, have regular access to inside information.

Comment: Cf. Art. 1(4) Regulation (EU) 2019/2115 of the European Parliament and of the Council of November 27, 2019 amending Directive 2014/65/EU and Regulations (EU) No 596/2014 and (EU) 2017/1129 as regards the promotion of the use of SME growth markets.

CHAPTER 2: PROHIBITION OF MARKET MANIPULATION

Article 9.4.2 - Prohibition of market manipulation

1. Market manipulation and attempted market manipulation are prohibited.

2. The notion of "market manipulation" includes any behaviour that

a) gives, or is likely to give, false or misleading signals concerning the supply, demand or price of a financial instrument, or secures the price of a financial instrument at an abnormal or atificial level; or

b) *uses fictitious devices or any other form of deception or contrivance to affect the price of a financial instrument.*

3. Any behaviour that manipulates the calculation of a reference index also constitutes market manipulation. Behaviour that conforms to accepted market practices is not considered market manipulation within the meaning of the preceding sentence.

4. The rules set out in paragraphs 1 to 3 also apply to commodity derivatives and emission allowances.

Comment: This article is based on articles 12 and 15 MAR and combines the two rules in a single provision. Since the definition in article 12 is already **VERY** detailed, it is not envisaged to extend the present provision to other cases.