Integrating Latin American Stock Markets: The Mercado Integrado Latinoamericano (Mila): Innovations And Perspectives

Dante Figueroa
Washington College of Law

Follow this and additional works at: http://digitalcommons.wcl.american.edu/aublr

Part of the Banking and Finance Law Commons, and the International Law Commons

Recommended Citation
Available at: http://digitalcommons.wcl.american.edu/aublr/vol3/iss2/2

This Article is brought to you for free and open access by the Washington College of Law Journals & Law Reviews at Digital Commons @ American University Washington College of Law. It has been accepted for inclusion in American University Business Law Review by an authorized editor of Digital Commons @ American University Washington College of Law. For more information, please contact kclay@wcl.american.edu.
INTEGRATING LATIN AMERICAN STOCK MARKETS: THE MERCADO INTEGRADO LATINOAMERICANO (MILA): INNOVATIONS AND PERSPECTIVES

BY DANTE FIGUEROA*

Introduction .................................................................278

I. Euronext and NYSE: The Rise of Integrated Stock Markets ....279

II. Description of the Legal Framework of the Stock Markets of Chile, Peru, and Colombia ...........................................282

1. Legal Framework of the Peruvian Financial Market .............282
   A. Brief History of the Peruvian Stock Market .................282
   B. Regulatory Scheme ...........................................283
   C. Main Institutions of the Peruvian Stock Market ..........284
      i. The Lima Stock Market ....................................285
      ii. CAVALLI ..................................................285
      iii. The SMV ..................................................286
   D. Current Information on the Peruvian Financial Markets ...286

2. Legal Framework of the Colombian Financial Market .........287
   A. Brief History of the Colombian Stock Market .............287
   B. Regulatory Scheme ...........................................288
   C. Main Institutions of the Colombian Stock Market .........289
      i. The Stock Market of Colombia ............................289
      ii. DECEVAL ..................................................289
      iii. The Financial Superintendence of Colombia .........289

3. Legal Framework of the Chilean Financial Market ..........290
   A. Brief History of the Chilean Stock Market .................290

* Dante Figueroa, Esq., is a Partner at Washington, D.C.-based Wöss & Partners, PLLC (http://www.woesssetpartners.com/IATG/) in the areas of international arbitration and trade. He is a member of the Chile, New York, Washington, D.C., U.S. Supreme Court, and U.S. Court of International Trade bars, and is an Adjunct Professor at the Georgetown Law Center, and the Washington College of Law. His publications are available at: http://ssrn.com/author=1015723, and he can be reached at: dfigueroa@woesssetpartners.com.
INTRODUCTION

This Article reviews the main aspects of the Latin American Integrated Market (Mercado Integrado Latinoamericano) ("MILA"), its principal characteristics, its structure, and the prospects for the development of the financial markets of MILA’s signatory countries. The MILA initiative creates a genuine investment opportunity for U.S. investors to take advantage of the benefits generated by an integrated stock market in South America. As this Article will explain further, U.S. investors may benefit from larger economies of scale, more uniform and harmonized information, creation of new financial products, early notification of regulatory changes, multiple market exposure, and the singular position of trading in three financial systems at once. Accordingly, U.S. investors may find in MILA a “one-way street” for investing in securities of the three (and potentially four if Mexico were to join MILA) jurisdictions whose economies are sound, and who are jointly taking enormous strides toward strengthening, harmonizing, and expanding their securities markets.

MILA constitutes an authentic effort to deepen the connections and opportunities between the stock markets of Latin America’s reputedly most prosperous and consistently open economies: Chile, Colombia, and Peru. The motivation for MILA’s creation arises from a growing interest in the globalization of financial markets around the world.

In this context, this Article reviews the broader context of the rise of integrated stock markets around the world, and then provides a description
of the financial markets of Chile, Colombia, and Peru, explaining the context in which MILA emerged as an alternative created by the pro-market economies of these three prosperous countries of the southern cone of South America aimed at facilitating the functioning of their stock markets and the creation of wealth. To frame this development, Part I of this Article provides a discrete overview of the rise of integrated stock markets around the world. Specifically, it traces the development of Euronext and its integration with the New York Stock Exchange ("NYSE").

Part II of this Article examines the legal framework of the stock markets of each of MILA’s signatory countries, providing a background for understanding the creation and prospects of MILA, and presenting a basic definition and explanation of MILA including the legal structure, practical advantages, and operational aspects of its mechanisms.

Part III of this Article discusses the main steps followed by the parties toward the signature of MILA’s Framework Agreement ("MILA Agreement"), and the main advantages of this integration for MILA’s members.

Part IV of this Article discusses the recent efforts undertaken by Mexico to join the MILA Agreement.

Finally, Part V of this Article presents a few closing thoughts on MILA’s potential as the foundation for the integration of Latin American stock markets.

1. **EURONEXT AND NYSE: THE RISE OF INTEGRATED STOCK MARKETS**

   During the last three decades, there has been a global trend in favor of market integration, and more specifically in favor of stock market integration.\(^1\) One commentator identifies several factors as probable causes of this trend, including the need to improve national competitiveness in a world of multilateral trading systems;\(^2\) the reduction of barriers on mobility triggered by globalization, market liberalization, and deregulation;\(^3\) and the revolution in information technology that has facilitated transactions in the banking and financial sectors.\(^4\) Consequently, stock market integration has found fertile grounds around the globe, and Latin America is not an exception to this global development.

---

2. *Id. at 5.*
3. *Id. at 7.*
4. *Id. at 8.*
The most relevant instances of stock market integration are found in the United States and the European Union. The leading initiatives in this field were the creation of Euronext in 2001; the integration of the New York Stock Exchange ("NYSE") and Euronext in 2007; and the recent efforts to integrate the NYSE Euronext group and the Tokyo Stock Exchange. Euronext, which is the first massive experiment of stock market integration, was incorporated into the framework of the European Union’s economic integration. Euronext is a result of the initial merger of the Paris Bourse SBF SA, the Brussels Stock Exchange, and the Amsterdam Stock Exchange, which went public in July 2001. After this initial merger, Euronext also integrated the Lisbon Stock Exchange, the London International Financial Futures and Options Exchange, and the Deutsche Börse. A few years after the Euronext merger, on April 4, 2007, the NYSE Group, Inc. entered into a merger with the Euronext N.V., a private Dutch finance company, creating one of the largest operators of the financial market in the world: NYSE Euronext group. Today, NYSE Euronext represents “one-third of the world’s equities trading [and is] the most liquid of any global exchange group.” Finally, the most recent initiative in stock market integration originates from the agreement signed in March 2011 between the world’s two main stock market groups, NYSE Euronext and the Tokyo Stock Exchange.

5. In 2011, the Tokyo Stock Exchange and NYSE Euronext signed a “Master Agreement Regarding Mutual Network Connection,” designed to provide “access to both exchange operators’ markets using the existing network environments for trading participants, investors, service providers and other users of both networks.” Tokyo Stock Exchange and NYSE Euronext Sign Master Agreement Regarding Mutual Network Connection, NYSE EURONEXT (Dec. 8, 2011), http://nyse.com/press/1323341327130.html.


the Tokyo Stock Exchange, which created a mutual network of stock exchanges.12

These integrations have provided useful insight into detecting and understanding the main challenges that stakeholders face when implementing integration. Among these challenges, the most important have been the harmonization of conflicting, or at least divergent, regulatory frameworks and the costs of compliance thereof.13 The NYSE Euronext experience clearly shows the difficulties of harmonizing divergent regulatory frameworks as each jurisdiction regulates its own financial markets differently.14

Much like MILA, the NYSE Euronext merger was the product of a Memorandum of Understanding signed by the regulatory agencies of the participating parties.15 In the Memorandum, the parties committed to harmonize the legal frameworks of each country to promote the stock market integration.16 The agreement, however, was non-binding in nature and prevented conflicts with the domestic laws or other bilateral or multilateral agreements existing between the signatory agencies’ countries.17 Consequently, many domestic regulations remained after integration, creating heavy burdens on non-local stakeholders.18 The heaviest burdens were created by the obligation to comply with laws on accountability standards,19 reporting and corporate governance requirements,20 and disclosure systems.21 Despite these challenges, the integration of the NYSE and Euronext has resulted in a successful experience that has facilitated the purchase and sale of foreign shares in the United States and Europe,22 which is the main purpose of the stock integration system.

14. See id. at 515–16 (2008) (discussing bilateral agreements that were created to avoid “conflicts that may arise from the application of differing regulatory practices”).
15. Id. at 514.
16. Id. at 515.
17. Id.
18. Id. at 499 (“The greatest challenges are posed by the burdens that listed companies may face in meeting the different regulatory requirements of the European nations that list on Euronext and the United States, many of which are rigorous.”).
19. Id. at 510–12.
20. Id. at 512–13.
21. Id. at 513–14.
22. Id. at 502.
II. DESCRIPTION OF THE LEGAL FRAMEWORK OF THE STOCK MARKETS OF CHILE, PERU, AND COLOMBIA

To understand the relevance of MILA as a crucial effort aimed at harmonizing Latin American financial markets, this Part will provide a description and general background information about the basic market structure and operations of MILA's signatory members. This general information will benefit U.S. businesses, and their attorneys, seeking to expand investment opportunities in the Latin American region.

1. Legal Framework of the Peruvian Financial Market

This Section will explore the legal framework of the Peruvian financial market by exploring its (A) history, (B) regulatory scheme, (C) main institutions, and (D) current performance. By understanding these elements, which underpin the Peruvian markets, U.S. businesses and their attorneys can explore the opportunities presented by MILA with a more keen understanding of the Latin American market on which it is based.

A. Brief History of the Peruvian Stock Market

The origins of the Peruvian Stock Market date back to 1857 with the creation of the Commerce Stock Market of Lima (Bolsa de Comercio de Lima). In 1898, this institution was renamed the Commercial Stock Market of Lima (Bolsa Comercial de Lima). Due to the catastrophic effects of the two World Wars and the American Great Depression during the twentieth century, this institution suffered several drastic changes that led to the creation of the New Commercial Stock Market of Lima in 1945. In 1945, reforms were initiated and then in 1951, the new stock market of Lima was officially created. However, between 1951-1971, there were many difficulties, primarily educating people to actually negotiate on the trading floor. In 1971, conditions were finally ripe for the creation of the actual stock market of Lima. Between 1971-2002, many important changes occurred, which ultimately resulted in the electronic system of trading that Peru now has, CAVALI. Finally, in 2002, the Extraordinary General Assembly of Associates of the Lima Stock Market decided to convert this institution into a stock corporation.

24. Id.
25. Id.
important legal and economic consideration behind the conversion into a stock corporation relates to the issue of limited liability enjoyed by such entities.

B. Regulatory Scheme

Peru’s Stock Market Law of 1996 is the main body of legislation regulating the Peruvian Stock Market, and its purpose is to regulate the creation and operation of stock markets in Peru. The most relevant amendment to this law was passed in 2008 by Legislative Decree No. 1061, which was enacted to enhance the existing Peruvian financial regulations pursuant to the U.S.–Peru Commercial Promotion Agreement and its Amending Protocol (Acuerdo de Promoción Comercial Perú - Estados Unidos de América y su Protocolo de Enmienda).

In addition to the Stock Market Law of 1996, the operation of the Peruvian stock market is governed by the subsidiary norms and statutes listed in Article 9 of Legislative Decree 861. Among these norms and statutes, the most important are: the local and international financial and commercial customs (usos bursátiles y mercantiles locales e internacionales), the Law on General Administrative Proceedings (Ley de Normas Generales de Procedimientos Administrativos), the General Law on the Financial System and the Insurance System (Ley General del Sistema Financiero y del Sistema de Seguros), and the Organic Law on the Superintendence of Banks and Insurance Institutions (Orgánica de la Superintendencia de Banca y Seguros).

Comparative Aspects of Piercing the Corporate Veil in the United States and Latin America, Duquesne Law Review, 50 DUQ. L. REV. 683, 704 (2012) (referring to the emergence of limited liability companies in the United States, where “society ultimately recognized the benefits of limited liability, which eventually resulted in the creation of a new form of business organization: the limited liability company.”).


29. According to the heading of Legislative Decree No. 1061 of 2008, the Peruvian Congress enacted this Legislative Decree with the purpose of facilitating the implementation of these agreements and to promote economic competition for the enforcement of these agreements. Ley de Mercado de Valores, Decreto Legislativo No. 1061 [Stock Market Law, Legislative Decree No. 1061], 1 de enero de 2009 (Peru), available at http://www.congreso.gob.pe/ntley/imagenes/DecretosLegislativos/01061.pdf.

30. Stock Market Law, Legislative Decree No. 861, supra note 27, art. 9.

31. Id.
Finally, several regulations control those aspects that do not contradict the contents of Legislative Decree No. 861 and the subsidiary norms and statutes listed in Article 9 of the Stock Markets Law of 1996. In fact, Article 9 enumerates the legal instruments that apply to matters in which that law is silent. Among the most important regulations are: the Regulation on the Operations of the Stock Exchange (Reglamento de Operaciones de la Rueda de Bolsa), the Regulation on the Inscription and Exclusion of Securities in the Stock Exchange of Lima (Reglamento de Inscripción y Exclusión de Valores Mobiliarios en la Rueda de Bolsa de la Bolsa de Valores de Lima), and the Regulation on the Surveillance of the Market by the Stock Exchange of Lima (Reglamento para la Vigilancia del Mercado por parte de la Bolsa de Valores de Lima).

C. Main Institutions of the Peruvian Stock Market

The Peruvian Stock Market has three main institutions: the Lima Stock Market (Bolsa de Valores de Lima), the Central Registry of Securities and Liquidation (Caja de Valores de Lima) ("CAVALI"), and the Superintendence of the Securities Market (Superintendencia del Mercado de Valores) ("SMV"). CAVALI's main function is the creation, maintenance, and development of the national securities market. CAVALI's tasks are the registration, transference, custody, offset, and liquidation of securities for operations performed at the Lima Stock Market. The SMV, in turn, is a governmental agency ascribed to the Ministry of Economy and Finance, whose role is to guarantee the protection of investors, to ensure efficiency and transparency of financial markets, to enforce compliance with securities markets regulations, and to

32. FIGUEROA, supra note 28, at 810.
33. Stock Market Law, Legislative Decree No. 861, supra note 27 (mentioning the following legal instruments: (a) General Companies Law; (b) Commerce Code and the Securities Law; (c) local and international stock and commercial customs; (d) Law on General Norms on Administrative Procedures; and (e) the Civil and Civil Procedure Codes).
38. Id.
oversee the activities of all individuals and institutions involved in Peruvian financial markets.39

i. The Lima Stock Market

On January 1, 2003, as a result of a decision by the Extraordinary General Assembly of its Associates,40 the Lima Stock Market adopted a new structure and transformed into a special stock corporation.41 By law, the shareholders of the Lima Stock Market became members of the stock market and its agents.42

According to its statute, the Lima Stock Market exercises five main functions: (a) providing the necessary structures and systems to obtain transparent information for the acquisition and sale of securities to market participants; (b) procuring the enlargement of the market through activities addressed to stimulate the negotiation of securities; (c) registering securities for their negotiation in the stock market; (d) offering information related to financial intermediaries and financial operations to the public; and (e) keeping the public informed about the value of securities and of any other relevant events that may affect the issuance of securities.43

ii. CAVALI

CAVALI acts as the repository of securities in Peru. Its main function is to keep the accounting record of securities admitted for trading in the stock market.44 Also, CAVALI is charged with the exclusive management of the profits obtained from the trading of these financial instruments.45 By law, CAVALI cannot engage in the intermediation of securities or in other activities related to the securities market other than managing profits and maintaining its accounting record.46

40. See Historical Review, supra note 23.
41. See Stock Market Law, Legislative Decree No. 861, supra note 27.
42. FIGUEROA, supra note 28, at 285–86.
44. See What is CAVALI?, supra note 37.
45. FIGUEROA, supra note 28, at 286.
46. Id.
iii. The SMV

The SMV is the entity in charge of supervising and controlling the enforcement of the Stock Market Law. Historically, this institution was called CONASEV (Comisión Nacional Supervisora de Empresas y Valores) until 2011, when Law No. 29,782, On the Strengthening of the Oversight of the Securities Market changed its name to the current SMV. Besides controlling and supervising the enforcement of the Stock Market Law, the SMV accomplishes several other functions; it serves as the official interpreter of the Law on the Stock Market, enacts regulations related to the operation of the stock market, and promotes the operation and study of the stock market.

D. Current Information on the Peruvian Financial Markets

In recent years, the operation of the Lima Stock Market has shown a positive trend. According to a report produced by the Lima Stock Market in 2010, the Peruvian stock market was the most profitable of the South American region for that year. Specifically, in 2010, the index of the Lima Stock Market closed at 23.374 points, which is the second highest index in Peruvian history, achieving an annual return of 64.99 percent. Additionally, “the LSE Selective Index (ISBVL), which groups the 15 most traded stocks on the market, experienced a 42.86 percent yield in 2010.” Moreover, “[t]he total BVL Market Capitalization, which includes the shares issued in Peru as well as those foreign shares that operate in [Peru] at the end of [2010] reached a record high of US $160,867 million, which is the greatest historical value of this indicator.”

50. See Purpose and Functions, supra note 39.
51. Id.
53. Id. at 14–15.
54. See id. at 15.
55. Id.
This successful trend continued in 2011, a year whose “most relevant and transcendental achievement… was the integration of the stock markets of Peru, Colombia, and Chile, thus, commencing the joint operations of [MILA].”56 Corroborating this tendency, in 2012 (year of the last publicly-available report on the performance of the Lima Stock Market), Peru’s economy experienced the largest growth (6.29 percent) in the South American region.57

For more information on Peru’s financial system see below.58

2. Legal Framework of the Colombian Financial Market

This Section will explore the legal framework of the Colombian Financial Market by exploring its history, regulatory scheme, main institutions, and current performance. By understanding these elements, which underpin the Colombian market, U.S. businesses and their attorneys can explore the opportunities presented by the MILA with a more keen understanding of the Latin American market on which it is based.

A. Brief History of the Colombian Stock Market

The expansion of the Colombian economy during the first two decades of the twentieth century fostered the incorporation of the first branches of foreign banks in that country, the creation of a national bank (Banco de la República), and the enactment of the first financial laws.59 Due to this economic growth, Colombia created the Stock Market of Bogota (Bolsa de Valores de Bogotá) in 1928.60 The creation of the Stock Market of Bogota was followed in 1961 by the foundation of the Stock Market of Medellín (Bolsa de Valores de Medellín), and the Stock Market of Occident (Bolsa de Valores de Occidente), in 1983.61 Finally, in July 2001, these three stock


60. Id.
markets merged into the current Stock Market of Colombia (Bolsa de Valores de Colombia).62

B. Regulatory Scheme

The Colombian financial system is mainly regulated by two bodies of laws: (1) Decree No. 663 of 1993, Organic Statute of the Financial System [Decreto No. 663 de 1993, Estatuto Orgánico del Sistema Financiero]63 and its amendments; and (2) Decree No. 2555 of 2010 for the Financial, Insurance and the Stock Market Sectors [Decreto No. 2555 de 2010, Sobre los Sectores Financiero, Asegurador y del Mercado de Valores].64 Law No. 964 of 2005 on the Management and Investment of Resources Generated from Securities [Ley 964 de 2005, Por La Cual Se Dictan Normas Generales y Se Señalan en Ellas los Objetivos y Criterios a los Cuales Debe Sujetarse el Gobierno Nacional para Regular las Actividades de Manejo, Aprovechamiento e Inversión de Recursos Captados del Público Que Se Efectúen Mediante Valores y Se Dictan Otras Disposiciones]65 and its amendments, along with Decree No. 2555 of 2010, are the primary regulations controlling the Colombian stock market.66

Other relevant laws closely related to the operation of the Colombian stock market include Law No. 1266 of 2008, on the management of financial information as part of the habeas data writ, and Law No. 1328 of 2009, on the protection regime for financial consumers.

---


62. Id.


C. Main Institutions of the Colombian Stock Market

The three main institutions of the Colombian stock market are the Stock Market of Colombia, the Colombian Central Deposit of Financial Instruments (Depósito Centralizado de Valores) ("DECEVAL"), and the Financial Superintendence of Colombia.

i. The Stock Market of Colombia

The Stock Market of Colombia is organized as a stock corporation.67 According to its regulations, the Stock Market of Colombia has thirteen basic functions.68 Some of the most important functions are: (a) to stimulate the market of capital, stocks, derivatives, and other financial instruments; (b) to organize, regulate, and exploit the operation of commercial entities and electronic systems developed to trade securities; (c) to organize, regulate, and exploit the operation of bidding systems for the sale of goods; (d) to establish permanent services of information, diffusion, and sale of financial data; (e) to stimulate and protect investments on stocks and other financial instruments; (f) to organize arbitration and conciliation centers, and other institutions for the settlement of disputes originated from the trade of securities and other financial instruments.69

ii. DECEVAL

Like the Stock Market of Colombia, DECEVAL is organized as a stock corporation. Article 2 of its Operation Regulatory Statute authorizes DECEVAL to exercise two core administrative functions: to administer the custody and deposit of securities and to administer the compensation or liquidation of the deposited securities.70

iii. The Financial Superintendence of Colombia

The Financial Superintendence of Colombia is an administrative agency affiliated with the Ministry of Finance and Public Credit (Ministerio de Hacienda y Crédito Público), and it is in charge of the inspection, control, and supervision of the financial system.71 The specific functions of this

---

68. Id. art. 5.
agency are regulated in Decree No. 2739 of 1991 and its amendments; the Organic Statute of the Financial System and its amendments; and Law No. 964 of 2005 and its amendments.\textsuperscript{72}

For more information on Colombia’s financial system see below.\textsuperscript{73}

3. **Legal Framework of the Chilean Financial Market**

This Section summarily reviews the history of the creation of the Chilean Stock Market in the late nineteenth century, as well as the principal institutions of that stock market, with the purpose of presenting its general framework and extraordinary evolution that led to play a leading role for the creation of MILA.

**A. Brief History of the Chilean Stock Market**

On November 27, 1893, Chile created the Commercial Stock Market of Santiago (Bolsa de Comercio de Santiago)\textsuperscript{74} in response to the growth of the Chilean market and the increasing incorporation of new commercial companies in Chile during the first half of the nineteenth century.\textsuperscript{75} During the 1930s, the trade of securities from the mining industry was the predominant activity in the Santiago Stock Exchange ("SSE") [Bolsa

\textsuperscript{72} For more information on Colombia's financial system see below.\textsuperscript{73}

\textsuperscript{73} For more information on Colombia's financial system see below.\textsuperscript{73}


During recent decades, the SSE has seen rapid growth and diversification into multiple areas of the economy.77

**B. Regulatory Scheme**

The Chilean securities market is principally regulated by Law No. 18,045 and its subsequent amendments.78 In addition, the General Norms (Normas de Carácter General) ("NCGs") issued by the Securities and Insurance Superintendence also play an important role in the regulation of this market. Some of the most relevant regulations of the Superintendence are: (a) NCG No. 216 of 2008, on the Definition and Registration of Foreign Investors and Securities,79 and (b) NCG No. 240 of 2009, on the Public Offer of Foreign Securities.80


77. *Id.* (stating that “within the economic growth framework that has prevailed in the country since the 1980s, the Chilean stock market has experienced an extraordinary development characterized by a substantive growth in stock transactions, the issuance of securities, diversification of transacted instruments, and the opening of new markets.”).


79. Norma de Carácter General No. 216 [General Character Norm No. 216], SUPERINTENDENCIA DE VALORES Y SEGUROS (June 12, 2008) ("NCG No. 216"), *available at* http://www.bolsadesantiago.com/Normativa%20Mercado%20de%20Valores/NCG%20N%C2%B0216.pdf (identifying the individuals and entities that are considered as “Qualified Investors,” including foreign investors and those who are authorized to operate in the Chilean stock market under certain more beneficial conditions). NCG No. 216 is relevant since it establishes clear and straightforward rules for the regulation of foreign investors in Chile, thus avoiding confusions and uncertainty on who are the stakeholders benefitted with the special rules established for foreign investors in that country.

80. *Imparte Instrucciones Sobre la Oferta Pública de Valores Extranjeros en Bolsas de Valores Fuera de Ellas. Deroga Norma de Carácter General No. 83 y sus Modificaciones* [Issues Instructions on the Public Offer of Foreign Securities Outside de National Stock Exchanges. Repeals NCG No. 83 and its Amendments] (Jan. 11, 2009), ("NCG No. 83"), http://www.bolsadesantiago.com/Biblioteca%20BCS/Norma%20del20Caracter%20General%20240.pdf (providing that foreign securities may be transacted in Chile only if Registered in the Foreign Securities Registry maintained by the Superintendence of Securities and Insurance, and regulating the activities of brokers who participate in the transaction of foreign securities). NCG No. 83 is relevant because even though the Chilean stock market is free, it also contains regulations that are necessary to maintain fairness in the rules of the game.
C. Main Institutions of the Chilean Stock Market

The main institutions of the Chilean Stock Market are the SSE, the Central Deposit of Securities (Depósito Central de Valores) ("DCV"), and the Securities and Insurance Superintendence.

i. The Santiago Stock Exchange

The SSE is organized as a stock corporation and is governed by the Stock Markets Law of 1981,81 the Bylaws of the Santiago Stock Exchange,82 and the laws applicable to Chilean closed corporations.83 According to its statutes, the main purpose of the Santiago Stock Exchange is to stimulate the formation of an open, competitive, ordered, and transparent stock market through its regulation and organization.84

ii. DCV

DCV is a stock corporation whose role is to receive and deposit securities offered to the public market, and to facilitate the transfer operations of these securities.85 DCV is governed by Law No. 18.876 of 1989,86 the Supreme Decree No. 734 of 1991,87 and by its internal regulations.88

iii. The Securities and Insurance Superintendence

The Securities and Insurance Superintendence is an autonomous institution affiliated with the Chilean Ministry of Finance that is

---

84. See id. art. 2.
85. See Law No. 18876 art. 1, Diciembre 21, 1989, Diario Oficial [D.O.] (Chile).
responsible for the supervision of the securities and insurance markets. Decree Law No. 3,538 of 1980 is the basic body of laws that controls the organization and functions of this entity. Besides supervising the securities market, the Superintendence also issues regulations, absolves petitions, and imposes sanctions for the violation of the laws on the securities market.

D. Current Information

The operational data of the Santiago Stock Exchange from the last ten years shows how this institution has played a fundamental role in the Chilean market. Specifically, during this period, the volume of securities traded in the Santiago Stock Exchange increased by 253 percent. Also, in the last ten years, 164 new issuers of securities have joined this institution.

For more information on Chile’s financial system see below.

III. Legal Structure and Operational Aspects of MILA Mechanisms

MILA is the first initiative for the integration of the stock exchanges of three Latin American countries: Chile, Colombia, and Peru. MILA is the result of a series of agreements executed by these three stock exchanges

93. Id.
since 2009 for the purpose of creating a regional market for the transaction of equity securities.\textsuperscript{96}

Consequently, this Part will review the history of the negotiation and implementation of MILA agreements, objectives, and operation, as well as MILA’s perceived benefits for international investors.

1. History and Negotiation of MILA

The origins of MILA can be found in the Letter of Intent signed in Lima on September 8, 2009 (the “MILA Agreement”) by the Lima Stock Market, the Colombia Stock Market, the Santiago Stock Exchange, CAVALI, DECEVAL, and DCV, respectively.\textsuperscript{97} In this agreement, the parties expressed their desire to create and promote a model of market integration.\textsuperscript{98}

The creation and implementation of MILA was carried out through a series of roundtables held between representatives of the stock exchanges of the three participating jurisdictions, who began meeting in 2009. During the First Roundtable held in Santiago on October 28, 2009, the supervising entities of each party to the Framework Agreement (the Peruvian CONASEV,\textsuperscript{99} the Colombian Financial Superintendence, and the Chilean Securities and Insurance Superintendence) signed their First Memorandum of Understanding (“MOU I”). The purpose of this non-binding document\textsuperscript{100} was to identify the necessary aspects\textsuperscript{101} that had to be analyzed

\textsuperscript{96} \textit{Id.}

\textsuperscript{97} \textit{See BOLSA COMERCIO SANTIAGO, GUIA DE MERCADO INTEGRADO MILA [MILA INTEGRATED MARKET GUIDE] 5 (10th version 2013), available at http://www.bolsadesantiago.com/Biblioteca%20BCS/Gu%C3%A9a%20de%20Mercado%20Integrado%20MILA.pdf; see also Memorando de Entendimiento Entre la Comisi6n Nacional Supervisora de Empresas y Valores del Peru, la Superintendencia de Valores y Seguros de Chile y la Superintendencia Financiera de Colombia [Memorandum of Understanding, Signed Between the Nat’l Comm’n of Peru for the Oversight of Cos. and Sec., the Superintendence of Sec. and Ins. of Chile, & the Fin. Superintendence of Colom.] (Oct. 28, 2009) [hereinafter MOU I], available at http://www.svs.cl/sitio/otra_informacion/doc/mou/memorando_superintendencia_colombia_peru_chile.pdf.}

\textsuperscript{98} MOU I, supra note 97.

\textsuperscript{99} After the enactment of Law No. 29782 of 2011, this entity was renamed as “Superintendence of the Securities Market.”

\textsuperscript{100} See MOU I, supra note 97, art. 3.

\textsuperscript{101} See Adenda al Memorando de Entendimiento de Fecha 15 de Enero del 2010 Suscrito Entre la Comisi6n Nacional Supervisora de Empresas y Valores del Peru, la Superintendencia Financiera de Colombia y la Superintendencia de Valores y Seguros de Chile [Addendum to the Memorandum of Understanding of January 15, 2010, Signed Between the Nat’l Comm’n of Peru for the Oversight of Cos. and Sec., the Fin. Superintendence of Colom., & the Superintendence of Sec. and Ins. of Chile] [hereinafter Addendum to MOU I] § 2.2, available at http://bit.ly/1eWmocw (explaining that MOU I’s objective was for the parties to implement the main activities
prior to the establishment of an integrated stock market. MOU I also identified two other areas that had to be addressed by the parties, including the creation of proper communication channels between them and the establishment of mechanisms to guarantee the confidentiality of the information related to the project. Annex No. 1 of the MOU I contained a list of the eighteen main aspects to be reviewed prior to the establishment of MILA, including, among other things: access to brokerage firms; access to the integrated stock market; supervision and vigilance of the integrated stock market; creation of rules for the negotiation system; and custody, compensation, and liquidation of securities operations.

Pursuant to the agreements reached at the Second Roundtable held in Lima on January 14–15, 2010, the supervising entities signed the Second Memorandum of Understanding ("MOU II"), which is one of the fundamental milestones of MILA because, in this document, the parties established the model of market integration to be followed in the project and divided the implementation of the project into two stages. For the first stage, the parties agreed to follow a scheme of intermediation beginning in November of 2010, without the necessity of modifying the local laws. Then, for the second stage, the parties agreed to follow a scheme of direct access to the intermediaries and to implement standard rules of negotiation by the end of 2011. In addition, the supervising entities established the definitions and guidelines for the implementation of MILA within the MOU II.

and tasks aimed at facilitating the integration project between the securities markets of each of their jurisdictions through a negotiation mechanism for the securities transacted in the Stock Exchanges of each jurisdiction).

102. Id. art. 2, annex 1.
103. Id. arts. 4, 9, annex 2.
104. Id. art. 6.
105. Id. annex 1, item 1.
106. Id. annex 1, item 3.
107. Id. annex 1, item 5.
108. Id. annex 1, item 6.
109. Id. annex 1, item 4.
110. See id.
111. Francisco Silva Valdivieso, Integración de Bolsas Perú – Colombia – Chile 12 (Oct. 28, 2010), available at http://www.bolsadesantiago.com/Biblioteca%20BCS/Presentaci%C3%B3nSuperintendencia%20de%20Valores%20y%20Seguros%20%28VS%29.pdf.
112. Id.
113. Id.
114. Addendum to MOU I, supra note 101.
115. Id. art. 2.1.2–.1.8.
Before the start of MILA’s first stage, the supervising entities conducted a Third Roundtable, on June 21–22, 2010, where they evaluated the potential benefits of the integrated market and agreed on the standards to be implemented in the local regulations to put MILA into operation. This roundtable was followed by some visits of national brokerage firms to Colombia and Peru for the purpose of evaluating these markets.

After these preliminary agreements and meetings, the main institutions of the project launched MILA in Lima during the “Launch Event of the Integrated Market” on November 9, 2010. During this event, the institutions signed an agreement for the implementation of the first stage of MILA, as well as the covenants for the bidirectional link of their deposits. Finally, on May 30, 2011, the commencement of the integration of the stock markets of Chile, Colombia, and Peru was celebrated.

After the commencement of the integration, the supervising entities held two meetings to amend MOU II. In the first meeting, held in June 2011, these agencies signed the First Addendum to MOU II to create a Supervisory Committee to oversee and control the activities related to the operation of MILA and to set the local competencies of the supervising entities in this field. In the second meeting that took place in Lima, on June 15, 2012, the supervising entities signed the Second Addendum to MOU II to create the Executive Committee of Authorities. This body was created for the purpose of establishing a supreme administrative coordinator for the implementation of MILA.


117. See id.

118. See id.; see also Seraylan, supra note 116, at 218.


120. See MERCADO INTEGRADO LATINOAMERICANO, supra note 116; see also Seraylan, supra note 116, at 218.


122. See Memorandum of Understanding, 2d add., art. 3 (Jan. 15, 2010).

123. Id.

124. Id.
In 2011, the parties began discussing the potential incorporation of Mexico into the integrated market. On December 4 of that year, the stock markets and deposits of Chile, Colombia, and Peru signed a Letter of Intent with the Mexican Stock Market in the city of Mérida, Mexico, to conduct viability studies to analyze the possible integration of the Mexican Stock Market (Bolsa de Valores de Mexico) into the MILA Agreement.

2. **Purpose and Operation of MILA**

MILA’s main aim is to allow local brokers from the signatory countries to directly negotiate financial instruments listed on foreign equity markets. To that effect, brokers have to sign an intermediary routing agreement (“IRA”) with a broker located in the country of origin, that is, the country where the securities were originally issued. IRAs must be executed according to the regulations of the country of destination, that is, the country where brokers desire to trade the securities or other financial instruments. Finally, brokers must submit IRAs to their respective stock exchanges for approval.

For example, if a Chilean broker wants to gain access to the Colombian stock market, the Chilean broker must sign an IRA with a Colombian intermediary, in accordance with the Colombian regulations. Next, the Chilean broker must submit the IRA to the Santiago Stock Exchange, and the Colombian broker must, in turn, submit the IRA to the Colombian Stock Exchange. Additionally, Chilean brokers must be depositaries of the DCV and sign an agreement called the International Custody Annex (Anexo de Custodia Internacional) (“ICA”). The ICA requires brokers to register a current account from a bank in Peru or Colombia. Through that account, the broker will receive payments from capital events (e.g. profits generated from transactions, commissions, etc.) of the stocks he has on each MILA member. In the case of Chile, each intermediary directly enters market orders (buying or selling orders) over stocks listed on the Colombia or Lima stock markets. Those orders, which are expressed in local currency, are sent to the respective foreign exchange market. Once the

---

125. See Ormachea, supra note 119, at 2.
127. Id. (citing the Undersecretary of Foreign Trade at the Mexican Ministry of Economy as saying, “we are working to have the four stock markets of [MILA] countries to work in line, to be connected, and to allow operations in each of them independently of the nationality [of the different stakeholders involved].”).
order is matched, notifications are sent to the DCV and to the respective foreign deposit: CAVALI or DECEVAL.

All transactions made by intermediaries of the integrated market must be settled in the place of the exchange, in local currency, and under the settlement regulations of the country of origin. The local broker settles bilaterally with the foreign broker. Clearing and settlement of the operations remain under the responsibility of the local broker. For example, operations made by a Colombian broker over stocks listed on the Santiago Stock Exchange—through Chilean brokers—must be settled under Chilean clearing and settlement regulations, and also under the name and responsibility of the Chilean broker. Negotiated stocks remain deposited in the deposit of the country of origin. The DCV guarantees to Chilean brokers with activities on the Colombian or Peruvian markets the custody of the shares they have in other deposits, through a “local position account,” through which the DCV can assign the shares to the local broker’s account. Also, DCV allows the local broker to obtain reports and certificates of the stocks it has on international custodies. In other words, in our example, the DCV is the custodian of Chilean brokers with activities on Colombian or Peruvian stock markets. The DCV has accounts on DECEVAL and CAVALI, which foreign intermediaries use to deposit the stocks purchased on behalf of the Chilean broker.

Relevant activities are subject to the regulations of the country of origin. For example, in Chile, the DCV receives the respective dividends paid outside the country and then pays them to the Chilean broker, using the respective foreign currency and depositing these payments in the account previously registered by the intermediate.

Finally, authorities from the country of origin retain supervisory powers over issuers. MILA contemplates the execution of supervision and control agreements between regulators from the three signatory countries. Relevant information is also made available to both authorities and investors.

After reviewing the genesis and main aspects of MILA’s operation, this Article will now spell out the benefits that MILA’s integrated markets offer

130. See id. at 4.
131. See id. at 5.
132. See id.
to the stakeholders already or potentially involved in the transactions of variable revenue securities (stocks) in Latin America.

3. **Principal Advantages Created by MILA for the Integration of the Financial Markets of the Parties**

MILA strives to achieve what is known as “MILA’s Virtuous Cycle.” Namely, MILA involves more international capital flows and increases the liquidity of stock markets, which are factors that attract more investors and result in more issuers in the market. The Chilean, Peruvian, and Colombian stock exchanges present high levels of profitability. In addition, the economic performance of those countries has strong mid- to long-term prospects.

The particular advantages created by MILA are as follows.

**A. Benefits for Investors**

The benefits for investors include: easy access to a much wider market; more investment alternatives in financial instruments; more liquidity allowing a higher diversification in the investments; a better risk-return balance; and a single access point to Latin American stock markets for foreign investors.

**B. Benefits for Issuers**

The advantages for issuers include: access to a wider market; availability of three country-investors for new initial public offerings (“IPOs”); more access to capital; broader investor base for their financing needs; capturing the interest of new investors; and capital cost reductions.

**C. Benefits for Intermediaries**

MILA’s stock integration mechanisms cause stock markets to be more attractive and competitive because they increase the portfolio of products and new investment vehicles for investors and produce technology-strengthening implementation with international standards.

133. Enrique Bascur, LATAM FUNDS PEOPLE (stating: “Si el MILA funciona será un ciclo virtuoso en términos de liquidez y tamaño de Mercado [If MILA works, it will be a virtuous circle in terms of liquidity and size of the market”), available at http://www.fundspeople.cl/noticias/enrique-bascur-si-el-mila-funciona-sera-un-circulo-virtuoso-en-terminos-de-liquidez-y-tamano-de-mercado.


135. Id.

136. Id.

137. Id.
D. Benefits for Markets

Overall, MILA mechanisms enhance liquidity in the integrated markets, and trigger a broader international visibility of the region as an investment destination.138

4. MILA's Benefits for U.S. Investors

MILA offers real and prospectively significant benefits for U.S. investors seeking to broaden their stock portfolios in Latin America, throughout both the first and second phases of MILA's creation and expansion.

In effect, pursuant to MILA's stated purpose—to broaden and deepen the market of participating jurisdictions—MILA's first phase targeted "the creation of a single market for variable-yield securities that is diversified, broad, and attractive for domestic and foreign investors."139 Furthermore, MILA's second phase seeks to:

provide direct access of foreign intermediaries to domestic securities negotiations and operations; to obtain the recognition of foreign brokers to perform these transactions on their own... [and in general] the full recognition of foreign securities and issuers as domestic issuers; and the treatment of foreign institutional investments as domestic investments.140

Additionally, MILA created the S&P MILA 40 Index, which will serve as a "point of reference to international investors, so they may monitor and follow-up their investments in this region."141 The synergy created by MILA in the region will probably increase with the potential addition of Mexico.142 In fact, some forecast that "if Mexico were to join, MILA would outrank Brazil's BM&FBOVESPA143 in terms of total listed companies and would rank second to Brazil in size.144 Accordingly, foreign investors

138. See id.
139. Seraylán, supra note 116, at 218.
140. Id. at 219 n.5.
141. Id. at 226-27.
143. BM&FBOVESPA is the result of the merger that occurred in 2008 between Brazil's largest stock exchange—Sao Paulo Stock Exchange (Bovespa)—and the Brazilian Mercantile and Futures Exchange (BM&F).
seeking to diversify their investment portfolios will look to gain unified access to the financial system of four countries’ stock markets that are among the best performing in the Latin American region.”

Therefore, in this context, MILA would bring particular benefits to U.S. investors by allowing them to invest in shares registered at the Stock Exchange of Colombia, the Commerce Stock of Santiago, and the Stock Exchange of Lima, through the intervention of their three respective securities deposits: DECEVAL, CAVALI, and DCV. To implement their investment strategies in MILA stock markets, U.S. investors must take into consideration a series of reasons related to the functioning of financial markets that are not universally present in non-integrated stock markets.

These factors are: (1) shareholding is the only investment in securities allowed; (2) trade in shares is performed at one of MILA participating jurisdictions, according to the place where the respective shares are originally registered; and (3) the securities broker hired at the jurisdiction of origin of the respective shares is authorized to trade in the other two jurisdictions—that is, no multiple brokers are required.

Therefore, a U.S. investor would not only derive advantages related to lower transactional costs, but also would gain access to multiple securities markets. Investments do not need to focus on one single area of the economy or issuer, but may flow through a cross-section of them. Given the growing level of communication between MILA’s stock markets, and the regulatory and procedural harmonization efforts currently underway, U.S. investors would also take advantage of economies of scale, greater information, development of new products, alerts on regulatory changes, innovative initiatives, visibility of new markets and exposure, as well as a privileged position in the coveted MILA markets.


146. MILA INTEGRATED MARKET GUIDE, supra note 97, at 12.

147. Id.

148. Transactional cost reduction would be achieved on a number of areas, inter alia: by retaining one broker in a MILA jurisdiction who would operate in three different jurisdictions; by eliminating duplication of forms and additional services germane to investing in multiple jurisdictions; and, by reducing brokerage commissions stemming from the streamlining multiple transactions in two or more jurisdictions.


150. Id. at 5.
For example, in Chile, by becoming certified as “qualified investors” according to the applicable legislation, U.S. investors can participate in the Chilean Stock Market, and also in the offers and tenders addressed to them. Entities eligible to qualify as “qualified investors” include “banking, insurance, re-insurance, pension fund administrators or other securities brokers, incorporated abroad” (outside of Chile). In addition, U.S. investors can become licensed as “qualified investors” if they enter into a “portfolio administration agreement” with a “qualified investor.” Hence, once a U.S. investor becomes a “qualified investor,” it must register its shares in the local stock market, and this registration makes the shares automatically available in the other two MILA stock markets.

CONCLUSION

The MILA Agreement serves as a blueprint for the real integration of Latin American financial markets through a combined mechanism that builds upon the individual legal and financial structures of each of the parties’ stock markets. It further accomplishes this through the streamlining and harmonization of requirements, notification, and referral and certification procedures that strongly facilitates exchange amongst MILA parties.

As recently as March 19, 2014, a high level delegation from the Mexican Stock Exchange and INDEVAL (Central Deposit of Securities) visited the Santiago Stock Exchange, with the purpose of defining a common action plan between MILA and its Mexican counterparts. These efforts are well underway, and there is a sense of renewed energy among MILA

151. General Character Norm No. 216, supra note 79, art. 2(2).
152. U.S. investors looking at MILA would derive considerable benefits, among others: benefits of scale from investing in multiple jurisdictions; more efficient access to MILA’s stock markets; regional investment portfolios which leads to risk diversification; development of new products; anticipation of regulatory changes; joint marketing of products; innovation.
153. General Character Norm No. 216, supra note 79, art. 2(2).
154. Id. art. 2(6).
155. Valdivieso, supra note 111, at 34.
members for the further implementation of their ambitious financial integration goals.158

In turn, MILA’s sustained growth is reflected in the statistics. In April 2013, MILA experienced a growth of 1.3 percent,159 and the S&P Dow Jones created a specific Index titled, S&P MILA 40.160 In this context, U.S. investors, who are broadly known by their entrepreneurship and skills on the world’s financial markets, should be ahead of their peers coming from other areas of the world into Latin America’s most coveted financial markets.

In sum, in a region where volatility is ever present, and where political risk is pervasive, the degree of confidence that the financial markets of three pioneering countries have put in their common undertaking—MILA—is praiseworthy and goes clearly in the right direction.

