

# Stock Market Class Action: New protection system of minority shareholders on takeovers in breach of the Securities Market Law

Law reform initiative

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On March 19, 2019 a law initiative of Senator Ricardo Monreal Ávila was published in the Parliamentary Gazette of the Senate with a decree project, by means of which certain provisions of the Federal Civil Proceedings Code (*Código Federal de Procedimientos Civiles*) and the Securities Market Law (*Ley del Mercado de Valores*) would be amended or added (the “**Initiative**”).

## Objective

The Initiative aims to guarantee the protection of minority shareholders’ rights if there is an omission to carry out a mandatory tender offer (“**Tender Offer**”), or when the control shares of a corporation (*sociedad anónima*) recorded in the National Securities Record are acquired, in contravention of the guidelines established in article 98 of the Securities Market Law (the “**SML**”).

In order to achieve the previous mentioned objective, the Initiative includes the concept of stock market *class action*. Such legal form consists in a procedural institution for a *collective* defense of minority shareholders against the acts carried out by a person or group of people who carry out a takeover of an issuer affecting such minorities’ rights and investments.

## Stock Market Class Action Benefits

Through stock market class action, it is intended to put together *into a single* judicial proceeding of a multiplicity of individual actions promoted by the minority shareholders regarding the same dispute, in this case, the illegal acquisition of 30% or more of ordinary shares of an issuer, when the acquiring party omitted to carry out the acquisition through a mandatory tender offer which is required in terms of article 98 of the SML, or when such share acquisition was carried out in contravention of aforementioned article of such law.

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Since the collective nature of such class actions, the person or group of people who are claimed for the acquisition of control interest carried out in contravention of the SML, could handle such claims directly with all relevant parties *in a single* court trial, with the possibility to achieve agreements to end the dispute and wind down the contingency and potential nullity of the transaction.

Stock market class action does not only represent a useful procedural institution to expedite, facilitate and be effective on claims against takeovers that omit being carried out through a mandatory Tender Offer and in contravention of the SML, it also simplifies to the parties of the dispute (minority shareholders and offeror) to achieve an agreement which ends the controversy and the claimants shareholders to receive the same compensation and, as the case may be, the acquisition premium that has been offered to controlling stockholders, in order to recognize the validity of shares' transmission, fulfilling the objective of defending their interest by receiving the same deal that controlling stockholders.

## What does the Initiative entail?

The Initiative aims to add an additional paragraph to article 103 of the SML, in order to include the concept of class action as a mean by which minority shareholders of an issuer oppose to any shares' acquisition carried out in breach of article 98 of the SML, remitting to the process regulated in the Federal Civil Proceedings Code ("FCPC"), for this kind of class actions. Additionally, the Initiative specifies that the claim to the acquisitions could be pursued also individually by each of the affected shareholders, without need to be part of the class action.

It is important to note that the Initiative does not specify a minimum percentage of the issuer's capital stock for such minority to submit a class action, which ensures that any shareholder of an issuer could initiate or adhere to a class action, regardless of the number of shares owned or held.

For the legal implementation of stock market class actions, the Initiative amends several articles of the Fifth Section of the FCPC named "Class Actions".

## What would be claimed by means of a Stock Market Class Action?

Through the class action that will be adopted with the Initiative, minority shareholders of an issuer company would claim the potential acquirer and, as the case may be, controlling stockholders, both, the *nullity* of the share purchase and the resolutions adopted by the exercise of corporate rights of the shares' acquisition carried out against the SML, as well as the *payment of damages and loss of profits* that the claimant shareholders could evidence through the federal court trial.

## Procedural amendments to set up Stock Market Class Actions

The Initiative amends and adds various articles of the FCPC to adapt class actions' system in consumer products and services, public or private and environmental litigation, with the implementation of stock market class actions, with the following highlights:

### Classification of Stock Market Class Action

The Initiative classifies stock market class action, as a *homogenous individual action*. This kind of class actions are those that enforce individual rights and interests of collective impact, which their holders are individuals joined together by common circumstances; as in this specific case, they are the minority shareholders of an issuer company, claiming the acquisition of shares by the offeror, in such ratio that grants the control of the issuer.

### Identify the issuer in the claim

In order to facilitate the identification the class members that could be interested in adhering to the stock market class action, the Initiative considers the alternative in favor of the minority shareholders claimants, to indicate the issuer's corporate name whose shares were acquired, as well as the stock exchange in which their shares are listed, in order to instruct the publication of the material event notifying the investors the beginning of the class action. In accordance with the abovementioned, it is intended to achieve the objective of this kind of proceedings to identify all the class members and to inform the existence of the class action.

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## Legal requirements of the Stock Market Class Action

As an essential condition to promote a stock market class action, the Initiative requires that they be based exclusively in disputes relating to the shares' acquisition in contravention of article 98 of the SML, both during the Tender Offer or after the acquisition, or without carrying out the acquisition by means of mandatory takeover, in terms of the aforesaid provision.

## Remove a minimum number of class members to promote a Stock Market Class Action

As a condition for homogenous individual stock market class actions, the Initiative intends to remove a minimum number of class members (30 members), that was a requisite to file a class action, being sufficient that only one of the minority shareholders files the claim, regardless of their interest participation in the issuer.

## Stock Market Class Action's Publicity

In accordance with the FCPC's provisions, when a class action is filed, the court must certify the legal requirements set forth in such code and, once such certification is done, the court must resolve the admission or dismissal of the complaint. In case of stock market class actions, if the complaint is admitted, the Initiative provides that the admission notice should be carried out by disclosing a material event by the issuer which its shares' acquisition are being disputed, through the stock exchange in which its shares are listed. The purpose of the relevant event is to inform the other affected shareholders about the existence of the class action, in order to let them adhere to such class action.

## Legislative process of the Initiative to come into force

The Initiative is subject to the legislative process, therefore, prior to entry into force, the Senate and the House of Representatives must approve it, in which it could suffer adjustments in its original content, in order to subsequently be enacted by the Mexican President and published in the Official Gazette of the Federation.

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