Legislative annexes

A Spanish legislation

A.1 Spanish National Securities Market Commission (CNMV)

– **Agreement of 27 September 2018,** of the Board of the Spanish National Securities Market Commission, on delegation of powers.

– **Royal Decree-Law 22/2018, of 14 December,** establishing macro-prudential tools.

Macro-prudential measures are introduced into our legal system necessary to overcome potential vulnerabilities in the financial system, to allow the Bank of Spain, the Spanish National Securities Market Commission and the Directorate General of Insurance and Pension Funds to have the necessary instruments and tools to help mitigate possible disruptions that could have a potential systemic impact.

In the case of investment funds, the Spanish National Securities Market Commission is empowered, in certain circumstances, to set liquidity requirements for collective investment schemes and institutions. The former are open-ended funds – that is to say, their unitholders are able to redeem their units at any time – which makes them particularly vulnerable to possible runs due to market tensions. In addition, these funds are marketed to private individuals, which makes them sensitive from a social point of view. Therefore, the title of Article 71 *septies* of Law 35/2003, of 4 November, on Collective Investment Schemes, is modified and a new section 7 is introduced.

Likewise, the title of Article 87 of Law 22/2014, of 12 November, regulating Venture Capital Firms, other closed-ended collective investment schemes and management companies of closed-ended collective investment schemes is amended, which amends Law 35/2003, of 4 November, on Collective Investment Schemes and introduces a new section 7.

Article 5 amends the recast text of the Securities Market Act, approved by Royal Legislative Decree 4/2015, of 23 October, and enables the Spanish National Securities Market Commission to establish limitations on certain activities by its supervised institutions that generate an excessive increase in the risk or indebtedness of economic agents that could affect financial stability.

A new Article 234 *bis* is added to the recast text of the Securities Market Act, approved by Royal Legislative Decree 4/2015, of 23 October, with the following content:

"Article 234 *bis*. Other powers to strengthen macro-prudential supervision.

The CNMV may introduce limits and conditions on the activity of its supervised institutions in order to avoid excessive indebtedness of the private sector that could affect financial stability".

The Sole Additional Provision provides an obligation for sector supervisors to communicate to the designated macro-prudential authority the adoption of macro-prudential tools before they are communicated to the public and those affected. Until the creation of this authority, the sole transitional provision provides that these communications will be made to the Financial Stability Committee.

A.2 Listed companies

– **CNMV Circular 2/2018, of 12 June,** which amends Circular 5/2013, of 12 June, establishing the annual corporate governance report templates for listed companies, savings banks and other institutions that issue securities admitted to trading on official securities markets, and Circular 4/2013, of 12 June, which establishes the annual remuneration report templates for the directors of listed companies and the members of the board of directors and the control committee of savings banks that issue securities admitted to trading on official securities markets.

Until now, institutions subject to this obligation had been submitting their reports on corporate governance and the remuneration of their directors using the standard templates established for this purpose. In addition to the obvious benefits of this system, a number of drawbacks had also been identified. Among them, a certain lack of flexibility for companies, which limited their ability to organise and structure the information in the way that they believe best explained the history and evolution of the company, and led to some companies preparing, in addition to the standardised template necessary to meet their legal obligations, another template with a format more aligned to their own set of circumstances and the corporate image of the company, to be distributed among their shareholders, institutional investors, voting advisors and other stakeholders.

Therefore, for the issuing companies, it is considered advisable to eliminate the mandatory nature of the formats contained in the standardised electronic documents of the corporate governance reports and the remuneration reports of directors established in CNMV Circulars 4/2013 and 5/2013. Those institutions that do not wish to use the standardised electronic document may submit reports in any format, the content of which must respect the minimum content established by regulation, including this Circular, and must be accompanied by statistical appendices in order to continue to have a minimum of the information in standardised format to facilitate its compilation and subsequent processing by the CNMV.

Royal Decree-Law 18/2017, of 24 November, amending the Commercial Code, the recast text of the Spanish Limited Liability Companies Act, approved by Royal Legislative Decree 1/2010, of 2 July, and Law 22/2015, of 20 July, on

Account Auditing, in matters of non-financial information and diversity, expands the scope of the information to be provided in the annual corporate governance report on the diversity policies implemented by the company, with it being mandatory to refer to gender diversity and, for institutions other than small- and medium-sized institutions as defined in auditing legislation, and also to the age, disability, training and professional experience of the directors.

In addition, some technical adjustments are included in both the annual corporate governance report and the annual report on directors' remuneration, in order to introduce or develop sections that are relevant to adequately understand the corporate governance system of institutions issuing securities and the remuneration of directors of listed companies.

Finally, it has been considered appropriate to include a new annual corporate governance report template applicable to the institutions that make up the institutional public sector and are issuers of securities, other than shares, which is more simplified and adapted to the particularities of these institutions.

This Circular entered into force on the day following its publication in the *BOE* (Official State Gazette) on 16 July 2018 and will be applicable to the annual corporate governance reports and to the remuneration reports of directors that the institutions that are subject to this obligation must submit for the financial years ended at 31 December 2018, inclusive.

A.3 Investment firms and credit institutions

– **CNMV Circular 1/2018, of 12 March,** on warnings relating to financial instruments.

Circular 1/2018 will apply to institutions providing investment services other than discretionary and individualised portfolio management services to retail customers in Spain: investment service companies, credit institutions and management companies of Spanish collective investment schemes, those same EU foreign institutions operating in Spain through a branch or agent and those non-EU foreign institutions acting through a branch or in the free provision of services.

The objective of Circular 1/2018 is to increase the protection of retail investors when contracting certain sophisticated financial instruments and, at the same time, to improve transparency in their distribution.

Circular 1/2018 will enter into force three months after its publication in the *BOE* (Official State Gazette) (27 March 2018).

– **CNMV Circular 4/2018, of 27 September,** amending Circular 1/2010, of 28 July, on confidential information of institutions providing investment services and Circular 7/2008, of 26 November, on accounting standards, annual financial statements and confidential statements of Investment firms, Management Companies of Collective Investment Schemes and Management Companies of Venture Capital Firms.

This Circular has as its main objectives:

i) To update the templates of confidential information established in Circular 1/2010, submitted by both credit institutions and investment firms, in order to gather information on new aspects incorporated into the MiFID II regulations, such as the new modalities for providing investment advisory services (independent and non-independent) or cross-selling. Information on the financial instruments held by customers in intermediaries is also increased and is now provided broken down on a per-instrument basis. Finally, other minor updates are also introduced in light of the experience gained since the last amendment.

ii) Update the confidential financial statement templates of investment firms to gather information on the following aspects:

- Any ancillary activities that they may carry out.
- The classes of liquid assets in which transitional customer balances and collateral received from customers are invested.
- Calculation of capital requirements for fixed overhead costs.

The first confidential information of Circular 1/2010, of 28 July, to be sent according to the new templates will be that corresponding to the period of activity from 1 January to 31 March 2019, which must be submitted by 20 April 2019. With regard to the amendments introduced in Circular 7/2008, the first information adapted to the new templates will be that corresponding to 30 April 2019, to be submitted by 20 May 2019.

A.4 Collective investment schemes, securitisation funds and venture capital firms

– **CNMV Circular 5/2018, of 26 November,** amending Circulars 4/2008, 7/2008, 11/2008 and 1/2010, on public and periodic information on Collective Investment Schemes, accounting standards, annual financial statements and confidential information statements of Venture Capital Firms, management companies of Collective Investment Schemes and Venture Capital Firms and branches of European managers established in Spain.

The purpose of this Circular is to modify:

- **CNMV Circular 7/2008**, of 26 November, on accounting standards, annual financial statements and confidential statements of Investment Firms, management companies of Collective Investment Schemes and management companies of Venture Capital Firms. A new breakdown is added, for management companies of investment firms, with regard to fees for financial advice to managed institutions or investors, the possibility of specifying the vehicles to which management is delegated and breakdowns of the profit and loss account. For management companies of investment firms, the deadlines for sending the confidential information of these institutions to the CNMV has been amended.

- **CNMV Circular 11/2008**, of 30 December, on accounting standards, annual financial statements and confidential information statements of venture capital firms. It adds information on the type of investor in venture capital firms, with the breakdown provided for in Article 75 of Law 22/2014, of 12 November.

- **Circulars 7/2008 and 11/2008**, in order to promote the electronic processing of documents before the CNMV, as well as to facilitate the availability of information to the public, incorporating the requirement to submit, as a standardised electronic document, the annual report of the management companies of investment firms and the venture capital firms provided for in the aforementioned Law 22/2014.

- The template report for investment funds set out in **Annex 1 of CNMV Circular 4/2008**, of 11 September, on the content of quarterly, half-yearly and annual reports of collective investment schemes and the statement of position, in order to include the information on remuneration policies established in Article 46 *bis* of Law 35/2003, of 4 November, on CIS and also the information on securities financing operations established by Regulation (EU) 2015/2365 of the European Parliament and of the Council, of 25 November, on transparency of securities financing transactions and of reuse.

- **CNMV Circular 1/2010,** of 28 July, on confidential information on institutions providing investment services. It is amended in order to gather information (based on the authorisations of the CIS Act which allows foreign managers to operate in Spain in accordance with the conditions established in Article 55 for management companies authorised by Directive 2009/65/EC of the European Parliament and of the Council, of 13 July 2009, and in Article 55 *bis* for management companies regulated by Directive 2011/61/EU of the European Parliament and of the Council, of 8 June 2011) on the activities carried out by foreign management companies from the European Union operating in Spain through a branch.

A.5 Transposition of European regulations

– **Royal Decree-Law 14/2018, of 28 September,** amending the recast text of the Securities Market Act, approved by Royal Legislative Decree 4/2015, of 23 October.

The purpose of this Royal Decree-Law is to complete the transposition of Directive 2014/65/EU of the European Parliament and of the Council, of 15 May 2014, on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU; of Directive 2016/1034 of the European Parliament and of the Council, of 23 June 2016, amending Directive 2014/65/EU on markets in financial instruments; and the Commission Delegated Directive (EU) 2017/593, of 7 April 2016, supplementing Directive 2014/65/EU of the European Parliament and of the Council, with regard to the safeguarding of financial instruments and funds belonging to clients, product governance obligations and the rules applicable to the provision or reception of fees, commissions or any monetary or non-monetary benefits.

- The preliminary title of the Securities Market Act is amended, which contains the general provisions and outlines the institutions that are excluded from the scope of application of the recast text of the Securities Market Act in relation to the content corresponding to Directive 2014/65/EU.

- Chapter V of Title IV is amended to provide for the possibility that the CNMV may impose limits on the volume of a net position that may be held in certain derivatives, as well as the obligations of trading centres to disseminate and communicate positions in certain derivatives.

- Chapters III, V and VI of Title V of the recast text are amended, containing the legal regime applicable to investment services and activities firms.

- A new Title V *bis* is introduced to regulate a situation that has been addressed for the first time in a European directive, that of data supply services, detailing the fundamental elements of the authorisation procedure to which the providers of these services must submit, as well as the internal organisational requirements that they must comply with.

- Title VII, which relates to the business conduct rules to be respected by investment services and activities firms, is amended to ensure adequate investor protection.

- As regards supervisory powers, some are amended and added in accordance with the provisions of Directive 2014/65/EU, of 15 May 2014. Major changes are also made to Chapter II of Title VIII, which relates to cooperation with other authorities. Four exceptions are added to the CNMV's obligation to maintain professional secrecy.

- Two new chapters are introduced in Title X relating to the communication of infringements and the publication of infringements, incorporating the innovations deriving from transposed European regulations.

- In order to determine the scope of the concepts contained in this Royal Decree-Law, the definitions contained in Directive 2014/65/EU of the European Parliament and of the Council, of 15 May 2014, and its implementing regulations shall be taken into account.

A Second Additional Provision is added on **alternative resolution of consumer disputes** which provides that until the creation of the single competent authority for the resolution of consumer disputes in the financial sector, the complaints service of the CNMV (regulated in Article 30 of Law 44/2002, of 22 November, on Financial System Reform Measures) will serve as an alternative dispute resolution body in the field of the securities market.

This Royal Decree-Law came into force the day after its publication in the *BOE* (Official State Gazette) . By way of exception, amendments to Articles 146, 147, 148, 149.2 second paragraph, 149.3, 152, 153, 151, 160, 161, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 176, 177, 193, 194, 195, 196, 205 and 207 shall enter into force at the same time as the Royal Decree implementing them. It was stipulated that the provisions of Articles 234.2(d) and 234.12 would not apply until the amendment to Constitutional Law 3/2018, of 5 December, on

Data Protection (which entered into force on 6 December 2018) had been approved and its Fifteenth Additional Provision had entered into force.

– **Resolution of 18 October 2018,** of the Lower House of Parliament, ordering the publication of the Resolution to Validate Royal Decree-Law 14/2018, of 28 September, which amends the recast text of the Securities Market Act, approved by Royal Legislative Decree 4/2015, of 23 October.

– **Royal Decree 1464/2018, of 21 December,** implementing the recast text of the Securities Market Act, approved by Royal Legislative Decree 4/2015, of 23 October, and Royal Decree-Law 21/2017, of 29 December, on urgent measures to adapt Spanish law to European Union regulations on the securities market, and partially amending Royal Decree 217/2008, of 15 February, on the legal regime for investment firms and other institutions providing investment services and partially amending the implementing regulation of Law 35/2003, of 4 November, on Collective Investment Schemes, approved by Royal Decree 1309/2005, of 4 November, and other Royal Decrees on the securities market.

The approval of Royal Decree-Law 21/2017, of 29 December, on urgent measures to adapt Spanish law to European Union regulations on the securities market and Royal Decree-Law 14/2018, of 28 September, has meant the incorporation into Spanish law of a large part of the MiFID II regulatory package, but it is necessary to complete its incorporation through regulatory implementation. The purpose of this Royal Decree is to finalise this incorporation and complete the regulatory implementation of the legal regime of Royal Decree-Law 21/2017, of 29 December, and of the recast text of the Securities Market Act, approved by Royal Legislative Decree 4/2015, of 23 October, which was amended by Royal Decree-Law 14/2018, of 28 September, and by other subsequent regulations (from which it receives authorisation for regulatory implementation).

The regulatory principles that serve as inspiration for this Royal Decree and emanate from Royal Decree-Law 21/2017, of 29 December, and Royal Decree-Law 14/2018, of 28 September, are as follows:

i) Ensure high levels of protection for investors in financial products, especially retail investors.

ii) Improve the organisational structure of regulated markets.

iii) Improve the organisational structure and corporate governance of companies.

iv) Increase the security and efficiency of securities markets.

It contains:

- Title I is devoted to the legal regime of regulated markets.

- Title II regulates limits on positions, detailing limits on the volume of a net position in commodity derivatives and regulating aspects such as supervision or the application of more restrictive limits in exceptional cases.

This Title also regulates the communication of positions in derivatives on commodities, emission rights or derivatives on emission rights, implementing the system on information and classification obligations.

- Title III regulates data supply services.

- The First Additional Provision provides for the communication by the CNMV to the European Banking Authority of the sanctions imposed on investment firms, as well as the appeals filed against them and their outcome.

- The Second Additional Provision establishes that the processing of personal data that must be performed as a consequence of the application of this Royal Decree must be carried out in accordance with Regulation (EU) No. 2016/679 of the European Parliament and of the Council, of 27 April 2016, on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and with the rest of the regulations on the protection of personal data.

- The Third Additional Provision specifies that in those autonomous regions in which there are regional markets, references in the Royal Decree to the CNMV must be construed as referring to the competent regional body.

- The First Transitional Provision establishes a period of two months for the application of the amendments introduced in Royal Decree 217/2008, of 15 February, on the legal regime of investment firms and other institutions providing investment services and partially amending the implementing regulation of Law 35/2003, of 4 November, on Collective Investment Schemes, approved by Royal Decree 1309/2005, of 4 November, and for the amendments to Royal Decree 1082/2012, of 13 July. Specifically, in relation to the incentive regime regulated in the regulation, a period of two months is also granted to adapt those financial instruments that had been marketed prior to the entry into force of these amendments.

- The Second Transitional Provision contains the provisions necessary to ensure legal certainty regarding the requirements applicable to admissions to trading regulated in this Royal Decree, until the full entry into force of Regulation (EU) 2017/1129 of the European Parliament and of the Council, of 14 June 2017, on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003/71/EC, maintaining until then the applicability of the laws transposing this Directive.

- The Third Transitional Provision regulates the adaptation of company names by EAFIs, which are now referred to as financial advisory companies (Spanish acronym: EAF), upon the entry into force of the Royal Decree.

- The Sole Repealing Provision repeals:

  – Royal Decree 710/1986, of 4 April, creating a second securities market on the Official Stock Exchanges and modifying the conditions for putting fixed-income securities into circulation.

– Royal Decree 726/1989, of 23 June, on Management Companies and members of the Stock Exchanges, Sociedad de Bolsas and Collective Guarantee Companies.

– Royal Decree 949/1989, of 28 July, on commissions applicable to transactions in securities admitted to trading on the Stock Exchanges and on the creation of the Associations of Brokers of Madrid, Barcelona and Bilbao.

– Royal Decree 1416/1991, of 27 September, on special stock exchange operations and on the OTC transfer of listed securities and weighted average exchange rates.

– Royal Decree 1333/2005, of 11 November, implementing the Securities Market Act 24/1988, of 28 July, on market abuse.

– Royal Decree 1282/2010, of 15 October, regulating the official secondary markets for futures, options and other derivative financial instruments.

- The First Final Provision amends Royal Decree 948/2001, of 3 August, on investor compensation systems, in order to adapt it to the innovations of the recast text of the Securities Market Act following the modifications introduced into the list of investment services and activities by Royal Decree-Law 14/2018, of 28 September.

- The Second Final Provision amends the implementing regulation of Law 35/2003, of 4 November, on Collective Investment Schemes, approved by Royal Decree 1082/2012, of 13 July, to comply with the MiFID II rules on the fees that may be charged in relation to market studies and research relating to incentives.

- The Third Final Provision amends Royal Decree 1310/2005, of 4 November, partially implementing the Securities Market Act 24/1988, of 28 July, regarding the admission to trading of securities in secondary official markets, public offerings or subscriptions and the applicable prospectus.

- The Fourth Final Provision constitutes one of the pillars of this Royal Decree and of the entire transposition of MiFID II by introducing a far-reaching amendment to Royal Decree 217/2008, of 15 February, on the legal regime of investment firms and other institutions providing investment services and partially amending the implementing the Regulation of Law 35/2003, of 4 November, on Collective Investment Schemes, approved by Royal Decree 1309/2005, of 4 November.

  The legal regime for investment firms provided for in the recast text of the Securities Market Act, following the amendments introduced by Royal Decree-Law 14/2018, of 28 September, is given regulatory implementation. It regulates the provisions included in that regulation with regard to authorisation, activity, organisational requirements, the legal status of financial advisory firms, the protection of client assets, cross-border activity, surveillance and control of products, incentives and obligations to provide information to clients and potential clients, and the legal status

of significant shareholdings and obligations to provide information on the composition of the share capital. In addition, the requirements applicable to investment firms in matters of corporate governance established in the recast text of the Securities Market Act are implemented, which, among other issues, entails the regulatory implementation of the transposition carried out in Articles 184 to 186 of the recast text of the Securities Market Act; of Article 91, paragraphs 8, 9 and 10, of Directive 2013/36/EU of the European Parliament and of the Council, of 26 June 2013, on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC – known as "CRD IV" – and repealing Directives 2006/48/EC and 2006/49/EC. Articles 29.2, 38 and 124.3 are also transposed, referring to the possibility for certain investment services companies to carry out operations on their own behalf with capital requirements of institutions that do not carry out these types of operations, to the treatment of branches of EU credit institutions in Spain, and to ensuring the adequate exchange of information between the CNMV and other competent authorities of the European Union, in the case of Spanish institutions controlled by a parent company from the European Union, respectively.

In this Fourth Final Provision, the transposition of the regime regarding incentives and rebates is noteworthy. In relation to product oversight and control, the Fourth Final Provision implements the regime according to which investment firms that design financial instruments to be marketed to clients must implement a prior approval process for each instrument in order to identify a market of end clients to whom the instrument will be addressed. The aim is to ensure that the characteristics of the products are the most appropriate for each type of customer identified, with the analysis including the distribution channels of the financial instruments in question. In this way, the goal of investor protection is reinforced, since issues relating to the suitability of the financial instrument for the specific client to whom it is addressed are no longer present only at the time of marketing, but also from the very conception and design of such product.

It reinforces both investor protection and the CNMV's supervisory capacity, relating to the obligation to include in the registers of investment firms telephone conversations and electronic communications related to the execution of orders on their own behalf and to the provision of the service of reception, transmission and execution of orders.

The Fourth Final Provision also includes adjustments in the area of supervision of investment firms, in order to progress to the full transposition of Directive 2013/36/EU of the European Parliament and of the Council, of 26 June 2013, on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC.

- The Fifth Final Provision amends Royal Decree 84/2015, of 13 February, implementing Law 10/2014, of 26 June, on the organisation, supervision and solvency of credit institutions, with the aim of ensuring the appropriate exchange of information between the Bank of Spain and other

competent authorities in the European Union, in the case of Spanish institutions controlled by a European Union parent company. This transposes Article 124.3 of Directive 2013/36/EU of the European Parliament and of the Council, of 26 June 2013, for credit institutions and completes the transposition of this Directive.

- The Sixth Final Provision amends Royal Decree 878/2015, of 2 October, on clearing, settlement and registration of marketable securities represented by book entries, on the legal regime of central securities depositories and central counterparties and on transparency requirements of issuers of securities admitted to trading in an official secondary market, to make the necessary adjustments to ensure its correct interpretation and application in relation to MiFID II developments relating to trading venues.

– **Royal Decree-Law 19/2018, of 23 November,** on payment services and other urgent financial measures.

The aim of this Royal Decree-Law is the regulation of payment services, listed in section 2, which are provided on a professional basis in Spanish territory, including the form of provision of such services, the legal regime applicable to payment institutions and the regime of transparency and information applicable to payment services, as well as the respective rights and obligations of both payment service users and their providers.

The payment services regulated by this Royal Decree-Law include two new ones: payment initiation and account information. Both services involve third party access to the accounts of payment service users.

From the point of view of the objective scope of application, it maintains the principle that the Royal Decree-Law applies to all services provided in Spanish territory, regardless of the origin or final destination of the operations.

Law 16/2009, of 13 November, on payment services is repealed.

In addition to the above regulation, the following is highlighted:

- Ninth Final Provision. **Amendment to the recast text of the Securities Market Act, approved by Royal Legislative Decree 4/2015, of 23 October.**

  The aims of this amendment are as follows:

  i) To carry out a formal and technical adaptation of some of its provisions.

     The Ninth Final Provision makes certain technical adaptations to the recast text of the Securities Market Act. The need for these adaptations has become apparent following its amendment by Royal Decree-Law 14/2018, of 28 September, which amends the recast text of the Securities Market Act, approved by Royal Legislative Decree 4/2015, of 23 October, and seeks to give full effect to the innovations introduced in the reference regulation on the securities market. Royal Decree-Law 14/2018 moved forward in incorporating the MiFID II regulatory package into our legal system, with

its approval being of extraordinary and urgent necessity, firstly, because the deadline for transposition of this Directive had expired and the European Commission had sued the Kingdom of Spain before the Court of Justice of the European Union for its failure to transpose it completely; secondly, to avoid serious harm arising from regulatory uncertainty for Spanish investment services and activities companies; thirdly, because the failure to transpose it within the deadline was affecting the attractiveness of the Spanish market as a market in which new investment services and activities companies could be set up; and, fourthly, because of the extraordinary and urgent need to provide the CNMV with the new supervisory powers and inter-administrative cooperation tools that MiFID II granted to the public bodies supervising the European Union's investment services and activities companies and securities markets.

ii) Adapt the standard to various recent European regulations which have already entered into force and been effectively implemented, in particular:

- Regulation (EU) 2016/1011 of the European Parliament and of the Council, of 8 June 2016, on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds and amending Directives 2008/48/EC and 2014/17/EU and Regulation (EU) No. 596/2014.

- Regulation (EU) No. 596/2014 of the European Parliament and of the Council, of 16 April 2014, on market abuse, repealing Directive 2003/6/EC of the European Parliament and of the Council, and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC.

- Regulation (EU) No. 1286/2014 of the European Parliament and of the Council, of 26 November 2014, on key data documents relating to linked retail investment products and insurance-based investment products.

- Regulation (EU) No. 2015/2365 of the European Parliament and of the Council, of 25 November 2015, on the transparency of securities financing and re-use transactions and amending Regulation (EU) No. 648/2012.

iii) **Complete transposition of two partially transposed directives**. Furthermore, Commission Implementing Directive (EU) 2015/2392, of 17 December 2015, on Regulation (EU) No. 596/2014 of the European Parliament and of the Council regarding the communication of possible breaches and actual breaches of the said Regulation to the competent authorities; and Directive 2013/36/EU of the European Parliament and of the Council, of 26 June 2013, on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC.

Legal certainty is introduced into our legal system through the adaptation of the recast text of the Securities Market Act (especially its penalty regime) to the European regulations already in force. Although these regulations were already directly applicable, Spanish national legislation has been adapted to them to introduce certainty for operators and in the CNMV's supervisory work. In this way, the backbone of the regulation applicable to securities markets is fully adapted to current European law, ensuring that the CNMV has all the necessary supervisory instruments to guarantee the proper functioning of these markets and adequate investor protection.

- Second Final Provision. **Amendment to Law 35/2003, of 4 November, on Collective Investment Schemes.** Spanish legislation is adapted to Regulation (EU) No. 2017/1131 of the European Parliament and of the Council, of 14 June 2017, on money market funds, which establishes harmonised regulation for this type of investment fund and imposes on the Member States the obligation to establish a penalty system. This Regulation has been applicable since 21 July 2018, and therefore the penalty system for non-compliance with this European Regulation is included in Law 35/2003, of 4 November, on Collective Investment Schemes, with a view to establishing the infringement classifications reflected in non-compliance with the obligations of the Regulation.

  It should be highlighted that the European Union Regulations imposed an obligation on Member States to notify the European Commission, before a certain date, of any administrative sanctions they had transposed into their legal systems in order to ensure their effectiveness. These deadlines were as follows: Regulation (EU) No. 2016/1011, on 1 January 2018; Regulation (EU) No. 1286/2014, on 31 December 2016; Regulation (EU) No. 2015/2365, on 13 July 2017; and Regulation (EU) No. 2017/1131, on 21 July 2018.

- First Final Provision. **Amendment to Law 41/1999, of 12 November 1999, on securities payment and settlement systems**. This updates the list of securities payment and settlement systems following the integration of Spain into the pan-European TARGET2-Securities platform.

- Eighth Final Provision. **Amendment to Law 11/2015, of 18 June, on the recovery and resolution of credit institutions and investment service companies**. This amendment aims to correctly transpose the provisions relating to branches of institutions established outside the European Union in Directive 2014/59/EU of the European Parliament and of the Council, of 15 May 2014, establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No. 1093/2010 and (EU) No. 648/2012. In this regard, it is also necessary to amend Article 53 to clarify that the FROB may collect contributions from branches in Spain of institutions established outside the European Union. In addition, this Final Provision contains provisions to clarify the powers of the FROB as an executive resolution authority at the time it performs a resolution, with respect to the

limitations and requirements demanded in the corporate regulations, in accordance with Directive 2014/59/EU of the European Parliament and of the Council, of 15 May 2014.

- Sixth Final Provision. **Amendment to Law 10/2014, of 26 June, on the organisation, supervision and solvency of credit institutions**. It is adapted to the activity of providing payment services and thereby completes the adaptation of the regulation to Directive 2013/36/EU of the European Parliament and of the Council, of 26 June 2013, on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms. Particularly noteworthy is the provision of an appropriate channel so that any person who has knowledge or well-founded suspicion of non-compliance with the prudential supervision obligations of credit institutions provided for in the Law and its implementing regulations has the possibility and the right to notify the Bank of Spain with due guarantees (otherwise known as whistleblowing).

  In addition, it provides that all centres of activity established in Spanish territory by European credit institutions whose central administration is in another Member State shall be considered a single branch, and ensures the appropriate exchange of information between the Bank of Spain and other competent authorities of the European Union, in the case of Spanish institutions controlled by a parent company of the European Union.

- Seventh Final Provision. **Amendment to Law 5/2015, of 27 April, on the promotion of business financing**. This attributes to the Bank of Spain the authorisation of hybrid credit financial institutions. To the extent that hybrid credit financial institutions provide payment services, this amendment is consistent with the fact that the Bank of Spain is given the powers to authorise payment institutions in this Royal Decree-Law.

- Fourth Final Provision. **Amendment to the recast text of the Capital Companies Act, approved by Royal Legislative Decree 1/2010, of 2 July.** This amends the Capital Companies Act by adding a new scenario in which it is not possible to separate the shareholder due to a failure to distribute dividends in the case of shareholders of credit institutions and other financial institutions that are not listed companies subject to Regulation (EU) No. 575/2013 of the European Parliament and of the Council, of 26 June 2013, on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No. 648/2012.

  An Eleventh Additional Provision is added to the recast text of the Capital Companies Act on the right of separation in financial institutions.

- Third Final Provision. **Amendment to Law 22/2007, of 11 July, on distance marketing of consumer financial services.** The regulation on distance marketing of financial services is adapted to the requirements of Directive (EU) 2015/2366 of the European Parliament and of the Council, of 25 November 2015.

This Royal Decree-Law came into force the day after its publication in the *BOE* (Official State Gazette). Nonetheless:

i) Titles II and III shall be applicable three months after their publication in the *BOE*.

ii) The security measures referred to in Articles 37, 38, 39 and 68 shall apply 18 months after the entry into force of Commission Delegated Regulation (EU) 2018/389, of 27 November 2017, supplementing Directive (EU) 2015/2366 of the European Parliament and of the Council, as regards technical regulatory standards for enhanced customer authentication and open, common and secure communication standards, without prejudice to the fact that until that date no account manager payment service provider may prevent or hinder the use of payment initiation services and account information services in relation to the accounts managed by it.

iii) The wording given to Articles 119.3 and 121.1 of Law 10/2014, of 26 June, on the organisation, supervision and solvency of credit institutions, by the Sixth Final Provision.

– **Law 11/2018, of 28 December,** amending the Commercial Code, the recast text of the Capital Companies Act approved by Royal Legislative Decree 1/2010, of 2 July, and Law 22/2015, of 20 July, on Account Auditing, in matters of non-financial information and diversity.

By means of this Law, the following is incorporated into Spanish law: Directive 2014/95/EU of the European Parliament and of the Council, of 22 October 2014, which amended Directive 2013/34/EU in relation to the presentation of non-financial information and information on diversity for certain large companies and certain groups. Its aim is to identify risks in order to improve sustainability and increase the confidence of investors, consumers and society in general, and to this end it increases the disclosure of non-financial information, such as social and environmental factors.

On the other hand, Directive 2014/95/EU expands the content required in the annual corporate governance report to be published by listed companies, in order to improve transparency, facilitating an understanding of the business organisation and the business dealings of the company in question. The new obligation on these companies consists of the dissemination of the "policies of diversity of competences and points of view" that they apply to their governing body with respect to issues such as age, gender, disability, or professional training and experience. In the event that the company does not implement a diversity policy, there is no obligation to do so, although the corporate governance statement must clearly explain why it is not being implemented.

Transitory nature. Application:

i) The amendments introduced by this Law, by means of the Articles 1, 2 and 3, shall be applicable for financial years beginning on or after 1 January 2018.

By way of exception, the amendments introduced by this Law in Article 2, section 6, in Article 348 *bis* of the recast text of the Capital Companies Act, approved by Royal Legislative Decree 1/2010, of 2 July, shall be

applicable to General Shareholders' Meetings held as from the same day of its entry into force.

ii) For the purposes of Articles 49.5(b) of the Commercial Code and 262.5(b) of the recast text of the Capital Companies Act, approved by Royal Legislative Decree 1/2010, of 2 July, the two consecutive eligible financial years will be the one commencing on 1 January 2018 and the immediately preceding one.

iii) Three years after the entry into force of this Law, the obligation to submit the consolidated non-financial information statement provided for in Articles 49.5(b) of the Commercial Code and 262.5(b) of the recast text of the Capital Companies Act shall apply to all companies with more than 250 employees that are either considered to be public-interest institutions in accordance with auditing legislation (except for institutions that are classified as small- and medium-sized enterprises in accordance with Directive 34/2013) or at the closing date of each of such years have been subject to at least one of the following circumstances for two consecutive financial years:

- The total of the asset items exceeds 20 million euros.

- The net amount of the annual turnover exceeds 40 million euros.

Seven final provisions have been incorporated, the first of which amends Law 35/2003, of 4 November, on Collective Investment Schemes (amendment of Articles 17, 18, 28, 40, 71 *ter*, new 48 *bis* and amendment of the penalty regime); the second, Law 16/2009, of 13 November, on payment services; and the third, Law 14/2013, of 27 September, on support for entrepreneurs and their internationalisation, for the purpose of reducing administrative burdens in the incorporation of companies, in the same way that Article 62 of the recast text of the Capital Companies Act is amended in Article 2 of this Law.

A.6 Other regulations

- **Royal Decree-Law 11/2018, of 31 August,** transposing directives on the protection of pension commitments to workers, the prevention of money laundering and the entry and residence requirements for third-country nationals and amending Law 39/2015, of 1 October, on the common administrative procedure for public administrations.

- **Royal Decree 1112/2018, of 7 September,** on accessibility of websites and applications for public sector mobile devices.

  This Royal Decree aims to ensure the accessibility requirements of websites and applications for mobile devices of public sector bodies and other obligors included within its scope. For the purposes of this Royal Decree, accessibility is understood as the set of principles and techniques that must be respected when designing, building, maintaining and updating websites and applications for mobile devices in order to guarantee equality and non-discrimination in access for users, in particular disabled people and the elderly.

This Royal Decree came into force the day after its publication in the *BOE* (Official State Gazette) with the following exceptions:

- For websites, the provisions of Articles 10.2(b), 12 and 13 shall apply one year after the entry into force of this Royal Decree, and two years after the entry into force of this Royal Decree for already published websites.

- All provisions relating to applications for mobile devices shall apply from 23 June 2021.

– **Constitutional Law 3/2018, of 5 December,** on the Protection of Personal Data and the guarantee of digital rights.

The purpose of this Constitutional Law is:

i) To adapt the Spanish legal system to Regulation (EU) 2016/679 of the European Parliament and of the Council, of 27 April 2016, on the protection of individuals with regard to the processing of their personal data and on the free movement of such data, and supplement its provisions. The fundamental right of natural persons to the protection of personal data, protected by Article 18.4 of the Constitution, shall be exercised in accordance with the provisions of Regulation (EU) 2016/679 and this Constitutional Law.

ii) To guarantee the digital rights of citizens in accordance with the mandate set out in Article 18.4 of the Constitution.

The necessary modifications were introduced to Law 1/2000, of 7 January, on Civil Procedure; Law 29/1998, of 13 July, regulating the Contentious-Administrative Jurisdiction; Constitutional Law 6/1985, of 1 July, on the Judiciary; Law 19/2013, of 9 December, on transparency, access to public information and good governance; Constitutional Law 5/1985, of 19 June, on the General Electoral System; Law 14/1986, of 25 April, on General Health; Law 41/2002, of 14 November, on the basic regulation of patient autonomy and of rights and obligations in matters of clinical information and documentation; and Law 39/2015, of 1 October, on the Common Administrative Procedure of Public Administrations.

In addition, in relation to the guarantee of digital rights, amendments are also made to Constitutional Law 2/2006, of 3 May, on Education and Constitutional Law 6/2001, of 21 December, on Universities, as well as to the recast text of the Workers' Statute and the recast text of the Basic Statute on Public Employees.

Constitutional Law 15/1999, of 13 December, on the Protection of Personal Data and Royal Decree-Law 5/2018, of 27 July, on urgent measures for the adaptation of Spanish Law to European Union regulations on data protection, are repealed.

– **Royal Decree-Law 21/2018, of 14 December,** on urgent measures in housing and rents.

This Royal Decree-Law provides a set of urgent measures to improve access to housing and promote affordable rent.

A.7 Other

– **Joint communiqué of the CNMV and the Bank of Spain on cryptocurrencies and initial coin offerings (ICOs).**

Through this release, the CNMV and the Bank of Spain report on:

- **The current situation in the area of cryptocurrencies and initial coin offerings (ICO**).

  The CNMV and the Bank of Spain highlight that: i) cryptocurrencies, including Bitcoin, are not backed by any public authority or central bank; ii) although they can be conceived as an alternative to legal tender, there is no obligation to accept them as a means of payment; iii) they have a very limited circulation and have a very marked volatility, with special emphasis being placed on the latter by pointing to the fall of more than 65% in the average value of Bitcoin since the December highs (16,000 euros) until the beginning of February (price of less than 5,500 euros).

  They also warn that, to date, no issue of cryptocurrency or ICO has been registered, authorised or verified by any supervisory body in Spain, which prevents its acquirers from benefiting from the guarantees or protections provided in the regulations relating to banking and investment products.

- **The duality of the ICO concept, construed as the issuance of cryptocurrencies or as the issuance of rights of a diverse nature, called tokens**.

  According to the press release, there are two types of tokens:

  – *Security tokens*: generally grant a share in future revenues or an increase in the value of the issuing entity or a business.

  – *Utility tokens:* grant the right to access a service or to receive a product, usually referring in the offer to expectations of revaluation and liquidity or the possibility of trading them in specific markets.

Finally, potential acquirers or unitholders of cryptocurrencies or ICOs are suggested to take into consideration: i) the fact that this is an unregulated area; ii) the problems arising from the cross-border nature of this operation; iii) the high risk of losing invested capital, as a consequence of the intrinsic lack of value and its strong technological dependence; iv) the illiquidity and extreme volatility; and v) the inadequate nature (especially in the case of ICOs) of the information.

It should be noted that the European banking authority (EBA) and the competent authority for insurance and occupational pensions (EIOPA), together with ESMA, agree with the considerations contained in the communiqué, as evidenced by the document published by ESMA in which consumers are warned of the risks of virtual currencies or cryptocurrencies.

– **The CNMV's considerations on cryptocurrencies and ICOs aimed at professionals in the financial sector.**

In addition to what was indicated by the CNMV in its previous communication, this document sets out: i) the different methods of marketing or acquiring detected cryptocurrencies and ii) its opinion on the treatment that should really be given to ICOs.

- **Marketing methods of the cryptocurrencies.** Apart from "direct" marketing, the CNMV highlights marketing through: i) contracts for differences; ii) futures, options and other derivatives; iii) investment funds and other types of collective investment vehicles that invest in cryptocurrencies; and iv) structured bonds whose underlying assets are cryptocurrencies. The supervisor also warns that such methods should not be considered to be exhaustive, given the constant innovation in products and channels.

- **Treatment of ICOs.** The CNMV considers that most ICOs should be treated as issues or public offerings of tradable securities, since, in its opinion, such transactions would be classifiable within the definition of tradable securities provided for in Article 2.1 of Royal Legislative Decree 4/2015, of 23 October, approving the recast text of the Securities Market Act (Spanish acronym: TRLMV), in those cases in which tokens*:*

  i) Grant rights or expectations of a share in the potential revaluation or return of businesses or projects or, in general, that present or grant rights equivalent or similar to those of the shares, debentures or other financial instruments included in Article 2 of the TRLMV.

  ii) Grant the right to access services or to receive goods or products that are offered with reference, explicitly or implicitly, to the expectation that the buyer or investor will obtain a profit, as a consequence of its revaluation or any remuneration associated with the instrument, or mentioning its liquidity or the possibility of its trading in markets equivalent or allegedly similar to the securities markets subject to regulation.

These ICOs, which are referred to in recitals i) and ii) above, would therefore be subject to the regulations established for this purpose and, in particular, to the provisions of MiFID II, in Directive 2003/71/EC of the European Parliament and of the Council, of 4 November 2003, on the prospectus to be published when securities are offered to the public or admitted to trading and amending Directive 2001/34/EC, and in Directive 2011/61/EU of the European Parliament and of the Council, of 8 June 2011, on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No. 1060/2009 and (EU) No. 1095/2010.

– **Questions and answers addressed to FinTech companies on activities and services that may be related to the CNMV.**

In December 2016, the CNMV opened a contact point (the FinTech Portal) with the aim of promoting initiatives in the field of financial technology (FinTech) that will make it possible to offer business models that are more

oriented towards the end investor and improve the efficiency and competitiveness of financial markets in Spain.

Through the FinTech Portal, the CNMV has collaborated with the developers and financial institutions that have requested it, providing assistance on the interpretation and application of regulatory aspects of the securities market that could affect their projects.

This collaboration has enabled the CNMV to gain first-hand knowledge of some of the demands and needs of the fintech sector in Spain and has led to the establishment of criteria on certain issues that are made available to the public with this document in the form of questions and answers (last update, September 2018).

B European legislation

B.1 Issuers and listed companies

– **Commission Regulation (EU) 2018/498, of 22 March 2018,** amending Regulation (EC) No. 1126/2008, adopting certain international accounting standards in accordance with Regulation (EC) No. 1606/2002 of the European Parliament and of the Council, as regards International Financial Reporting Standard 9.

– **Commission Regulation (EU) 2018/400, of 14 March 2018,** amending Regulation (EC) No. 1126/2008, adopting certain international accounting standards in accordance with Regulation (EC) No. 1606/2002 of the European Parliament and of the Council, as regards International Accounting Standard (NIC) 40.

– **Regulation (EU) 2018/946, of the European Parliament and of the Council, of 4 July 2018,** replacing Annexes A and B to Regulation (EU) 2015/848 on insolvency proceedings.

Regulatory technical standards and implementing technical standards of the Commission

– **Commission Delegated Regulation (EU) 2018/990, of 10 April 2018,** amending and supplementing Regulation (EU) 2017/1131 of the European Parliament and of the Council, with regard to simple, transparent and standardised (STS) securitisations and asset-backed commercial papers (ABCPs), requirements for assets received as part of reverse repurchase agreements and credit quality assessment methodologies.

– **Commission Implementing Regulation (EU) 2018/1212, of 3 September 2018,** providing minimum requirements for implementing the provisions of Directive 2007/36/EC of the European Parliament and of the Council, as regards shareholder identification, the transmission of information and the facilitation of the exercise of shareholders rights.

The Implementing Regulation sets out the standard formats, form, minimum requirements and language in which the following must be presented or provided, among other things: i) the request for disclosure of information on the

identity and responses of shareholders; ii) the information to be transmitted with respect to the calling of general shareholders' meetings; and iii) confirmation of receipt and registration and counting of votes.

It also refers to: i) the deadlines to be observed by issuers and intermediaries in corporate actions, construed as any action initiated by the issuer or a third party that involves the exercise of the rights deriving from the shares and which may or may not affect the underlying share, such as the distribution of profits or a general shareholders' meeting; ii) the processes for identifying shareholders; and iii) the transmission of specific information on corporate actions that are not general shareholders' meetings. With regard to the latter, the Implementing Regulation provides that:

- All essential information relating to the corporate action must be included.
- The issuer must give sufficient notice of the corporate action.
- Payments to shareholders will be dealt with as quickly as possible.

The Annex to the Implementing Regulation contains eight tables detailing the formalities and requirements to which information flows between the issuer, intermediaries and shareholders are subject.

– **Commission Delegated Regulation (EU) 2018/1221, of 1 June 2018,** amending Delegated Regulation (EU) 2015/35, as regards the calculation of regulatory capital requirements for securitisations and simple, transparent and standardised securitisations held by insurance and reinsurance undertakings.

– **Commission Delegated Regulation (EU) 2018/1637, of 13 July 2018,** supplementing Regulation (EU) 2016/1011 of the European Parliament and of the Council, with regard to regulatory technical standards for the procedures and characteristics of the oversight function.

– **Commission Delegated Regulation (EU) 2018/1638, of 13 July 2018,** supplementing Regulation (EU) 2016/1011 of the European Parliament and of the Council, with regard to regulatory technical standards specifying further how to ensure that input data is appropriate and verifiable, and the internal oversight and verification procedures of a contributor that the administrator of a critical or significant benchmark has to ensure are in place where the input data are contributed from a front office function.

– **Commission Delegated Regulation (EU) 2018/1639, of 13 July 2018,** supplementing Regulation (EU) 2016/1011 of the European Parliament and of the Council, with regard to regulatory technical standards specifying further the elements of the code of conduct to be developed by administrators of benchmarks that are based on input data from contributors.

– **Commission Delegated Regulation (EU) 2018/1640, of 13 July 2018,** supplementing Regulation (EU) 2016/1011 of the European Parliament and of the Council, with regard to regulatory technical standards specifying further the governance and control requirements for supervised contributors.

B.2 Investment firms and credit institutions

– **Regulation (EU) 2018/318 of the European Central Bank, of 22 February 2018,** amending Regulation (EU) No. 1011/2012, concerning statistics on holdings of securities (ECB/2018/7).

Regulatory technical standards and implementing technical standards of the Commission

– **Commission Delegated Regulation (EU) 2018/977, of 4 April 2018,** correcting the Bulgarian language version of Delegated Regulation (EU) 2017/653, supplementing Regulation (EU) No. 1286/2014 of the European Parliament and of the Council, on key information documents for packaged retail and insurance-based investment products (PRIIPs) by laying down regulatory technical standards with regard to the presentation, content, review and revision of key information documents and the conditions for fulfilling the requirement to provide such documents.

– **Commission implementing regulation (EU) 2018/1624, of 23 October 2018,** laying down implementing technical standards with regard to procedures and standard forms and templates for the provision of information for the purposes of resolution plans for credit institutions and investment firms pursuant to Directive 2014/59/EU of the European Parliament and of the Council, and repealing Commission Implementing Regulation (EU) 2016/1066.

B.3 Market infrastructures

Regulatory technical standards and implementing technical standards of the Commission

– **Commission Delegated Regulation (EU) 2018/1229, of 25 May 2018,** supplementing Regulation (EU) No. 909/2014 of the European Parliament and of the Council, with regard to regulatory technical standards on settlement discipline.

– **Commission Implementing Regulation (EU) 2018/1889, of 4 December 2018,** on the extension of the transitional periods related to own funds requirements for exposures to central counterparties set out in Regulations (EU) No. 575/2013 and (EU) No. 648/2012 of the European Parliament and of the Council.

B.4 European System of Financial Supervision

Regulatory technical standards and implementing technical standards of the Commission

– **Commission Delegated Regulation (EU) 2018/66, of 29 September 2017,** supplementing Regulation (EU) 2016/1011 of the European Parliament and of the Council, specifying how the nominal amount of financial instruments other than derivatives, the notional amount of derivatives and the net asset value of investment funds are to be assessed.

- **Commission Implementing Regulation (EU) 2018/292, of 26 February 2018,** laying down implementing technical standards with regard to procedures and forms for exchange of information and assistance between competent authorities according to Regulation (EU) No. 596/2014 of the European Parliament and of the Council on market abuse.

- **Commission Delegated Regulation (EU) 2018/959, of 14 March 2018,** supplementing Regulation (EU) No. 575/2013 of the European Parliament and of the Council with regard to the regulatory technical standards of the specification of the assessment methodology under which competent authorities permit institutions to use Advanced Measurement Approaches for operational risk.

- **Commission Implementing Regulation (EU) 2018/1105, of 8 August 2018,** laying down implementing technical standards with regard to procedures and forms for the provision of information by competent authorities to ESMA under Regulation (EU) 2016/1011 of the European Parliament and of the Council.

- **Commission Delegated Regulation (EU) 2018/1641, of 13 July 2018**, supplementing Regulation (EU) 2016/1011 of the European Parliament and of the Council with regard to regulatory technical standards specifying further the information to be provided by administrators of critical or significant benchmarks on the methodology used to determine the benchmark, the internal review and approval of the methodology and on the procedures for making material changes in the methodology.

- **Commission Delegated Regulation (EU) 2018/1642, of 13 July 2018,** supplementing Regulation (EU) 2016/1011 of the European Parliament and of the Council with regard to regulatory technical standards specifying further the criteria to be taken into account by competent authorities when assessing whether administrators of significant benchmarks should apply certain requirements.

- **Commission Delegated Regulation (EU) 2018/1643, of 13 July 2018,** supplementing Regulation (EU) 2016/1011 of the European Parliament and of the Council with regard to regulatory technical standards specifying further the contents of, and cases where updates are required to, the benchmark statement to be published by the administrator of a benchmark.

- **Commission Delegated Regulation (EU) 2018/1644, of 13 July 2018,** supplementing Regulation (EU) 2016/1011 of the European Parliament and of the Council with regard to regulatory technical standards determining the minimum content of cooperation arrangements with competent authorities of third countries whose legal framework and supervisory practices have been recognised as equivalent.

- **Commission Delegated Regulation (EU) 2018/1645, of 13 July 2018,** supplementing Regulation (EU) 2016/1011 of the European Parliament and of the Council with regard to regulatory technical standards for the form and content of the application for recognition with the competent authority of the Member State of reference and of the presentation of information in the notification to European Securities and Markets Authority (ESMA).

– **Commission Delegated Regulation (EU) 2018/1646, of 13 July 2018,** supplementing Regulation (EU) 2016/1011 of the European Parliament and of the Council, with regard to regulatory technical standards for the information to be provided in an application for authorisation and in an application for registration.

B.5 Data providing entities

Regulatory technical standards and implementing technical standards of the Commission

– **Commission Delegated Regulation (EU) 2018/63, of 26 September 2017,** amending Commission Delegated Regulation (EU) 2017/571, supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards on the authorisation, organisational requirements and the publication of transactions for data reporting services providers.

Delegated Regulation 2018/63 amends the content of Commission Delegated Regulation (EU) 2017/571, of 2 June 2016, supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards on the authorisation, organisational requirements and the publication of transactions for data reporting service providers, by including in its articles a new provision (15 *bis*) concerning the scope of consolidated information on bonds, securitisation products, allowances and derivatives. This article establishes: i) a list of asset classes, the data of which must be included in the data flow of the consolidated information providers, and ii) the coverage ratios to be taken into consideration for these purposes.

B.6 Other

– **Commission Regulation (EU) 2018/182, of 7 February 2018,** amending Regulation (EC) No. 1126/2008, adopting certain International Accounting Standards in accordance with Regulation (EC) No. 1606/2002 of the European Parliament and of the Council, as regards International Financial Reporting Standard 28 and International Financial Reporting Standards 1 and 12.

– **Commission Regulation (EU) 2018/289, of 26 February 2018,** amending Regulation (EC) No. 1126/2008, adopting certain International Accounting Standards in accordance with Regulation (EC) No. 1606/2002 of the European Parliament and of the Council, as regards International Financial Reporting Standard (IFRS) 2 – Share-based payment.

– **Commission Regulation (EU) 2018/400, of 14 March 2018,** amending Regulation (EC) No. 1126/2008, adopting certain International Accounting Standards in accordance with Regulation (EC) No. 1606/2002 of the European Parliament and of the Council, as regards International Accounting Standard (IAS) 40.

– **Commission Regulation (EU) 2018/1595, of 23 October 2018,** amending Regulation (EC) No. 1126/2008, adopting certain International Accounting Standards in accordance with Regulation (EC) No. 1606/2002 of the European Parliament and of the Council, as regards Interpretation 23 of the International Financial Reporting Interpretations Committee.

Regulatory technical standards and implementing technical standards of the Commission

– **Commission Implementing Regulation (EU) 2018/1078, of 30 July 2018,** providing technical information for the calculation of technical provisions and basic own funds for reporting with reference dates from 30 June 2018 to 29 September 2018 in accordance with Directive 2009/138/EC of the European Parliament and of the Council, on the taking-up and pursuit of the business of insurance and reinsurance.

B.7 Guidelines, decisions and recommendations of ESMA/EBA

– **European Securities and Markets Authority Decision (EU) 2018/1466, of 21 September 2018,** renewing and amending the temporary prohibition in Decision (EU) 2018/795 on the marketing, distribution or sale of binary options to retail clients.

– **European Securities and Markets Authority Decision (EU) 2018/1636, of 23 October 2018,** renewing and amending the temporary restriction in Decision (EU) 2018/796 on the marketing, distribution or sale of contracts for differences to retail clients.

B. 8 CNMV Technical Guides

– **Technical Guide 1/2018 on related-party transactions of Collective Investment Schemes and other transactions of collective investment scheme management companies**.

Spanish regulations, like European regulations, accept the performance of related-party transactions by collective investment scheme management companies for the Collective Investment Schemes (CIS) that they manage: acquisition of securities issued by institutions in their own group, contracting of services provided by institutions that are related parties, purchases and sales in which the counterparty is another managed CIS, etc. However, given the conflict of interest that such operations raise, their execution is conditional on their being carried out in the exclusive interest of the CIS and at prices or under conditions equal to or better than arm's length. In addition, a collective investment scheme management company should have a formal internal procedure to ensure that such requirements are met and a responsible person or body.

The approved technical guide contains criteria derived from the CNMV's supervisory experience regarding what should be considered related parties and related-party transactions, as well as regarding the consideration that the different types of related-party transactions should be given.

Accordingly, the related-party transactions that must be subject to prior authorisation are identified, as well as those that, due to their repetitive or insignificant nature, may be subject to simple *a posteriori* control. Some of the situations specifically envisaged in the technical guide are:

- Applications (transactions in which a CIS has as counterparty another CIS or client managed by its own collective investment scheme management company). The CNMV considers that they should be very exceptional in nature, given the difficult justification for opposing decisions taken by the same entity for different clients.

- The sale by CIS of securities acquired as part of issuances by institutions in their own group, which it is deemed should also be reported, on a case-by-case basis, to the body responsible for related-party transactions in order to reinforce the appropriate management of any conflicts of interest that might exist at the time of acquisition.

In addition, the CNMV clarifies to collective investment scheme management companies that it considers it appropriate in terms of managing conflicts of interest to apply a treatment equivalent to that of related-party transactions to certain transactions not expressly classified as related-party transactions but comparable therewith, carried out with the promoters of the funds they manage or which affect customers of portfolio management or advisory services.