

5.1 Trading and post-trading

One of the aims of supervising secondary markets is to detect and prevent possible market abuse conduct. With this aim, the CNMV uses various sources of information, particularly the daily reporting of transactions in financial instruments executed by investment firms, credit institutions and, in certain circumstances, markets. The information contained in this reporting is entered into an alarm system, referred to as the advanced system for monitoring secondary markets (Spanish acronym: SAMMS). Another important source of information is the reporting by firms of suspicious transactions.

Over 2018, the CNMV completed implementation of the new reporting system in accordance with the new legislation applicable as from 3 January: reporting instructions, schemas and validations in order for entities not only to comply with this obligation, but also do so with high quality levels. The new regulatory framework has expanded the set of entities subject to the requirements and has increased the level of detail in transaction reporting. For this purpose, the CNMV has provided entities support in order to deal with incidents and respond to the most frequent enquiries and it has emphasised the importance of high-quality compliance. In this regard, the CNMV sent several general notices to reporting entities as a result of the general quality tests performed. In certain cases, it also established bilateral contact with entities in order to correct particular areas and it individually reviewed the transaction reporting of other entities, which gave rise to seven deficiency letters relating both to the lack of quality of the content of the reports and the failure to report transactions.

In 2018, the CNMV received over 110 million registrations (10% up on 2017) of reports of transactions executed in financial instruments. The number of registrations received remained stable compared with the previous year, although both the type of transactions reported and the universe of entities required to report are different. The number of entities required to report to the CNMV stood at 177 on average, and reports were also received from some markets, from their members or from participants not subject to the MiFID. It should be noted that the Spanish branches of foreign entities now report to the competent authority of their parent company and several of them continue being major operators in Spanish markets.

On 3 January 2018, the new regulatory framework consisting of MiFID II¹ and MiFIR² came into force. This has led to significant new developments from the point of view of trading venues and financial instruments:

Trading of equity instruments

One of the main new aspects introduced by MiFIR is the cap applicable to trading in shares that may be performed outside trading venues and systematic internalisers (share trading obligation).

As from the application date of the new framework, the trading percentages show that internalisers account for a significant proportion of total trading. It should be noted that some of the transactions that were included under OTC activity prior to 2018 are now covered by systematic internalisers with entry into force of the new framework. Internalisers are subject to requirements on transparency and on the quotes they offer, with the aim of preventing unfair competition with markets.

Another of the new obligations introduced is the application of a regime for minimum tick sizes for trading venues. From the very moment that the new regime began to be applied, both the need to extend it to systematic internalisers and the desirability of exempting third country shares were detected. Both changes are being addressed through regulatory review processes.

The limit to the use of certain waivers to order and quote transparency (double volume cap), both with regard to the trading venue itself (4%) and to the European Union (8%), is also having a significant effect on the structure of the European market. In the case of Spain, application of the volume cap mechanism affected 20 instruments as the 8% threshold with regard to the European Union was exceeded, but in no case because the trading of domestic trading venues had exceeded the 4% threshold.

Furthermore, since the new framework entered into force, there has been an emerging proliferation of periodic auction systems in some European trading venues. Although their levels of trading still remain at moderate percentages, ESMA and the National Competent Authorities (NCAs) have begun a process of reviewing these systems in order to analyse how some of their characteristics fit in with current legislation and to provide a regulatory response to any doubts that may emerge.

Trading of fixed income and derivative instruments

The new aspects of MiFID II and MiFIR, both from the point of view of market structure and application of the transparency regime, have also brought about important changes in the trading of fixed income and derivative instruments.

In general, and at a European level, there has been an increase in fixed-income trading through trading venues, largely corresponding to pre-arranged

transactions that are reported to trading venues and to the sector's reaction to a possible involuntary classification of entities dealing on own account in the OTC area as systematic internalisers.

From the point of view of market structure, CAPI OTF (managed by CM Capital Markets Brokerage, S.A., AV) and CIMD OTF (managed by CIMD SV, S.A., of Grupo CIMD Corretaje e Información Monetaria y de Divisas, S.A.) started trading as Organised Trading Facilities (OTF) in January 2018. These two Spanish OTFs are also among the 13 trading venues in Europe that trade derivative instruments subject to the trading obligation of these instruments set out in Article 28 of the MiFIR.

In addition, a total of six entities have notified the CNMV about the performance of systematic internalisation activity, mainly in fixed-income and derivative instruments.

Activities of data reporting services providers

MiFIR introduces the obligation to report, via an Approved Publication Arrangement (APA), OTC trades on a general basis as well as those performed by systematic internalisers as a particular case of OTC trading.

In Spain, BME Servicios Regulatorios began operating an APA at the start of the year. In the European context, there has been a certain level of concentration in the reporting of OTC trading (including that of systematic internalisers) via a low number of APAs at a European level.

The new scenario of greater fragmentation has revealed the need of participants to consolidate information from different sources. From the beginning of the new framework, the absence of a Consolidated Tape Provider (CTP) as a private initiative has brought difficulties for market participants that need to have a single point of access to the information on the activity of a given financial instrument.

Sale of market data and free access to 15-minute delayed market data

ESMA and the National Competent Authorities (NCAs) share the view that market participants must be allowed to take full advantage of the data generated through the new legislative framework. In this context, users of the data generated have identified several difficulties: i) access to data on a reasonable commercial basis, ii) the cost of maintaining a multiple connectivity structure and iii) the lack of development or barriers for accessing data with a 15-minute delay from publication.

In this first year of the new regulatory framework, the NCAs have undertaken, in the context of ESMA, to adopt convergent supervisory practices on obligations relating to the sale of market data. Furthermore, ESMA has coordinated supervisory work on access to 15-minute delayed market data. This coordinated supervisory effort is expected to lead to improved accessibility in the short term.

Information on reference instruments and on transparency calculations

A joint effort has been made by trading venues, APAs, NCAs and ESMA to develop the system for transaction reporting and for transparency calculations (FITRS, Financial Instruments Transparency System). Both systems are supported by the Financial Instrument Reference Data System (FIRDS), which makes it possible to identify instruments admitted or traded on trading venues. These instruments are subject to the transaction reporting requirement and application of the transparency regime. In the case of the transaction reporting system, the obligation extends to instruments whose underlying is admitted or traded on a trading venue. FIRDS manages a very high volume of instruments on a daily basis, which leads to millions of registrations.

The complexity and size of the project for the collection of data, calculations and publication of the activity of the instruments has meant that the situation is not yet optimal and several initiatives have been developed to increase the coverage of the instruments and the quality of the data.

- 1 Directive 214/65/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.
- 2 Regulation (EU) No. 600/2014 of the European Parliament and of the Council, of 15 May 2014, on markets in financial instruments and amending Regulation (EU) No. 648/2012 (EMIR). In addition, over 285 million registrations were received relating to transactions in Spanish financial instruments from the competent authorities of other EU Member States (8.3% up on the previous year). In turn, the CNMV sent over 23 million registrations (a similar figure to that of 2017) to the competent authorities of other Member States.

In addition, over 285 million registrations were received relating to transactions in Spanish financial instruments from the competent authorities of other EU Member States (8.3% up on the previous year). In turn, the CNMV sent over 23 million registrations (a similar figure to that of 2017) to the competent authorities of other Member States.

This entire system, in turn, rests on another reporting obligation relating to data on instruments carried out by our markets in order to consolidate, on a daily basis, the European instrument database published by ESMA (the FIRDS, Financial Instrument Reference Data System).

Like other competent authorities, over 2018, the CNMV, in its work overseeing the quality of the information submitted to the FIRDS, paid particular attention to the quality of the reference data, such as correct use of the issuer's LEI code, the CFI code of the instruments and the correlation between the instruments submitted to the FIRDS system and to the transparency regime. For this purpose, it has maintained ongoing contact with trading venues in order to correct any incidents detected.

At the end of 2018, there were 6 regulated markets, 4 multilateral trading facilities, 2 organised trading facilities and 6 systematic internalisers registered with the CNMV's FIRDS. The regular daily flow in the year consisted of 21 files, corresponding to 19 different Market Identifier Codes (MICs), while the number of reported

instruments rose from around 28,000 per day at the start of the year to over 35,000 per day at the end of 2018. The active instruments in ESMA's database whose relevant competent authority was the CNMV amounted to 123,652 at 31 December.

As shown in Table 5.1.1, the number of transactions on the trading venues supervised by the CNMV fell by 12% on 2017. In contrast, the volume traded rose by 92% due to the addition of the statistics of 2 OTFs (CIMD OTF and CAPI OTF).

Number of trades and volume

TABLE 5.1.1

Markets	No. of trades (thousands of trades)			Notional/effective amount: (million euros)		
	2017	2018	% change 18/17	2017	2018	% change 18/17
Equity	50,947	44,225	-13.2	651,489	587,507	-9.8
Fixed income	73	76	4.1	213,666	678,369	217.5
Regulated market	59	31	-47.5	76,048	112,476	47.9
MTF	14	15	7.1	137,618	101,088	-26.5
OTF	-	30	-	-	464,805	-
Derivatives	3,534	3,803	7.6	726,158	1,788,998	146.4
Total markets	54,553	48,104	-11.8	1,591,313	3,054,874	92.0
Settlement	10,907	9,165	-16.0	36,061,115	20,735,046	-42.5
Clearing	105,398	91,992	-12.7	2,317,536	1,976,536	-14.7
Total	170,859	149,261	-12.6	39,969,964	25,766,456	-35.5

Source: CNMV.

The **deficiency letters** sent by the CNMV in the course of its market supervision, as well as the reports prepared in this area, are shown in Table 5.1.2.

The obligation imposed by Article 16 of the Market Abuse Regulation on investment firms and markets to report to their competent authority orders or transactions that might infringe market abuse rules constitutes another basic supervisory instrument for the CNMV. The number of **suspicious transactions reported** – STORs: Suspicious Transaction and Order Reports – totalled 232 (a similar number to those received in 2017). As in previous years, the bulk of the STORs related to actual or attempted insider dealing (66%) and the others to possible market manipulation.¹ Most (69%) of the STORs received related to electronic market shares, followed in second place by reports on derivative instruments, although these fell from 15% to 10%. In contrast, reports related to fixed income trading rose to 7%.

1 Article 1 of Commission Delegated Regulation (EU) 2016/957, of 9 March 2016, defined suspicious transactions as: market manipulation, insider dealing, attempted market manipulation and attempted insider dealing.

Summary of market supervisory activities

TABLE 5.1.2

Markets	Deficiency letters	Supervision reports	Reports sent to other bodies and agencies	Periodic reports
Equity				
2017	160	96	26	26
2018	171	74	35	26
Fixed income				
2017	19	4	18	8
2018	6	0	9	0
Derivatives				
2017	1	1	0	30
2018	3	2	0	27
Settlement				
2017	1	1	1	0
2018	5	0	0	0
Clearing				
2017	28	21	0	12
2018	23	1	2	0
Other				
2017	14	7	0	50
2018	36	0	0	23
Total				
2017	223	130	45	126
2018	244	77	46	76

Source: CNMV.

Reports of suspicious transactions relating to Spanish instruments received from other regulators accounted for 40% of the STORs (a similar percentage to the previous year) compared with 7% of the total for reports forwarded by the CNMV to other regulators (slightly lower than the number forwarded in 2017).

Supervisory actions

Equity

One of the basic activities performed by the CNMV for supervising market integrity consists of overseeing compliance by issuers with the obligation imposed by Article 17.1 of the Market Abuse Regulation. The number of **disclosures of price sensitive information** submitted to the CNMV in 2018 stood at 8,691 (3.4% down on the previous year). Table 5.1.3 provides a breakdown of price sensitive information notices by type.

Price sensitive information notices received by the CNMV

TABLE 5.1.3

CNMV actions in the
securities markets
Supervision of the markets

Type	2017	2018	% change 18/17
Financial instruments	5,087	4,759	-6.4
Capital increases and reductions	189	183	-3.2
Public offerings for sale or subscription	46	41	-10.9
Dividend information	211	210	-0.5
Block trades	57	29	-49.1
Trading halts and resumptions	33	28	-15.2
Credit ratings	117	115	-1.7
Asset funds	3,275	3,117	-4.8
Other financial instruments	1,159	1,036	-10.6
Business and financial position	2,201	2,084	-5.3
Earnings information	1,550	1,530	-1.3
Insolvency proceedings	11	3	-72.7
Other business and financial position	640	551	-13.9
Corporate transactions	425	559	31.5
Transformations, mergers, spin-offs and liquidations	36	64	77.8
Strategic agreements with third parties	18	45	150.0
Transfers and acquisitions of shareholdings	108	161	49.1
Other corporate transactions	263	289	9.9
Corporate governance and official notices	1,281	1,289	0.6
Notices and resolutions of general meetings and assemblies	476	494	3.8
Composition of board of directors	318	312	-1.9
Annual corporate governance report	171	166	-2.9
Other corporate governance	316	317	0.3
Total	8,996	8,691	-3.4

Source: CNMV.

A **temporary trading halt** is an exceptional measure that the CNMV may adopt in severe cases of asymmetrical or insufficient information that does not allow proper price discovery. Both the number of issuers affected and the number of trading halts fell slightly in 2018.

Temporary trading halts

TABLE 5.1.4

	2017	2018
Number of issuers suspended	15	13
Number of halts	18	16
Due to the need to disclose price sensitive information	12	11
Due to expiry of acceptance period for delisting bids	5	4
Other	1	1

Source: CNMV.

Market sounding prior to the sale of a significant share package is an action that normally entails a significant number of entities accessing inside information. The CNMV therefore checks that this practice complies with the conditions established

by the Market Abuse Regulation. A total of 11 accelerated book builds for large packages of shares affecting 9 issuers (1 of them was the subject of 3 book builds over the year) took place in 2018. A total of 12 and 18 book builds were carried out in 2016 and 2017, respectively.

The following may take place through book builds: i) the sale of shares of one issuer on behalf of the company itself and, therefore, a sale of treasury stock; ii) the sale of shares of an issuer on behalf of a significant shareholder; and iii) the placement of the issuer's newly issued shares through a capital increase without pre-emptive subscription rights. The aim of some of the book builds performed over the year in this last category was, firstly, to raise finance and, secondly, an interest in finding shareholders whose investor profile meant that they were expected to remain long-term shareholders.

Eight of these operations involved issued shares held by one of the issuer's significant shareholders, while the other three involved shares resulting from capital increases or treasury stock held by the issuer. The percentages of the book builds ranged between 2.4% and 15.2%. One of the book builds was performed without a discount with regard to the closing price of the session, while the discounts for the others ranged between 12.6% and 1%. All the book builds, with the exception of one in which the trading of the share had previously been suspended, began following the market close and were completed prior to the start of the following stock market session.

In addition to these accelerated book builds of shares, in 2018 there was an accelerated book build of subscription rights performed by a shareholder of the issuer.

In this type of operation, it is common for the issuer or the significant shareholder to give a mandate to one or several financial institutions for them to carry out market sounding with the aim of determining investor appetite for the securities offered. It is also common for inside information to be disclosed in the context of the market soundings.

In this regard, the Market Abuse Regulation and its implementing standards define what is understood by market sounding and indicate the obligations that must be met so that disclosure of inside information made in the course of a market sounding is deemed to be made in the normal exercise of a person's employment, profession or functions and does not therefore constitute the unlawful disclosure of inside information. Such obligations apply both to the market participant that discloses information in the context of a market sounding and those that receive it. They refer to aspects such as whether the information disclosed is deemed insider information or the need to create and maintain records of the information that they disclose and to maintain a record of potential investors that they contact.

Due to the importance of regulatory compliance in this area for the integrity of Spanish markets, the CNMV once again actively supervised the book builds performed over the year. Firstly, by monitoring the price of the shares affected by said book builds and supervising the price sensitive information published in this regard. Secondly, through intervention, by sending requests for information to the entities responsible for performing the market sounding and to the entities that receive the information in said sounding in order to determine whether their actions are in line with market abuse legislation with regard to market soundings and

whether there may have been any illegal use of inside information. As a result of these actions, the CNMV sent various warning letters to several entities.

Another important aspect of the CNMV's supervisory work relates to treasury stock trading by issuers and, in particular, **discretionary treasury stock trading**. As the CNMV has reiterated for several years, there are two possible risks associated with discretionary treasury stock trading. The first of these relates to the generation of false or misleading signals on volume, which might mislead investors with regard to the share's level of liquidity. The second risk relates to the possible generation of misleading signals with regard to price, which might affect price discovery to the extent that investors obtain volumes that are high or at prices far from the prevailing market range.

The CNMV therefore reiterates its warning about the need to exercise prudence in discretionary treasury stock management and the appropriateness of channelling these transactions through the buy-back programmes of the Market Abuse Regulation and the liquidity contracts provided for in CNMV Circular 1/2017, of 26 April, when the aim of the purchases corresponds with those provided for in these two regulatory frameworks. Both buy-back programmes in line with the Market Abuse Regulation and the provision of liquidity – as an accepted market practice in accordance with said Regulation and the CNMV Circular – constitute a safe harbour for treasury stock trading with regard to market abuse regulations.

Buy-back programmes are regulated under the Market Abuse Regulation and Commission Delegated Regulation (EU) 2016/1052, of 8 March 2016, and must have one of the following objectives: i) to reduce the capital of an issuer, ii) to meet obligations arising from debt financial instruments that are exchangeable into equity instruments or iii) to meet obligations arising from share option programmes, or other allocations of shares, to employees or to members of the administrative body of the issuer or of an associate company.

Buy-back programmes must also comply with a series of transparency and operational conditions. In order to verify compliance with these conditions, the supervision of the CNMV in 2018 was essentially focused on the following aspects: i) supervision of the price sensitive information published by the issuer prior to the start of the buy-back programme; ii) supervision of the price sensitive information published by the issuer with the details of the transactions performed under the framework of the buy-back programme; iii) supervision of compliance with the conditions for operating in terms of volume to verify that the issuer did not buy more than 25% of the average daily volume of the shares; iv) supervision of operations in auctions; and iv) supervision of compliance with the restrictions to trading implemented in the framework of the buy-back programme.

There were 20 buy-back programmes in force and operative in 2018 corresponding to 18 issuers (1 issuer had 3 buy-back programmes). 14 of these programmes aimed to buy back shares for their subsequent cancellation, while the remaining 6 were for share option programmes.

For their part, the **liquidity contracts entered into by issuers** with a financial intermediary are regulated in Circular 1/2017, which entered into force in July 2017. Since that date, the CNMV has been paying particular attention to supervising the liquidity contracts subject to this Circular. The supervisory effort began with the transition work from the previous circular to the new one, which included: adaptation

of contracts, analysis of the operations resulting from the cancellation of the former contracts, responding to multiple enquiries and supervision of the price sensitive information disclosures of the cancellation and notification of the new contracts. This supervision has remained very intense since then.

In addition to the supervision performed on a day-to-day basis – which includes that relating to price sensitive information, dealing with enquiries, analysing liquidity contracts and sending requests for information – the CNMV conducts a periodic and exhaustive analysis every quarter to determine the behaviour of liquidity contracts and compliance with the conditions laid down in Circular 1/2017.

As a result of this supervision, it may be stated that Circular 1/2017 and liquidity contracts play an important role in the provision of liquidity of issuers with equity instruments listed on Spanish markets, both in terms of the number of issuers that have entered into such contracts and in terms of the volume traded under them.

At year-end, 35 issuers held operating liquidity contracts.

The Market Abuse Regulation and Delegated Regulation (EU) 2016/1052 also regulate as safe harbours **stabilisation transactions** intended to provide support for the price of an initial or secondary offering of securities during a limited time period if the securities come under selling pressure, thus alleviating sales pressure generated by short-term investors and maintaining an orderly market, which contributes to greater confidence of investors and issuers in financial markets.

In order for stabilisation transactions to benefit from the safe harbour, they must comply with a series of transparency and operational conditions. In this regard, supervision of stabilisation transactions performed in the framework of public offerings for sale or subscription focus on verifying compliance with said conditions, with particular attention paid to the following aspects: i) the price at which the stabilisation transactions were executed, which may never be above the offer price; ii) the volume of the shares subject to stabilisation; and iii) the price sensitive information published in the context of the stabilisation, both relating to the transactions performed and to the start and end of the stabilisation.

A special situation that the CNMV analysed and with regard to which it had to form criteria in 2018 was one that affected three shares: Abengoa B, Vértice 360 and Urbas, which were persistently quoted at one euro cent as a result of the trading rules in force on Spanish stock exchanges, which included a rule that the minimum price should be one euro cent. On the one hand, this unduly restricted the liquidity of the aforementioned shares and, on the other hand, generated artificial signals about their price. The CNMV supported BME's initiative to lower the minimum trading price to one ten-thousandth of a euro and disseminated a criterion against the initiative to carry out stock splits, aimed at removing the effect of the modification promoted by BME, that were announced by some of the affected companies and which did not prosper. The modification introduced by BME solved the problem.

The CNMV supervises **changes in the composition of the Ibex 35** index in order to analyse whether such changes meet the technical rules of the index and to detect any distortions in trading in the market aimed at favouring a share remaining in, joining or being removed from the index. In the first ordinary review, in June, the technical advisory committee of the Ibex 35 agreed to add the shares of CIE Automotive to the selective index, after having previously decided to remove the shares of Abertis as a

result of the takeover bid made by Hotchief AG (at which time the index was temporarily made up of 34 shares). In the second ordinary review conducted in December, the committee agreed to include Ence in the index to replace DIA.

In addition, the CNMV performed several supervisory interventions in 2018 with regard to transactions performed by **persons discharging managerial responsibilities**. In particular, it sent letters requesting information to several issuers and persons discharging managerial responsibilities in order to verify compliance with the obligations set out in Article 19 of the Market Abuse Regulation. With regard to issuers, the supervision consisted of determining whether the issuers complied with the obligation to notify in writing the persons discharging managerial responsibilities of their obligations under Article 19 and to draw up a list of all persons discharging managerial responsibilities and persons closely associated with them. With regard to the former, the supervision aimed to determine whether they complied with the ban on conducting any transaction on his/her own account or on the account of a third party, directly or indirectly, relating to the shares and debt instruments of the issuer or to derivatives or other financial instruments linked to them during a closed period of 30 calendar days before the announcement of an interim financial report or a year-end report. As a result of this supervision, the CNMV sent warning letters to certain issuers and persons discharging managerial responsibilities.

A good deal of the CNMV's supervisory work focused on compliance with the obligations resulting from Regulation (EU) No. 236/2012 of the European Parliament and of the Council, of 14 March 2012, on **short selling** and certain aspects of credit default swaps. These obligations are mainly in the following areas:

- Transparency regime.

The Regulation establishes a transparency regime with the obligation to notify net short positions in shares which reach or fall below 0.2% of the capital, as well as each additional 0.1% in excess of that percentage. In addition, the Regulation establishes the obligation to disclose positions which reach or fall below 0.5% of the capital, as well as each additional 0.1% in excess of that percentage.

In 2018, the CNMV received a total of 5,848 notifications of net short positions in shares (25% up on 2017) and a total of 172 investors reported short positions, mostly US and UK hedge funds, as in previous years. At the end of the year, 67 issuers held net short positions, while a total of 90 were affected by short positions at some time during the year (86 issuers in 2017). The average of all the aggregate net positions weighted by market capitalisation stood at 0.86% of the capital at year-end 2018, compared with 0.70% at year-end 2017.

The CNMV performs different supervisory actions aimed at verifying compliance with the Regulation. In this regard, the CNMV performs an analysis of the notifications of net short positions received and carries out periodic supervisions of notifications of net short positions of greater than six months so as to determine whether they remain in force or not. This work makes it possible to detect possible breaches of the Regulation by those holders who have not updated their net short positions by means of the appropriate notification, which led to the CNMV sending several letters requiring information. This analysis also allows the CNMV to keep an updated register of the positions of this type in listed issuers on Spanish markets.

- Creation and increase in net short positions and compliance with conditions for performing short sales.

The CNMV sent various letters requiring information to determine how the reported net short positions had been generated and, as the case may be, to verify compliance with conditions for performing short sales. These letters were sent to various foreign entities that operate in Spanish securities markets.

This supervisory work is carried out on an ongoing basis and allows the CNMV to know which mechanisms and financial instruments are commonly used by investors to take a net short position in a security and the type of agreements reached in the short sales in order to comply with the Regulation.

Fortnightly publication of aggregate short positions

EXHIBIT 12

On 1 January 2019, the CNMV stopped publishing aggregate information on short positions on each listed company resulting from all the information contained in the reporting that it receives. The basic reason for this decision, which was adopted following the corresponding analysis and consultation process, was to apply the same criteria in this area as other European countries. None of them disseminate aggregate short positions, and therefore their regular publication was a unique feature of the Spanish market.

Regulation (EU) No. 236/2012 of the European Parliament and of the Council, of 14 March 2012, on short selling and certain aspects of credit default swaps establishes the obligation to inform the supervisor of net short positions equal to or above 0.20% of the issued share capital of a company, but it only provides that these should be made public when they are equal to or above 0.50%. Over recent years, the CNMV has published on a voluntary basis every 15 days the aggregate net short positions of each listed company, the result of adding together those that exceed 0.20% and the public positions of over 0.50%.

When making the decision to stop regularly publishing aggregate net short positions, the CNMV took the following considerations into account:

- The fortnightly aggregate publication represents an asymmetry of information with regard to the practice of other competent European authorities, which do not publish any type of aggregate information. This might give the impression that net short positions in Spanish listed securities are higher than their European counterparts.

This situation is particularly noticeable with regard to small and medium-cap securities, in which the taking of reportable net short positions involves absolute amounts that are much lower than those required in the case of large-cap securities.

- There is no prospect of any aggregated net short positions being published at a European level. In December 2017, ESMA published technical advice to the European Commission on the evaluation of certain

elements of the Short Selling Regulation and did not include any reference to such a possibility.

It is worth remembering that short trading is a matter that is regulated exclusively at a European level in the aforementioned Regulation and in its delegated regulations.

In 2018, three members of Spanish stock markets notified the CNMV of their intention to make use of the exemption for market-making activities. In accordance with the Regulation on short selling, these entities are not subject to the obligations relating to notification and transparency of net short positions or the restrictions on uncovered short selling with regard to their market making activities. The CNMV analysed the notifications received and verified whether they were in line with the aforementioned Regulation and the ESMA guidelines on the exemption for market making activities. The CNMV also notified ESMA that the applicant entities were going to make use of the exemption as market makers.

Fixed income

The CNMV's supervisory work was widened in 2018 with the addition of two new Spanish trading venues: CAPI OTF and CIMD OTF, authorised in 2017.

A new development relating to the AIAF regulated fixed-income market was the admission to trading from May 2018 of sovereign debt issues from Austria, Belgium, Germany, France, Ireland, Italy, the Netherlands and Portugal, as well as issues of the European Stability Mechanism (ESM). The trading of these issues accounted for 14% of the nominal amount of the total sovereign debt traded on AIAF. With regard to corporate debt, trading in 2018 of issues generally considered to be aimed at retail investors, as they have a nominal unit volume below 100,000 euros, totalled a nominal amount of 422 million euros, accounting for 97% of the total of this type of debt. With regard to the size of the trades, in overall terms (public and corporate debt), those with a nominal value equal to or greater than 100,000 euros accounted for 99.6% of total, corresponding to a nominal volume of 93.86 billion euros.

In 2018, the CNMV approved the modifications of the regulations of the Fixed Income Market (AIAF) and of the two MTFs – Alternative Fixed Income Market (MARF) and the Electronic System for Trading in Financial Assets (SENAF) – with the aim of completing their adaptation to MiFID II/MiFIR. The modifications include the new name of its operating company: Bolsas y Mercados Españoles Renta Fija, SAU.

With regard to the transparency requirements for trading venues, MiFID II/MiFIR recognises the possibility for operators to make a request to the competent authority for application of waivers to the general pre-trade transparency obligation in the event of certain circumstances provided for by the legislation. The CNMV received a total of 46 waiver requests, of which 36 were exclusively for fixed-income instruments and 11 for fixed income and derivative instruments. ESMA issued a favourable opinion on the aforementioned 46 waiver requests that had previously been approved by the CNMV.

As a result of these requirements, ESMA periodically assesses the liquidity criteria for the bonds. The result for the bonds issued in Spain in the last quarter of 2018 was that 98% of the bonds were non-liquid (1,373 issues) and only 2% were liquid (25 issues). With regard to securitised issues, following the calculations performed, ESMA has classified all assets of this type as illiquid.

Derivative products

Supervision of derivative instrument markets has focused on three lines of activity: i) analysing and monitoring daily trading, ii) supervising compliance with, and adaptation to, new market legislation, and iii) preventing and detecting market abuse situations.

In addition to these three areas, as from January 2018, the CNMV has supervised the submission of information to ESMA as part of the aforementioned FIRDS project, both for instrument reference data (FIRDS) and for the data necessary for transparency calculations (FITRS).

Regulated markets

With regard to the first line of activity (analysing and monitoring daily trading), the supervision of derivative instruments traded on MEFF Exchange was performed by monitoring volumes traded and prices, volatilities, transactions, trading strategies and open positions, as well as any changes thereof. In this regard, it should be noted that during the weeks the contracts mature, the CNMV conducted a specific analysis of the roll-over of positions and of the accounts with the largest concentration of position in the nearest maturity. The CNMV also monitored the performance of the Ibex 35 over the period for calculating the settlement price at maturity of the future.

With regard to compliance with the new legislation, the CNMV's supervision of the transparency regime was extended to both MEFF and MEFF Power, in close contact with the markets so as to achieve the established level of compliance.

With regard to detecting market abuse situations, the CNMV closely monitored trading on dates close to the disclosure of price sensitive information by the issuers of securities with derivatives traded on MEFF, as well as trading on days close to suspensions of trading.

With regard to warrants traded on stock markets, the CNMV monitored daily and intraday trading and checked the specialists' compliance with their obligations. In addition, the CNMV monitored the publication of price sensitive information of the issuers of warrants and of the settlements corresponding to the different maturities.

Lastly, the CNMV reviewed potential market abuse situations linked to both spot trading and trading in derivative markets. These transactions were detected by direct analysis of the trading, as well as through the reporting of suspicious transactions.

Organised Trading Facilities (OTFs)

The CNMV's supervision took into account the start of operations of two Organised Trading Facilities (OTFs) that have been operating since 3 January 2018: CAPI OTF (managed by CM Capital Markets Brokerage, S.A., AV) and CIMD OTF (managed by CIMD SV, S.A., of the CIMD Group, Corretaje e Información Monetaria y de Divisas, S.A.).

Mainly interest-rate and foreign exchange derivatives are traded on CAPI OTF, while CIMD OTF has two differentiated segments: one for electricity derivatives and another for currency futures and interest-rate swaps.

Clearing, settlement and registry

The Sociedad de Gestión de los Sistemas de Registro, Compensación y Liquidación de Valores, S.A. Unipersonal (Iberclear) is supervised by the CNMV, which is the competent authority responsible for authorising, supervising and sanctioning Central Securities Depositories (CSDs).² A significant part of the supervision conducted by the CNMV over the year related to monitoring levels of efficiency following migration to the T2S platform, which Iberclear joined in September. During 2018, the supervisory activity also focused on reviewing the requirements imposed by Regulation (EU) No. 909/2014 of the European Parliament and of the Council, of 23 July 2014, on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No. 236/2012 (CSDR) so that Iberclear might be authorised in accordance with this Regulation.

With regard to BME Clearing, in 2018, a very significant part of the CNMV's supervisory work was focused on verifying compliance by the Spanish Central Counterparty (CCP) with the requirements of Regulation (EU) No. 648/2012 of the European Parliament and of the Council, of 4 July 2012, on OTC derivatives, central counterparties and trade repositories (EMIR). In this regard, the CNMV performed a series of assessments on the manner in which the CCP meets prudential, operational, corporate governance and service quality requirements. For all segments, the CNMV analysed the evolution of open positions and the collateral requested with the aim of verifying that the registered risk was suitably covered. With the start of the clearing of natural gas derivatives in the first half of 2018, the CNMV conducted special monitoring of the energy segment in general and of these contracts in particular.

Finally, the CNMV is developing a warning system based on the monthly information (contribution of margins by clearing members, collateral provided and analysis of the CCP's risk methodology) that BME Clearing must report to the college of supervisors in accordance with the new ESMA templates, implemented as from August 2018.

In addition, the CNMV performed specific supervisory actions during this period related to: i) liquidity risk management (in accordance with Article 44 of the EMIR,

² In accordance with Regulation (EU) No. 909/2014 of the European Parliament and of the Council, of 23 July 2014, on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No. 236/2012 (CSDR).

CCPs shall at all times have access to adequate liquidity to perform their services and activities); ii) preparation of a recovery plan (in line with that defined and developed in the principles for financial market infrastructures of CPMI-IOSCO and in anticipation of the future European regulation on the resolution of CCPs); and iii) the CNMV's participation in the European stress tests designed by ESMA, which will be developed over 2019-2020.

In addition, during 2018 the CNMV continued its work of **supervising the compliance of Spanish entities with their obligations under EMIR**. It monitored the level of accuracy of the reporting sent by entities to trade repositories. In addition, the CNMV participated together with other Spanish authorities in the analysis exercises coordinated by ESMA to assess the quality of the information reported at a European level. Following the application in November of Commission Delegated Regulation (EU) 2017/104, which amended the regulatory technical standards that specify the content of the information to be reported, the CNMV monitored the effect that implementation of this measure had on the notifications made by Spanish entities.

5.2 The Market Monitoring Unit

Through its Market Monitoring Unit (Spanish acronym: UVM), the CNMV undertakes in-depth investigations of situations in which actions contrary to market integrity may have been performed. Firstly, the investigations aim to detect cases of the illegal performance, recommendation or disclosure of insider dealing and, secondly, manipulation practices performed in securities markets. In both types of investigation, the CNMV also reviews such aspects as proper preparation and maintenance of insider lists or the effectiveness of the mechanisms, systems and procedures of entities providing investment services for identifying and reporting transactions suspected of market abuse to the CNMV. On completion of the UVM's investigations, the CNMV decides whether to apply measures, including disciplinary measures.

As a result of the aforementioned investigations, 7 disciplinary proceedings were initiated in 2018 affecting 11 legal or natural persons for the commission of the following infringements:

- A natural person for disclosure of inside information to three closely related persons, who have been accused of using said information.

In the period in which a company was analysing whether to make a takeover bid for the shares of an issuer, one natural person – belonging to a law firm providing services in the operation – disclosed inside information relating to the imminent bid to three people, who used it to purchase shares of the Spanish issuer.

In this case, the person performing their work in the law firm became aware in the context of their functions of the process initiated by the company to make a takeover bid for the issuer and, despite being included in the insider list, disclosed the inside information to three closely related persons. These persons purchased shares of the issuer on the same day on which, at the close of the session, the bidder announced its takeover bid, thus taking advantage of the inside information received.

- Two natural persons, for market manipulation in various shares as a result of the transactions of various owners.

A natural person, decision maker and ordering party of the purchase and sale of shares of several issuers in their own name, and occasionally in the name of a relative, performed concerted trading with another person – the administrator of a website that disseminates analyses of listed securities. This latter person sent misleading and biased information with regard to those issuers' shares to clients acquired through the website. Prior to sending that information, the natural person intervening in the market would take a long position that they would undo while the clients received the information and would thus obtain gains.

- A natural person and a broker-dealer that provided the former with investment services for market manipulation.

The natural person, with the collaboration of several operators of their broker-dealer, issued numerous orders for a small number of shares, which were not intended to take or undo a position, but rather to have an impact on the order book and trigger price oscillations, which allowed the natural person to take positions at advantageous prices and undo them with positive results. This strategy required performing a significant number of executions during the session that were of a small size but which generated most of the price movements, both up and down, which led to a positive difference between the price of the natural person's purchases and the price of their sales. Free price discovery was therefore altered during the open session.

- A natural person representing a legal person on the board of directors of an issuer, for the use of inside information.

In the framework of a significant corporate transaction, the natural person representing the director of an issuer was included in the insider list and warned of the corresponding obligations resulting from the information disclosed in the meetings of the board of directors with regard to the development of a corporate transaction. On different dates within the transaction trading period, that natural person bought shares of the company, which recorded significant gains in price once the corporate transaction was disclosed to the market.

People who have inside information with regard to an issuer may not prepare or perform any type of transaction with its securities during the period in which that information has not yet been disclosed. If they do so, they are presumed to be using the inside information that they have even when – as in this case – the natural person has bought the issuer's shares prior to and following the period in which they have access to the inside information.

- A broker-dealer, for market manipulation and performing uncovered short selling.

The strategy performed by the broker-dealer consisted of entering a high number of orders that alternated between cycles of share purchases and cycles of share sales. These cycles were repeated numerous times throughout the session and the prices evolved generating small oscillations between the higher and lower level by means of small-sized buy and sell orders that had an impact on the order book and which, in the end, were largely matched with each other. This strategy meant that the broker-dealer intervened in most of the

executions in the open session, with small-sized trades of shares, thus triggering most of the upward and downward price movements.

In short, by using small-sized orders, the broker-dealer reduced the share price to a suitable level for buying and, subsequently, raised the price in order to make the sales in an optimal manner. This prevented free price discovery and led to up-and-down oscillations throughout the session.

In addition, on specific occasions, the broker-dealer took short positions that were not covered at any time, but which were closed subsequently during the session by means of purchases subsequent to the sales.

- A natural person, for market manipulation and their financial institution for not disclosing a suspicious transaction.

A natural person performed transactions in which they were simultaneously the buyer and the seller of an issuer's shares. These transactions, without a real change of ownership, gave a distorted image of supply and demand and modified the closing price as they were entered during the auction period. In short, this recurring practice prevented free price discovery. The financial institution that provided investment services did not detect this practice and did not comply with the obligation to report its client's transactions to the CNMV as suspicious.

- A natural person, for market manipulation.

A natural person with a long position in a security intervened on a recurring basis prior to the start of the closing auction period by means of transactions without any change of ownership. This person also traded during the auctions themselves by means of purchases that monopolised demand and led to price increases. These transactions were performed with the minimum number of shares that would generate the closing price and had no other purpose than to alter free price discovery and trigger price increases that would improve the possible results of the long position taken.

Lastly, a cautionary letter was sent to a broker-dealer for it to establish effective mechanisms, systems and procedures to properly assess and detect transactions with inside information and market manipulation and to report them, once detected, as suspicious transactions that might constitute market abuse.

5.3 Credit rating agencies

The Credit Rating Agencies Regulation³ assigns the supervision of rating agencies to ESMA. This means that the CNMV's supervisory actions basically focus on participating in the decision-making reserved to ESMA's Board of Supervisors (for example, that relating to disciplinary proceedings or authorisation procedures). In addition, at a technical level, the CNMV participates in ESMA's CRA Technical Committee, which is responsible for regulatory and strategic tasks in this area.

3 Regulation (EU) No. 462/2013 of the European Parliament and of the Council, of 21 May 2013, amending Regulation (EC) No. 1060/2009 on credit rating agencies.

In addition, the Credit Rating Agencies Regulation imposes certain ratings obligations on issuers. Supervision of these obligations is assigned to the national authorities. In this case, it is therefore the CNMV that performs the direct supervision. In the scope of these powers, in 2018 the CNMV continued to oversee the obligation of Spanish issuers to consider hiring small agencies when appointing two or more agencies to rate their issues or the issuer itself. It is worth noting both that the CNMV began to supervise this requirement, in accordance with the common European approach approved in 2017, and that it performed a supervisory exercise in the specific area of the MARF, which showed that the use of smaller agencies is prevalent.

The CNMV continues to actively cooperate with ESMA in the implementing regulations on rating agencies as well as disciplinary procedures, and authorisations and rejections of new agencies in Europe.

With regard to the above, it is important to note the approval and publication of the supplementary guidelines on endorsement of ratings prepared in non-EU countries for assessing whether their requirements are as stringent as those under European regulation. In this regard, it is also important to note the public consultation launched at the end of December 2018 relating to sustainable finance initiatives to support the European Commission's Sustainability Action Plan in the area of credit rating agencies.

Over 2018, ESMA registered four new rating agencies, with the addition of DBRS Ratings GmbH and A.M. Best (EU) Rating Services B.V. in Germany and the Netherlands, respectively, as part of a strategy to strengthen their presence in Europe in anticipation of the United Kingdom leaving the European Union after Brexit. The Nordic rating agencies Moody's Investors Service (Nordics) AB and Nordic Credit Rating AS were also registered. In contrast, the removal of SPMW Rating Sp. z.o.o. from the register was authorised.

In the disciplinary area, a fine was imposed on five Nordic banks for the issuance of credit ratings without being appropriately registered as rating agencies.

