

The new responsibilities of the CNMV's senior management in ESMA, where, in addition to being a member of the Board of Supervisors (BoS), it is a member of the Management Board and Chairperson (through its Vice-chairwoman) of the Corporate Reporting Standing Committee (CRSC), its promotion of IOSCO's work on sustainable finance and FinTech and the Vice-Presidency of the Mediterranean Partnership of Securities Regulators have required intense work by the CNMV in 2018. Over 104 people from the institution took part in 400 international meetings (compared with 360 meetings in the previous year), not including staff attendance at 27 training courses and seminars. This chapter reviews the most important actions of the European Securities and Markets Authority (ESMA), the International Organisation of Securities Commissions (IOSCO), the European Systemic Risk Board (ESRB) and the Financial Stability Board (FSB), with the focus on the ESRB and the FSB relating to their responsibility to promote financial stability. It also describes the main activities of the Ibero-American Institute of Securities Markets, whose foundation is chaired by the CNMV, the Mediterranean Partnership of Securities Regulators and the Iberian Electricity Market.

### 9.1 European Securities and Markets Authority (ESMA)

ESMA's activity in 2018 was marked by the start of the application of two pieces of legislation that are fundamental pillars of European markets in financial instruments, MiFID II and MiFIR, preparation for the withdrawal of the United Kingdom from the European Union (Brexit), particularly if this takes place with no deal, and its contribution to the European Commission's Capital Markets Union Action Plan.

In the first year of application of MiFID II/MiFIR, ESMA continued to devote a significant part of its activity and resources to ensuring that their implementation was consistent and effective in all Member States.

One of the most important new aspects introduced by this legislation in the area of investor protection was the exercise, for the first time and at a EU level, of powers of intervention by ESMA. The measures adopted established the prohibition as from 2 July 2018 of the marketing, distribution or sale of binary options to retail clients and imposed restrictions as from 1 August 2018 on the marketing, distribution and sale of Contracts For Differences (CFDs), also when aimed at retail investors. In addition, greater demands with regard to the information provided to retail clients on the costs of the products in which they invest, as a result of the application not only of MiFID II/MiFIR, but also of the PRIIPs Regulation, aim to increase confidence in capital markets. Another important new aspect is the ban on incentives for third parties in portfolio management and independent advice, which should make it easier to manage conflicts of interest.

The impact of MiFID II/MiFIR has been particularly significant in the area of secondary markets. One of the main intended objectives of both pieces of legislation is to ensure correct price discovery in the trading of financial instruments. To this end, they promote transactions being performed on organised and regulated trading venues, with various pre-trade and post-trade transparency obligations applicable to equities and equity-like financial instruments, and to structured products, derivatives, bonds and emission allowances (non-equity financial instruments).

## The Capital Markets Union

EXHIBIT 19

With the mandate of the “Juncker Commission” coming to an end, the European Commission has undertaken the measures announced in 2015 on its Action Plan on Building a Capital Markets Union in 2019, as well as the nine priority measures identified in the review of this Plan carried out in June 2017.

The main measures adopted by the European Commission in the area of capital markets in 2018 regarding the following objectives are listed below:

### i) Facilitating access of unlisted companies to financing.

- **Pan-European Venture Capital Funds-of-Funds Programme (VentureEU)**, launched by the European Commission jointly with the European Investment Fund. It is expected that thanks to public and private savings raised by this programme, up to 6.5 billion euros may be allocated to financing projects of 1,500 start-ups and scale-ups.
- **Proposal for a legislative amendment to facilitate medium-sized companies obtaining finance through private placements of debt.** Following the study performed on this issue, the European Commission has proposed an exemption from the market sounding regime for private placements of bonds with qualified investors in its proposal to promote the use of SME growth markets.
- **FinTech Action Plan**, which sets out 19 measures on the use of new technologies in the financial sector. The issues that will be subject to coordinated action at a European Union level include the creation of a financial technology laboratory and a blockchain observatory, cybersecurity and sandboxes.
- **Commission proposal for a regulation on European crowdfunding service providers for business.** This initiative aims to establish a framework that will allow platforms that meet a series of requirements to access a European label and thus be able to offer their services throughout the European union.

### ii) Facilitating access of European companies to trading venues.

- **Legislative proposal to promote the use of SME growth markets.** This initiative consists of a proposal to amend the Prospectus and Market Abuse Regulations, as well as a proposal for a delegated act amending certain MiFID II requirements. Its aim is to reduce the administrative burdens for SMEs that request admission to trading on “growth SME markets” of the financial instruments that they issue, as well as to promote the liquidity of their shares when they are listed on these markets.
- iii) **Facilitating long-term investment in infrastructure and sustainable finance.**
- **Action plan on sustainable finance** with specific legislative proposals (see Exhibit 21).
- iv) **Helping banks to finance the European economy.**
- **Legislative proposal on covered bonds.** This initiative comprises a proposal for a directive and for a regulation. The former aims to regulate the requirements for issuing these instruments as well as their structural elements, the supervision to which they are subject, the requirements for being able to use the “European Covered Bonds” label and competent authorities’ publication obligations. These obligations will consist of publication of information on the legislation and general guidance adopted, the credit institutions that will be allowed to issue covered bonds and the list of bonds that may use the European Covered Bond label on the website of the designated competent authorities. They must also publish the administrative penalties and remedial measures imposed in this area. The second proposal aims to strengthen the conditions that must be met for these instruments to enjoy preferential treatment with regard to capital requirements.
- v) **Facilitating cross-border investment.**
- **Legislative proposal for reducing barriers to cross-border distribution of investment funds.** This initiative comprises a proposal for a regulation and for a directive. The latter amends the Directive on undertakings for collective investment in transferable securities and the Directive on alternative investment fund managers. The Commission’s aim is to improve transparency in the marketing of these products through harmonisation of national requirements and fees. It also harmonises the procedural requirements for verification by the national competent authorities of marketing communications used for the marketing of funds to retail clients. The aim of the second proposal is to harmonise the conditions under which a fund may leave a national market and to allow managers to discover the appetite of professional investors for new investment strategies by means of pre-marketing activities.

With regard to these new transparency obligations, as from this year ESMA has taken on the function of calibrating the liquidity level of traded instruments, as well as the thresholds for applying exemptions from requirements for compliance, such as in the case of large-scale orders or orders which are large in scale compared with the average or standard size for the instrument. In order to carry out these calculations, ESMA has made use of the information provided by trading venues, systemic internalisers, authorised publication arrangements and national competent authorities, which has been processed in different databases, such as the Financial Instruments Reference Database (FIRDS), the Financial Instruments Transparency System (FIRTS) and the double volume cap (DVC) mechanism.

It should be noted that, despite ESMA's efforts to perform these calculations, only a few financial instruments other than equities and equity-like financial instruments have become subject to the transparency regime. In addition, the double volume cap mechanism, devised to restrict the waivers from the pre-trade transparency obligation of orders traded outside trading venues or orders at reference prices from another European market in relation to liquid shares and similar financial instruments, has favoured more correct price discovery as it subjects these transactions to the general transparency framework when trading exceeds certain limits. However, ESMA is studying whether, in order to avoid the cap involved in applying this mechanism, part of this trading is migrating to periodic auction trading systems and systematic internalisers.

Other noteworthy consequences of application of the new legislation include the emergence of a new category of trading venues: organised trading facilities, and an increase in the number of registered systematic internalisers.

With regard to ESMA's contribution to the Capital Markets Union Action Plan in 2018, it is important to highlight its proposals relating to the regulatory developments required by application of the new Prospectus Regulation and the Securitisation Regulation. It is also worth noting the first annual statistical report on performance and costs of retail investment products, published in January 2019. The study performed by ESMA covered undertakings for collective investment in transferable securities (UCITS), alternative investment funds and structured products in the framework of a broader mandate from the European Commission (which is also addressed to EBA and EIOPA). With regard to this last study, the CNMV, together with other national authorities, has expressed certain fundamental reservations with regard to the quality and limitations of the data used, and has expressed its intention to conduct an equivalent study for the entities under its jurisdiction.

Finally, an important part of ESMA's activity this year has been focused on Brexit. In addition to monitoring the negotiation process, this authority devoted time to identifying the risks and consequences that might arise from the United Kingdom leaving the European Union without a deal on 29 March 2019. In 2018, ESMA also adopted various measures in case a no-deal Brexit turns out to be the final scenario. Consequently, it has published various messages requesting participants in financial markets in the United Kingdom and the rest of the European Union to adopt the measures necessary to limit, as far as possible, the consequences of the loss of the European passport following the United Kingdom's withdrawal. It has also requested coordination of the criteria applicable by NCAs in processing requests for authorisation submitted by UK entities that have decided to fully or partially transfer their business to the EU<sup>27</sup>. In addition, ESMA has analysed the third country regime in EU financial legislation, which has allowed it to detect several legal loopholes or

disadvantageous conditions for the financial sector in Europe, which it has reported to the European Commission. Other important measures on which it worked over the year in preparation for the United Kingdom's withdrawal from the European Union were the necessary Memoranda of Understanding with the competent UK authorities, modification of certain technical standards to facilitate the continuity of derivative contracts after Brexit when one of the counterparties is British, and initiating the procedure for recognition of UK central counterparties.

A brief description of some of the main work performed by ESMA over the year (including those already mentioned in the preliminary introduction) is given below.

### Product intervention measures

The aforementioned measures on binary options and CFDs were adopted for an initial period of three months. Specifically, the restrictions on CFDs consist of setting limits to the leverage of open positions, imposition of a margin close out rule on a per account basis, the establishment of negative balance protection on a per account basis, a prohibition on incentives offered to trade CFDs by providers and the establishment of a standardised risk warning on the risks associated with these products.

On their expiry, and considering that there was still significant concern in relation to investor protection, ESMA renewed both measures in 2018, extending them for a period of three months, as from 2 October for binary options and 1 November for CFDs. However, in the first renewal of the prohibition on binary options, ESMA modified its scope, excluding those in which the client cannot lose more than what they have paid or where the term from emissions to maturity is at least 90 calendar days.

### Secondary markets and market integrity

In 2018, ESMA worked on the amendment of two Commission Delegated Regulations in relation to the tick size regime: Commission Delegated Regulation (EU) 2017/587 (RTS<sub>1</sub>) and Commission Delegated Regulation (EU) 2017/588 (RTS<sub>11</sub>).

The proposed amendment to RTS<sub>1</sub> aims, among other aspects, to prevent systemic internalisers from having a competitive edge with regard to trading venues in relation to the minimum price increment (tick size) of shares and depositary receipts traded on both, by obliging the former to comply with this requirement.

The proposed changes to RTS<sub>11</sub> aim to ensure that the minimum tick size regime is applied to third country financial instruments under the same conditions as it is applied to those of the European Union. Specifically, it will allow national competent authorities to decide on a case-by-case basis whether it is necessary to adjust the average daily number of transactions used to calculate the tick sizes in order to take into account the available liquidity in third country trading venues.

In the area of derivatives, it should be noted that the obligation to trade certain interest-rate swaps and credit default swaps on trading venues became effective as from 3 January 2018. In addition, over 2018 ESMA issued favourable opinions on the limits proposed by competent national authorities on the size of a net position which a person can hold at all times in commodity derivatives traded on trading

venues and economically equivalent OTC contracts. Specifically, the ESMA opinions referred to gasoil, power and natural gas derivative contracts.

MiFID II provides for the obligation to register as an investment firm for non-financial companies whose dealing on own account in commodity derivatives may be considered a main business. After discussing this issue, the European Commission established that the status of main or ancillary activity should be determined by taking into account the ratio of the transactions in commodity derivatives performed by each entity in comparison with the aggregate overall balance at the level of the business group. As a result of this decision, no non-financial company has had to register as an investment firm.

Furthermore, in December ESMA approved the annual report to the European Commission on Accepted Market Practices (AMPs), which are not considered market manipulation under European market abuse legislation. The report, which contains ESMA's non-binding opinion on the application of AMPs, as well as recommendations for competent national authorities, includes the favourable opinion on the practice approved by the CNMV in 2017 on liquidity contracts.

With regard to the review of the Short-Selling Regulation, in March ESMA submitted its technical advice relating to market making, the procedure for imposing short-duration restrictions on short selling in the event of a significant fall in prices and the transparency of short positions together with their public notification and disclosure. The CNMV, for its part, considers that the level of transparency of these positions should be raised by lowering the thresholds for disclosure and establishing different levels depending on the size of the affected companies measured by their capitalisation.

Finally, it should be noted that the CNMV informed ESMA of its intention not to comply with part of the guidelines on the exemption for market-making activities and transactions in primary markets under the Short-Selling Regulation. Specifically, it will not comply with the requirement to be a member of a trading platform in order to apply the aforementioned exemption with regard to the range of financial instruments indicated in Sections 30 and 32 of the document. This is mainly due to the fact that unequal conditions of competition have been noted as a result of the failure of some key European jurisdictions to comply with these requirements.

The review of the European System of Financial Supervision continued through the procedures of the European co-legislators (European Commission, Council and European Parliament) over 2018, although a final agreement was not reached in the year.

While the position of the European Parliament, largely following the proposal of the European Commission, is favourable to granting more powers to the European supervisory authorities (European Securities and Markets Authority – ESMA –, European Banking Authority and European Insurance and Occupational Pensions Authority), the position of the Council, which reflects the will of the Member States, is generally more reticent about granting new powers.

The objectives of the various legislative proposals making up the package reviewing the European System of Financial Supervision include those relating to the European Supervisory Authorities, particularly those focused on promoting greater supervisory convergence, achieving greater independence of their decision-making bodies and the granting of new powers.

The most noteworthy aspects of the negotiation being conducted by the co-legislators with regard to the legislative proposal affecting ESMA are as follows:

- **Enhancing supervisory convergence.** Some of the measures proposed to move forward in supervisory convergence, such as ESMA preparing strategic supervisory plans and supervisory handbooks at a EU level or monitoring by ESMA of third country equivalence decisions, are reflected in the final positions of both the European Parliament and of the Council. However, the Council is not in favour of ESMA being given coordination functions with regard to arrangements for delegation and outsourcing in third countries of entities established in the European Union or in market abuse matters in the case of suspicious transactions with significant cross-border implications.
- **New direct supervisory powers.** Both the final position of the European Parliament and that of the Council are in favour of attributing to ESMA direct powers over consolidated tape providers, but the Council, unlike the Parliament, does not want to also entrust to ESMA powers over approved publication arrangements and approved reporting mechanisms. With regard to benchmarks, the European Parliament supports attributing powers to ESMA on critical and third country benchmarks, in contrast with the position of the Council, which only intends to assign it powers on non-national critical benchmarks. The European Parliament supports, in line with the European Commission’s proposal, granting ESMA powers to authorise certain prospectuses (basically fixed-income securities aimed at wholesale investors, asset-backed securities and with regard to third country issuers), in contrast with the Council, which does not wish to grant it any powers in this matter. However, the final position of the European Parliament and of the Council does not

contemplate, unlike the initial proposal from the Commission, granting powers to this authority in relation to harmonised collective investment funds (EuVECA, EuSEF and ELTIF).

- **Governance and funding.** With regard to the governing bodies, the proposal of the European Parliament provides for an executive board which would replace the current management board and which would be made up solely of independent full-time members. However, the Council's position is to maintain the management board, although it proposes that some of the members should be independent and full-time. With regard to funding, the Parliament's proposal provides, together with contributions from the European Commission and the national competent authorities, for annual contributions paid by financial institutions, while the final position of the Council has excluded contributions from the industry.

The CNMV's position in relation to this important reform, which was shared at all times with the Ministry of Economy, was to support the strengthening of ESMA as the coordinating entity responsible for promoting effective supervisory convergence, but at the same time favourable to making a greater integration of the supervisory system in Europe compatible with local supervisory bodies with a significant role and functions that will contribute towards maintaining a large number of financial markets and centres in Europe with a critical mass. This is essential in order to achieve a European capital market with greater penetration and which will truly help to improve the financing of companies, not only of large companies, and to reduce the level of dependence on bank lending, one of the main objectives of the Capital Market Union. This position, in particular, was defended by the CNMV's president in a hearing to which he was called before the Economic and Monetary Affairs Committee of the European Parliament in February 2018.

### Financial reports

In 2018, ESMA contributed to the public consultation conducted by the European Commission on the fitness of the European Union framework for public reporting by companies admitted to trading, by collecting the position of all its members. In addition, as in previous years, this authority worked on identifying the enforcement priorities in this area on which the national competent authorities will focus with regard to the 2018 financial year, such as application of IFRS 15 – Revenue from Contracts with Customers – and IFRS 9 – Financial Instruments. It also published a report on the evaluation of compliance with the priorities identified in 2016, as well as on the coordination of issues that were discussed with regard to the priorities identified in 2017.

### Collective investment schemes

With regard to collective investment, ESMA focused a significant part of its work on the developments required by Regulation (EU) 2017/1131 of the European

Parliament and of the Council, of 14 June 2017, on money market funds (MMFs), which has been fully applicable since July 2018.

In addition, it performed a peer review in which it analysed the supervision that competent authorities perform with regard to the use of efficient portfolio management techniques (EPM) by UCITS managers. The evaluation focused on the authorities in Estonia, France, Germany, Ireland, Luxembourg and the United Kingdom, and identified weaknesses in supervisory practices relating to operational aspects of costs, fees and revenues relating to the use of EPM and collateral management issues. It also indicated the need to improve the information provided to investors when these techniques are used.

Finally, it is important to note some of the conclusions of the first annual statistical report on performance and costs of retail investment products in relation to UCITS. The analysis shows that the total cost of these funds significantly reduces gross returns, with the fees for retail clients being on average twice those for institutional investors, particularly management fees, which account for over 80% of total costs. In terms of overall returns, passive equity funds consistently outperform active equity funds due to the fact that the costs of the latter are significantly higher.

### Prospectuses

In April, ESMA published its technical advice to the European Commission on the content and format of the prospectus (including the base prospectus and the final terms), the format and content of the EU Growth Prospectus and, finally, examination and approval of prospectuses (including the universal registration document).

### Securitisation

ESMA has worked intensively over 2018, in close collaboration with the European Banking Authority and the European Insurance and Occupational Pensions Authority, in order to submit to the European Commission on time the regulatory work provided for by the new Securitisation Regulation, applicable as from 1 January 2019, as well as the technical advice requested by the Commission.

Noteworthy among the technical standards proposed by ESMA, and pending endorsement by the European Commission, are: i) the information and format that the originators and sponsors of securitisation products must adhere to when notifying ESMA that a securitisation transaction meets the STS criteria; and ii) the information to be provided to the competent authorities in the application for the authorisation of a third party assessing the compliance of securitisations with the STS criteria.

### FinTech

In 2018, ESMA, like other supranational and national authorities, continued to conduct an in-depth analysis of the phenomenon of initial coin offerings (ICOs) and cryptoassets.

In February, the European supervisory authorities jointly published a warning aimed at investors on the high risk of buying virtual currencies, as they are not

issued by a central bank or public authority and are generally not backed by any tangible assets or regulated at an EU level and do not, therefore, offer any legal protection to investors.

Furthermore, ESMA worked intensively over the second half of 2018 on advice, published in January 2019, addressed to the European Union Institutions (European Commission, Council and European Parliament) on initial coin offerings and cryptoassets, the legal nature of the latter and how they fit into applicable legislation. ESMA clarifies in this document the circumstances in which cryptoassets qualify as financial instruments. It states that EU legislation in this respect would be applicable and reports on its position in relation to any gaps and issues in the current regulatory framework. With regard to cryptoassets that do not qualify as financial instruments, ESMA proposes a bespoke regime limited to establishing minimum requirements which, at any event, will include aspects relating to the prevention of money-laundering and the obligation to properly inform investors about the risks and lack of protection or limited protection associated with this type of investment.

Finally, it should be noted that a significant part of ESMA's activity in 2018, in compliance with its 2016-2020 strategic orientation, has consisted of enhancing supervisory convergence in the different areas under its remit. To this end, it has made use of the different tools available to it, such as guidelines, opinions, questions and answers, statements and peer reviews.

## 9.2 European Systemic Risk Board (ESRB)

The European Systemic Risk Board (ESRB) has continued its supervisory work in the macro-prudential area in order to prevent and mitigate, as the case may be, the impact of systemic risk. The scope of the ESRB covers the entire financial system, including banks, insurance companies and pension funds, asset managers, entities and activities related to non-bank financial intermediation (previously known as shadow banking) and other financial institutions and markets.

As a member of the ESRB, the CNMV participates on the Advisory Technical Committee and in groups of experts that analyse the formation of systemic risk in areas related to securities markets. Furthermore, a member of the CNMV Board sits on the General Board of the ESRB as a non-voting member.

In 2018, the most significant issues that were addressed in the areas relating to the CNMV were: i) analysis of the most significant risks and vulnerabilities for financial stability, ii) the possible formation of systemic risk associated with interconnectedness in derivatives markets and iii) the risk inherent to activities and entities related to non-bank financial intermediation. It also conducted an in-depth analysis of the risk associated with the commercial real estate sector, performing horizontal evaluations in every Member State in the European Union. It also started to examine vulnerabilities relating to cyber risk. Furthermore, it carried out the update of an annual report describing the macro-prudential policy of the European Union, considering the macro-prudential measures as a whole used both by Member States and by supranational bodies.

In addition to its participation in the Advisory Technical Committee, the CNMV actively participated in the Shadow Banking Expert Group. This group was asked to

analyse the growth and risks associated with the different types of entities and activities making up the non-bank financial intermediation sector. In 2018, one of its actions was to prepare the *Shadow Banking Monitor* (SBM), in which it highlights as possible vulnerabilities: risks associated with excessive leverage among some types of investment funds; the risk of contagion and interconnectedness across different financial sectors; procyclicality, leverage and liquidity risk created through the use of derivatives and securities financing transactions; and significant data gaps in the category of “Other financial intermediaries”. In addition, this group also analysed the contagion risk between entities belonging to the shadow banking sector and banks, and began a thematic study on systemic risk in the ETF sector. Finally, in line with other international bodies, in 2019 this group will change its name to the “Expert Group on Non-Bank Financial Intermediation”, in order to avoid the negative connotations associated with the term “shadow banking”.

### 9.3 International Organization of Securities Commissions (IOSCO)

A significant aspect to be highlighted in 2018, in the area of the governance and structure of the organisation, was the establishment of a framework for determining the jurisdictions that supervise the most developed financial markets, which will be part of the IOSCO Board for four-year periods.

The importance of this work lies in the fact that, on the basis of the results obtained through the criteria for calculating certain data from each market, the composition of the IOSCO Board will be established. Since unification in 2013 of the former Technical Committee, Executive Committee and the members of the Emerging Markets Committee Advisory Board, this body is made up of: i) 18 members from the 16 jurisdictions representing economies with the most developed financial markets; ii) 12 elected members, from jurisdictions of the 4 regions into which the organisation is divided; iii) 4 members elected from emerging markets supervisors; and iv) 2 observer members, 1 representative of the affiliated members, representatives from the industry and ESMA.

This framework, agreed in May and October 2018, henceforth establishes a clearer and more transparent procedure with regard to the selection of the specific sources and the data used to determine the most developed markets, as well as with regard to their weighting. The procedure establishes that IOSCO will first identify the 50 most developed jurisdictions according to their gross domestic product (using the data published by the World Bank) and that it will then perform calculations based on: i) the average stock market capitalisation over the last five years, excluding ETFs; ii) the average debt issued over the last five years, excluding sovereign debt and debt issued by supranational entities; iii) assets under management of collective investment schemes, excluding pension funds as they are considered to be mostly outside the scope of securities market supervisors; iv) exchange-traded derivatives (ETDs), based on four semi-annual data points over two years; and v) OTC derivatives based on turnover by jurisdiction for the most recent available period. With these new criteria and their new weighting, the CNMV will be represented on the IOSCO Board.

Another new aspect in the work performed by IOSCO in 2018 was the setting up of information sharing networks in three areas of action: the Fintech network, the sustainable finance network and a consultation and support framework relating to Initial Coin Offerings (ICOs).

These information sharing networks, set up by the IOSCO Board and governed by a Steering Committee, allow any member of the organisation interested in the matter to join.

The approach of these sharing networks is mainly to exchange specific information and regulatory experiences or draft legislation under development among the members. These networks also have an educational aspect based on some members' experience with regard to regulatory work already carried out. Finally, they also aim to submit issues of importance for discussion by the Board.

The Fintech network was set up in May 2018 and, after a variety of preliminary projects carried out over the previous year, it was decided that the work to be performed in the immediate future should focus on four priority areas: i) distributed ledger technology (DLT, known as blockchain), with the aim of exploring practical applications in the context of securities markets; ii) ethics in artificial intelligence and machine learning; iii) RegTech/SupTech, on the regulatory challenges in financial services as a result of the development of new technologies; and iv) encouraging innovation, based on the practical experience of the different members.

The sustainable finance network was created at the end of 2018 with the aim of providing members with a forum for sharing experiences, obtaining better understanding of sustainability-related issues and holding structured discussions that might respond to the growing role of environmental, social and governance factors in financial markets. The aim is for this initiative to also include the dissemination of non-financial information, given its importance in investment decision-making, and monitoring the different proposals and initiatives on sustainable finance made by different governments, bodies and institutions locally, regionally and globally, as well as their implementation by the industry.

### Financial sustainability

EXHIBIT 21

In March 2018, the European Commission published its Action Plan for a greener and cleaner economy, which has laid the foundations for integrating the European Union's targets on climate change and sustainability into the financial system.

Recent years have seen the incorporation of aspects relating to climate change and sustainable development into the financial agenda of various international bodies, such as the Task Force on Climate-Related Financial Disclosures (TCFD)<sup>1</sup> of the Financial Stability Board (FSB), the OECD and the Global Reporting Initiative (GRI). This interest has been reflected in the publication of guidelines, standards and principles that now report on the activity of many companies and bodies from the private and public sectors.

Spain has not lagged behind in this task. Law 11/2018, of 28 December, amending the Code of Commerce; the recast text of the Corporate Enterprises Act, approved by Royal Legislative Decree 1/2010, of 2 July; and Law 22/2015, of 20 July, on Account Auditing, in the matter of non-financial information and diversity, strengthen the obligations relating to the reporting of this type of information, which the CNMV must oversee.

This legislation transposes into Spanish law Directive 2014/95/EU of the European Parliament and of the Council, of 22 October 2014, amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by large undertakings and groups. The new legislation aims to identify risks that might affect sustainability and to increase the trust of investors, consumers and societies in general and, to this end, increase the disclosure of non-financial information, such as social and environmental factors.

In addition, Directive 2014/95/EU extends the content required in the annual corporate governance report that must be published by public limited companies, in order to improve transparency by facilitating the understanding of the business organisation and affairs of the undertaking concerned. Consequently, some large companies are required to disclose the diversity policies that they apply to their administrative, management and supervisory bodies with regard to issues such as age, gender or educational and professional backgrounds. Disclosure of the diversity policy should be part of the corporate governance statement and, if no diversity policy is applied, the statement should include a clear explanation as to why this is the case.

The CNMV has contributed towards the validation of sustainable projects, particularly in the area of its entity authorisation and registration task, but it has also promoted the creation of an informal group of national regulators and supervisors made up of the Bank of Spain, the Directorate-General of the Treasury, the Directorate-General for Insurance and Pension Funds and the Office of Climate Change. The aim of this group is to cooperate and share knowledge and experience on sustainability-related financial initiatives.

In addition, the CNMV is actively participating, together with the aforementioned bodies, in drafting the legal provisions of the Draft Law on Energy Transition and Climate Change that will affect its supervisory tasks. These provisions include obligations to disclose the financial impact of risks related to climate change and energy transition on the activity of financial institutions, insurance companies and listed companies of a certain size.

At a European level, the CNMV accompanies the Ministry of Economy in the working groups of the Council of the European Union in order to develop the Commission's Action Plan and the ESMA committees that fulfil the Commission's mandate to introduce sustainability factors in various areas of MiFID II, UCITS, AIFMD and the Regulation on Credit Rating Agencies. Particularly important is the CNMV's role in the Corporate Reporting Standing Committee, chaired by the CNMV's Vice-chairperson, which addresses compliance with the obligation to disclose non-financial information as a priority.

With regard to IOSCO, it is important to note the significant role played by the CNMV in the recently created Sustainable Finance Forum, which acts as a platform for sharing knowledge and experience. One of its working groups, the one charged with studying the initiatives undertaken in this field by national regulators and supervisors, is also chaired and led by the Vice-chairperson of the CNMV.

2019 is lining up to be a crucial year for financial sustainability as it is one of the priorities of the Japanese Presidency of the G20, as it was for the previous Argentine Presidency. It is, therefore, an opportunity for achieving greater involvement of regulators and the financial industry in this area.

<sup>1</sup> The Task Force on Climate-Related Financial Disclosures was set up in December 2015. It is chaired by Michael Bloomberg and in 2017 it published a report with recommendations on the disclosure of financial information about the risks and opportunities presented by climate change.

With regard to the ICO consultation and support framework, the network was set up in 2017 in order to facilitate the sharing of experiences amongst members about incidents in this area and to analyse the legislative responses or the criteria that were being developed in order to respond to the new initiatives relating to digital assets. These meetings were held regularly on a monthly basis, by means of telephone conferences.

This consultation network led, in May 2018, to the creation of the current consultation and support framework for initial coin offerings, or cryptoassets in general, as an internal educational resource aimed at helping members to consider domestic cross-border ICO-related problems. As support, a regulatory risk assessment framework was set up for this type of operation that establishes a common set of concepts in this regard, such as the characteristics of an ICO and the role of securities regulators and supervisors with regard to a product other than traditional negotiable securities, considered in many jurisdictions to fall outside the scope of securities market oversight and regulation.

In addition to this new approach for sharing knowledge among members, noteworthy work was performed on markets, intermediaries and securitisation. Specifically, in April IOSCO published a *Report on Regulatory Reporting and Public Transparency in the Secondary Corporate Bond Markets*, which examines the situation of several jurisdictions and analyses the relationship between transparency and liquidity. The report offers regulators the opportunity to study the existing reporting requirements for these markets, as well as the gathering of information that may be compared and used across borders, particularly to assess liquidity.

With regard to intermediaries, in September IOSCO published a *Report on Retail OTC Leveraged Products*, which include rolling spot forex contracts, CFDs and binary options. The report, coordinated by several committees, offers three toolkits: i) policy measures that may be adopted to address the specific risks arising from the offer and sale of the relevant products by intermediaries; ii) ways to design investor education programmes to inform retail investors about the nature and risks of the relevant products; and iii) challenges faced by regulators when trying to make intermediaries comply with the requirements for offering these products and it describes some practices that have been effective in certain jurisdictions for mitigating the risks of companies offering these products illegally.

Finally, in the area of securitisation, in May IOSCO and the Basel Committee on Banking Supervision published the *Criteria for identifying simple, transparent and comparable short-term securitisations*, building on criteria issued previously by IOSCO in July 2015, which set out 17 criteria specifically adapted to short-term securitisations, particularly related to ABCP conduits, which are a key part of securitisation

markets in some jurisdictions and can provide a significant source of funding to the economy.

#### 9.4 Financial Stability Board (FSB)

The Financial Stability Board (FSB) is structured around the Plenary, the Steering Committee and four standing committees: Standing Committee on Assessment of Vulnerabilities (SCAV), Standing Committee on Supervisory and Regulatory Cooperation (SRC), Standing Committee on Standards Implementation (SCSI) and Standing Committee on Budget and Resources (SCBR). The FSB has also established specific working groups on priority areas such as non-bank financial intermediation, resolution and Over-The-Counter (OTC) derivatives. Finally, there are currently six FSB Regional Consultative Groups.

The CNMV participates in the FSB's work through the following committees and working groups:

- Full member of the SCSI, in which its Chairperson participates.
- Member of the following working groups:
  - i) Non-Bank Financial Intermediation (NBFi).
  - ii) OTC Derivatives Working Group (ODWG).
  - iii) Cross-border Crisis Management Working Group for FMIs (fmiCBCM), set up as a subgroup of the Resolution Steering Group (ReSG).

In 2018, the FSB continued developing and applying the recommendations and demands of the G20 relating to the financial sector, particularly in the areas deemed a priority: strengthening the resilience of the financial sector, procedures to address global systemically important institutions, non-bank financial intermediation and OTC derivatives.

The FSB also focused its attention on new emerging risks for the international financial system, such as the implications for financial stability of cryptoassets and it continued assessing the application and effects of the financial reforms promoted by the G20.

The FSB's most important areas of action relating to stock markets in 2018 were as follows:

- Non-bank financial intermediation (previously referred to as “parallel banking” or “shadow banking”) as an alternative source of financing for the real economy and which may, at the same time, contribute towards reducing systemic risks. In this regard, for the eighth consecutive year, the FSB published its Global Monitoring Report on Non-Bank Financial Intermediation 2018 at the start of 2019, in which it presents the results of its monitoring exercise that assesses global trends and risks associated with this activity. The report covers data from 29 jurisdictions which together represent over 80% of global GDP. It is worth noting the attention given to the activity of non-bank entities that engage in direct lending. The CNMV forms part of the working group that prepares this

report, providing statistical data on the financial institutions supervised and evaluating possible risks to financial stability.

- Implementation of the reforms of OTC derivative markets. In 2018, the FSB published two reports in this area: one on legal barriers to reporting of OTC derivatives trading and the other on regulators' access to trade repository data.
- Systemic importance of Central Counterparties (CCPs). The obligation of centralised clearing in a CCP has significantly increased the systemic importance of these entities. In this regard, the CNMV continued its analysis of CCPs and drew up a discussion paper for public consultation on financial resources to support CCP resolution and the treatment of CCP equity in resolution. The above document was prepared by the fmiCBCM, a subgroup of the ReSG, in which the CNMV participates. Furthermore, and with the aim of complying with the FSB's recommendations on systemic CCPs, the CNMV will lead the creation of a Crisis Management Group for BME Clearing, the Spanish central counterparty.
- Continuation of the analysis of the risks associated with asset management, in particular those arising from possible mismatches of liquidity and high leverage.
- Disclosures on the risks associated with climate change. The FSB Task Force on Climate-related Financial Disclosures (TCFD) published its first Status Report, in which it analyses the level of implementation and compliance with its 2017 recommendations. This exercise will continue over 2019.
- Risks associated with the "digitalisation" of the financial sector and cybersecurity. The FSB continued in 2018 to assess the risks associated with these activities. Its initial conclusion is that, at present, cryptoassets do not pose a significant risk to financial stability, but it recommends their ongoing monitoring due to their high rate of growth. To this end, among other measures, a global directory of cryptoasset regulators,<sup>1</sup> which will include the CNMV, will be established.

Finally, as regards the Standing Committee on Standards Implementation (SCSI), of which the Chairperson of the CNMV is a member, its main lines of action are as follows: i) to ensure implementation of financial standards agreed by the G20 and the FSB; ii) to report to the Plenary Session of the FSB – and indirectly to the G20 – on the level of implementation of the standards in each one of the member jurisdictions; iii) undertake thematic and country peer reviews amongst its members and iv) encourage global adherence to prudential regulatory and supervisory standards approved by the FSB and drawn up by standards issuers, such as IOSCO and the Basel Committee.

In 2018, the SCSI addressed issues including the following: i) completion and publication of the Hong Kong and Singapore peer reviews, concluding the FSB's first round of jurisdiction analyses; ii) the start of the thematic peer reviews on implementation of the LEI (Legal Entity Identifier) and bank resolution planning, which will be completed in the first half of 2019; and iii) coordination of the assessment of

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<sup>1</sup> This directory was eventually established in April 2019.

the impact and effects of financial regulatory reforms in infrastructure finance and incentives to centrally clear OTC derivatives. These exercises will continue in 2019, with the completion of the assessment of regulatory reforms in small and medium-sized enterprise financing and in entities included in the “Too-big-to-fail” category, on which a report is expected to be published towards the end of 2020.

Finally, it should be noted that, in the framework of the country peer reviews, a member of the CNMV Board will lead the peer review of Mexico, which is focused on application of the reforms of OTC derivative markets.

## 9.5 Other international forums

The **Mediterranean Partnership of Securities Regulators** presented the different legislative proposals at its Annual Conference of presidents, held in Athens, and reported on the current state of affairs and the outlook for progress in different economies.

In the elections that take place on a biannual basis, in which the Presidency and the Vice-Presidency are rotated between members from the north and south of the Mediterranean, the Presidency will be held by the Egyptian Financial Regulatory Authority (FRA) and the positions of Vice-President and Secretary will be held by the CNMV. In 2018, Cyprus joined as a new member of the association, bringing the total to 11.

As is usual at the meetings of presidents, the different legislative proposals and activities performed as a result of the global financial reform promoted by the G20 and the FSB, the proposals and work plans for the year and other recommendations from these forums were presented.

A report was also presented on the activities performed by ESMA and the legislation adopted by the European Union on collective investment, financing information, and cooperation and information sharing relating to market abuse practices.

The agreed objective for the coming year, proposed by the southern countries, is to incorporate technology issues in the papers or seminars planned for 2019 and to hold seminars on ICOs, crowdfunding platforms, cyber security, FinTech and sandboxes, among others. Seminars have also been proposed on small and medium-sized enterprise financing through capital markets, and on monitoring sustainability-related programmes and initiatives.

In addition, the papers, activities and proposals of IOSCO were presented, with special emphasis on those suggested by southern countries with regard to technology issues, which will be the subject of the aforementioned seminars.

The **Ibero-American Institute of Securities Markets (IIMV)** organised 11 in-person training courses and actions, on cooperation and to disseminate information, in which officials from the supervisors of securities markets in Ibero-American countries participated. It also carried out two online courses on corporate governance and international financial reporting standards (IFRS) and a website on the memorandum of understanding on FinTech (initiative of the CNMV). This institute edits *Revista Iberoamericana*, a magazine that is published every four months and which includes articles on MiFID II, FinTech and other issues. As a result of the

conclusions of its last board meeting held in November, the IIMV will promote an update of the studies on the limits to development of equity markets in the region.

## 9.6 Cooperation and information sharing with foreign authorities

In 2018 there was a new general increase in acts of cooperation and information sharing with foreign authorities, and particularly those requested by the CNMV.

The CNMV handled 158 requests for support from supervisors from other States and issued 93 requests for support from its counterparts abroad. Most of this cooperation involved, on the one hand, the submission of information relating to investigations on cross-border transactions that allegedly involved market abuse (34 requests sent and 23 received) and, on the other hand, the sharing of information aimed at verifying the suitability and good repute of regulated entities and individuals in authorisation processes (66 requests sent and 28 received).

The figures on these acts of cooperation over the last three years are set out below.

### Acts of cooperation with foreign authorities

TABLE 9.6.1

Request for support	2018	2017	2016
Sent	93	90	63
Received	158	106	110
<b>Total</b>	<b>251</b>	<b>196</b>	<b>173</b>

Source: CNMV.