

# **CNMV** **ANNUAL REPORT**

**ON ACTIVITIES**

**2002**



**CNMV**

Comisión Nacional  
del Mercado de Valores  
Spain

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## LETTER FROM THE CNMV PRESIDENT

*The year 2002 was complicated for listed companies, financial institutions and investors. We started the year with uncertainties about economic performance in several parts of the world and with the knowledge of a number of irregularities in the public information disclosed by some large US listed companies; subsequently, some (although fortunately few) companies in Europe joined this list. We ended the year with the added uncertainty of a probable war in the Middle East, which actually took place in 2003, although it appears to have concluded.*



*Spain's securities markets, which increasingly form part of the global financial economy, were adversely affected by the uncertainty dominating the international arena, although not everything was negative. We are satisfied that the Spanish markets efficiently financed credit institutions and other financial entities through securitisation, an activity which has boomed in Spain in the last two years. The Spanish financial industry also signified its maturity by devoting efforts to adapting its product offering to market conditions and to maintaining investor interest in securities markets in these difficult times.*

*We trust that the outlook for the worldwide economy will improve as soon as possible. Regarding the uncertainties arising from the accounting and financial scandals, the US and European regulatory authorities and markets have already implemented wide-ranging initiatives in order to restore investor confidence. Listed companies are now more aware of the benefits of transparency and respect for the rules and, above all, of the damage they may suffer due to non-compliance*

*In Spain, the Law on Measures to Reform the Financial System introduced major new features, discussed elsewhere in this Report, which will undoubtedly improve the efficiency of Spain's markets and enhance investor protection. The reforms also affected the CNMV, which is implementing all of them; some are at an advanced stage, such as the Internal Regulation. In Europe, the moves to harmonise the EU market were boosted in 2002 and continue at an acceptable rate.*

*The CNMV strives to comply with its obligations as efficiently as possible. In 2002, we increased staff considerably, reinforcing mainly the supervisory area. We also created an Investor Department in order to provide investors with greater information about securities market products and services.*

*I would like to underscore my confidence in the future of Spain's markets. This is not the first time that we are facing a difficult situation. I trust that, as on other occasions, the Spanish markets be strengthened by the experience.*

*Blas Calzada  
Madrid, April 2003*



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## ABREVIATIONS

AIAF:	Asociación de Intermediarios de Activos Financieros
AIAF:	Asociación de Intermediarios de Activos Financieros / Spanish Brokers' Association
ANCV:	Agencia Nacional de Codificación de Valores / Spain's National Securities Numbering Agency
ANNA:	Association of National Numbering Agencies
AV:	Agencia de valores / Broker
AVB:	Agencia de valores y bolsa / Broker and stock exchange member
CADE:	Central de Anotaciones de Deuda Pública / Spanish government debt book-entry centre
CESR:	Committee of European Securities Regulators
CFI:	Classification of Financial Instruments
CIS:	Collective Investment Scheme
CNMV:	Comisión Nacional del Mercado de Valores / Spanish Securities Market Commission
EC:	European Commission
ECR:	Entidad de Capital-Riesgo / Venture capital entity
ECSDA:	European Central Securities Depositories Association
EU:	European Union
FASB:	Financial Accounting Standards Board
FC&M:	Mercado de Futuros sobre Cítricos y Mercaderías / Citrus futures market
FCR:	Fondo de capital-riesgo / Venture capital fund
FESCO:	Forum of European Securities Commissions
FIAMM:	Fondos de inversión en activos del mercado monetario / Money market fund
FII:	Fondos de inversión inmobiliaria / Real estate investment fund
FIM:	Fondos de inversión mobiliaria / Securities investment fund
FTH:	Fondo de titulización hipotecaria / Mortgage securitization fund
FSAP:	Financial Services Action Plan
IAS:	International Accounting Standards
IASB:	International Accounting Standards Board
IFRS:	International Financial Reporting Standards
IIMV:	Instituto Iberoamericano del Mercado de Valores
IOSCO:	International Organization of Securities Commissions
ISD:	Investment Services Directive
ISIN:	International Securities Identification Number
ISO:	International Organization for Standardization
LATIBEX:	Madrid based market in Latin American securities
MEFF RF:	Spanish market in fixed-income futures

MEFF RV:	Spanish market in equity futures
MOU:	Memorandum of understanding
MTF:	Multilateral Trading Facility
MMU:	Market Monitoring Unit
SCLV:	Servicio de Compensación y Liquidación de Valores / Securities Clearing and Settlement Service
SCR:	Sociedad de capital-riesgo / Venture capital company
SENAF:	Sistema Electrónico de Negociación de Activos Financieros (a Spanish multilateral trading facility)
SGC:	Sociedades gestoras de cartera / Portfolio management company
SGEGR:	Sociedades gestoras de entidades de capital-riesgo / Venture capital management company
SGFT:	Sociedades gestoras de fondos de titulización / Securitization fund management company
SGFTA:	Sociedades gestoras de fondos de titulización de activos / Asset securitization fund management company
SGIIC:	Sociedades gestoras de instituciones de inversión colectiva / Collective investment scheme management company
SIB:	Sistema de Interconexión Bursátil / Spain's electronic market
SIBE:	Sistema de Interconexión Bursátil Español / Spain's electronic market
SII:	Sociedades de inversión inmobiliaria / Real estate investment company
SIM:	Sociedad de inversión mobiliaria / Securities investment company
SIMCAV:	Sociedad de inversión mobiliaria de capital variable / Open-end securities investment company
SON:	Sistema Organizado de Negociación / Multilateral trading facility
SUNI:	Sistema Unificado de Notificaciones por Internet / Unified Internet Notification System (see box in Chapter 11)
SV:	Sociedad de valores / Broker-dealer
SVB:	Sociedad de valores y bolsa / Broker-dealer and stock exchange member
UCITS:	Undertakings for Collective Investment in Transferable Securities



## SUMMARY

Spain's securities markets, particularly the stock markets, were not immune to the international uncertainty in 2002, although the Spanish economy outperformed that of neighbouring countries. Equities trading was similar to 2001 while Spain's main indexes fell substantially, though by less than other European markets such as Paris and Frankfurt. The low share prices halted the flow of new issues and public offerings of equities. However, the private fixed-income market grew moderately due mainly to issues of mortgage-backed and other asset-backed securities. Trading in MEFF's own products declined, but trading in products listed in foreign markets via MEFF increased significantly.

Despite the difficult situation, Spanish markets continued to adopt measures to improve services and reinforce their competitive position in the worldwide scenario. A major new feature was the integration of the stock exchanges, MEFF-AIAF-SENAF, FC&M and Iberclear (the new securities clearing and settlement house owned by the SCLV and the Bank of Spain) into a common holding company, Bolsas y Mercados Españoles.

The main new feature in Spanish regulations in 2002 was the approval of the Law on Measures to Reform the Financial System, which deals with a wide range of issues so as to stimulate efficiency and competitiveness in the Spanish markets and reinforce investor protection. There were also novelties in EU regulations, namely the approval of the market abuse and financial conglomerate supervision Directives. A major new feature was the approval of EU Regulation 1606/2002, which envisages that all companies listed in regulated markets in the EU must adopt the international accounting standards issued by the IASB from 1 January 2005 onwards.

The number of entities filed with the CNMV again increased significantly due mainly to the registration of new SIMCAV, foreign investment services firms and representatives or agents of Spanish investment services firms. At 2002 year-end, 13,937 entities were registered in the CNMV (12,985 in 2001). Since the unfavourable market situation persisted, the CNMV reinforced prudential supervision of the entities under its charge, particularly investment services firms and collective investment schemes and their operators. Both sectors amply met their solvency requirements in general.

Issuers' public information was again a priority in market supervision. A positive feature of listed companies' public disclosures was the information about the degree of adoption of, and compliance with, corporate governance recommendations. The recommendations by the Aldama Commission (created last year) were published in January 2003.

Regarding the supervision of secondary markets, in addition to the usual controls, the CNMV closely monitored day trading and securities loans and, in line with the recommendations from international regulation forums, it encouraged organised markets and their members to be more zealous so as to prevent the use of markets for illicit or non-ethical activities. As usual, tender offers were again a priority in stock market supervision. The CNMV paid special attention to certain acquisitions of shares of listed companies (Dragados, Metrovacesa and Vallehermoso) that were lower than, though close to, the 25% threshold set in the current regulations for launching an obligatory offer<sup>1</sup>.

The CNMV initiated 17 disciplinary proceedings covering 54 possible violations. It completed seven proceedings and imposed 16 penalties: 13 fines totalling € 8.55 million and three public reprimands.

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<sup>1</sup> On 11 April 2003, the Spanish Cabinet approved a reform of the tender offer regulation which, inter alia, envisages acquisitions that provide effective control over a company without involving the acquisition of a specific percentage (Royal Decree 432/2003, dated 11 April, which amended Royal Decree 1197/1991, dated 26 July, on the system of tender offers of securities).

In 2002, the major new feature in the CNMV's relations with investors was the creation of the Investor Department in order to actively boost investor protection through information and education and by monitoring the marketing practices of the supervised entities. In 2002, the Investor Department established an Investor Assistance Office to handle queries, created an information section on the CNMV's web site («Investor's Corner»), published new investor guides and promoted and participated in educational activities. The CNMV's Complaints Department handled 1,094 complaints, 89% relating to financial institutions, mainly banks and thrifts.

Finally, the CNMV was very active in major international forums on securities market regulation. The Spanish EU presidency in the first half of 2002 required significant participation in meetings of this type, in addition to the CNMV's usual presence in the activities of the Committee of European Securities Regulators (CESR), International Organization of Securities Commissions (IOSCO) and other bodies.

Following the changes in the organisational structure carried out in late 2001 and early 2002, the Comisión Nacional del Mercado de Valores (CNMV) continued to increase its resources in order to fulfil the responsibilities assigned to it: staff numbers were increased and information systems were improved.

The CNMV Internal Regulation was drawn up in 2002 in accordance with the provisions of Article 14 of the Securities Market Law, as amended by the Law on Measures to Reform the Financial System<sup>(1)</sup>. The Internal Regulation is at an advanced stage of the approval process<sup>(2)</sup>. The revision and updating of the internal procedures manual commenced in 2002<sup>(3)</sup>.

### Internal procedures manual

In 2002, the CNMV commenced a review and update of the internal procedures by which its various units fulfil the objectives entrusted to them by the Securities Market Law. A total of 53 general procedures are being revised. In addition, the Directorate of Authorisation and Registration is revising the general registration procedure so that it takes greater account of the various circumstances derived from the nature of the entity and the characteristics of the act to be registered. This task involves adapting a further 55 specific procedures.

The procedures are being drafted by the individual units of the Directorates-General, coordinated by the General Secretariat's Subdirectorate of Internal Procedures, with the aim of standardising systems, practices, registers, archives, documents and notifications.

### Organisational structure

There were some changes in the composition of the CNMV Board in 2002. Commissioner Félix de Luis y Lorenzo left the CNMV when his appointment expired on 14 January 2002. Juan Junquera González was appointed on 18 January 2002 and Luis Perezagua Clamagirand was appointed on 28 June 2002. M<sup>a</sup> Soledad Plaza y Jabat was re-appointed on 26 November 2002. Annex 1 contains the full list of the CNMV Board.

In accordance with the provisions of Article 18 of the Securities Market Law, as amended by the Law on Measures to Reform the Financial System, the CNMV Executive Committee was established, composed of the President, the Vice President and the Commissioners whose appointment is not automatic, and the Secretary to the Board, acting as secretary (non-voting)<sup>(4)</sup>. The Executive Committee has the following duties:

(1) Law 44/2002, dated 22 November, on Measures to Reform the Financial System (see Chapter 2).

(2) At the date of preparing this Annual Report, the draft text has been sent to the Council of State for comment.

(3) See box in this chapter.

(4) Annex 1 contains the full list of the Executive Committee.



# ORGANISATION AND MANAGEMENT

- Prepare and study matters to be submitted to the Board.
- Study, inform and deliberate on the matters referred to it by the President.
- Coordinate the proceedings of the Commission's various governing bodies, without prejudice to the powers of the President.
- Approve, within the sphere of private law, the acquisition and disposal of assets by the Commission.
- Resolve the administrative authorisations that have been delegated to it by the Board and exercise those powers expressly delegated by the Board.

Table 1.1 illustrates the internal organisation of the CNMV, which has been in place since January 2002. The reorganisation consisted of grouping the various pre-existing divisions into three Directorates-General which cover the main activities of the CNMV, performed in compliance with the objectives stipulated by the Securities Market Law. The three Directorates-General are as follows: the Directorate-General of Legal Affairs and Inspection, the Directorate-General of Markets and Investors and the Directorate-General of Securities Market Participants. The latter two comprise other Directorates. The Directorate-General of Markets and Investors encompasses the Primary Markets and Secondary Markets Directorates, as well as the Directorate of Investors. The Directorate-General of Securities Market Participants encompasses the Directorate of Authorisation and Registration and the Directorate of Supervision.

In addition to the above-mentioned Directorates-General, a further five Directorates report directly to the President of the CNMV and have horizontal scope. They are the Directorate attached to the President, Research and External Relations, International Relations, Information Systems and the General Secretariat (see Annex 4 for a list of Directorate heads and other senior officials).

## **Administración**

### **Finances**

The CNMV obtained €34.09 million in revenues and incurred €22.75 million in expenses; therefore, the surplus for the year amounted to €11.34 million.

The bulk of revenues was derived from fees, which amounted to €31.40 million, up 6.0% on 2001. The rest of revenues came mainly from financial revenues and the sale of publications.

As illustrated in table 1.2, the increase in fees was due entirely to higher market supervision revenues (+20.8%) since revenues from the supervision of market participants were practically flat (0.2%) and revenues from prospectus registration fell 6.4%. The most outstanding features of the performance of the different sources of fees are as follows:

- Prospectus and participant registration: the adverse circumstances of the stock market in 2002 are reflected in the fall in fees for all items (issue prospectuses, listing prospectuses, registrants and authorisation of tender offers), with the exception of vetting fees for AIAF listings, which increased 16.1%.
- Supervision of financial markets: revenues associated with the supervision of members of the Securities Clearing and Settlement Service (SCLV) rose sharply due to the substantial volume of fixed-income securities issued and traded in AIAF.

Table 1.1

## STRUCTURE OF THE COMISIÓN NACIONAL DEL MERCADO DE VALORES IN 2002

DIRECTORATES GENERAL	DIRECTORATES	FUNCTIONS
<b>Directorate-General of Securities Market Participants</b>	<b>Directorate of Authorisation and Registration</b>	Creation and institutional supervision of investment service firms, collective investment schemes and venture capital firms.
	<b>Directorate of Supervision</b>	Supervision, inspection and intervention in registered entities (investment service firms, collective investment schemes and venture capital firms).
<b>Directorate-General of Markets and Investors</b>	<b>Directorate of Primary Markets</b>	Security issues, public offerings and listings. Significant holdings and own shares at listed companies. Takeovers. Periodic disclosure by issuers.
	<b>Directorate of Secondary Markets</b>	Supervision of secondary markets. Reporting of significant events to the market. Exclusion from, and suspension, of trading.
	<b>Directorate of Investors</b>	Provision of information to investors. Investor education.
<b>Directorate-General of Legal Affairs and Inspection</b>		Secretariat to the Board and the Advisory Committee. CNMV Legal and litigation department. Relations with the justice system. Development of regulations. Disciplinary proceedings. Market Monitoring Unit.
BOARD	<b>General Secretariat</b>	Administration. Documentation and official registries. Internal procedures. Claims service.
	<b>Directorate attached to the President</b>	Institutional relations with the securities markets. Advice on accounting regulations. Analysis of EU and international policy on securities markets.
	<b>Directorate of Research and External Relations</b>	Analysis of the financial situation and research on securities markets. Preparation of the Annual Report and Report on the Securities Markets. Preparation and updating of statistical information. Relations with the media.
	<b>Directorate of International Relations</b>	Coordination of the CNMV's international relations. Participation in IOSCO, CESR and other international bodies. Coordination of follow-up on EU directives.
	<b>Directorate of Information Systems</b>	Design, development, implementation and maintenance of the CNMV information systems. National Securities Numbering Agency. Technological support to the supervision of the information systems at markets and market members. Soporte tecnológico a la supervisión de los sistemas de información de los mercados y sus miembros.



Table 1.2  
CNMV FEE REVENUES

Importes en miles de euros

Activity or service	2001	2002	Change (%)
<b>Prospectus and participant registration</b>	9,213.9	8,625.2	-6.4
Prospectus registration	6,993.2	6,939.8	-0.8
Issue prospectuses	4,871.9	4,571.4	-6.2
Listing prospectuses	300.8	254.6	-15.4
Vetting for AIAF listing	1,820.5	2,113.9	16.1
Participant registration	1,600.1	1,302.2	-18.6
Authorisation of tender offers	620.6	383.4	-38.2
<b>Financial market supervision</b>	11,499.8	13,894.8	20.8
Members of AIAF	66.8	100.3	50.1
Members of SCLV	6,611.4	9,245.7	39.8
Stock exchange members	4,592.6	4,212.2	-8.3
Members of MEFF RF	6.1	3.4	-44.1
Members of MEFF RV	222.5	332.9	49.6
Members of FC&M	0.4	0.4	-8.5
<b>Participant supervision</b>	8,900.4	8,884.3	-0.2
IIC supervision	7,909.3	8,069.9	2.0
FIM and FIAMM	7,173.1	7,162.4	-0.1
SIM and SIMCAV	682.8	834.7	22.2
Real estate investment funds	53.4	72.9	36.4
IIC and FTH management companies	234.2	193.8	-17.3
IIC management companies	226.7	186.3	-17.8
Securitisation fund management companies	7.5	7.5	0.0
Supervision of investment services firms	756.9	620.7	-18.0
Portfolio management companies	23.6	23.9	1.2
Broker-dealers and brokers	733.4	596.8	-18.6
<b>Issuance of certificates</b>	0.1	0.8	451.0
Total	29,614.1	31,405.2	6.0

- Supervision of market participants: revenues from this source remained practically flat on 2001, although fees for supervision of collective investment schemes rose due to the increase in total net worth in 2002, and fees for the supervision of management companies and investment services firms fell sharply due to lower capital requirements.

Expenses increased 14.4% year-on-year, to €22.75 million. Personnel costs (66.5% of the total) rose 14.1% due to the increased workforce. Other expense items increased 39.3% overall; leases, renewal and maintenance of installations, memberships, printing and external services accounted for 81.2% of the increase in other management costs. In this connection, the following factors are significant:

- Lease and installation renewal and maintenance expenses increased due to the rental and conversion of 2,100 m<sup>2</sup> of new offices to provide space for new personnel. The 60% of the total increase in expenses that is not attributable to personnel was mainly incurred on this item.
- Membership expenses rose due to the contribution by the CNMV as a member of the Committee of European Securities Regulators (CESR).

- The increase in investor information activities boosted printing expenses (Information Guides) and external services costs (902 call centre).

At the suggestion of the CNMV Board, the government agreed in December 2002 to transfer €7 million out of 2001 surplus to the Treasury.

## Human resources

The CNMV's workforce grew 10% in 2002 to 295. The new personnel were mainly technical staff (25 employees) intended primarily to reinforce the Supervision, Authorisation and Registration, Secondary Markets and Legal Affairs and Inspection Directorates. Eight trainee technicians were also hired in the Directorate-General of Securities Market Participants. However, in the CNMV as a whole, the number of trainee technicians fell substantially since the 15 technicians hired in 2000 reached the end of their training period. The number of administrative staff fell slightly.

Table 1.3  
CNMV STAFF BY PROFESSIONAL CATEGORY

Category	Number of employees	
	2001	20002
Services .....	9	9
Administration .....	54	52
Trainee technicians .....	16	8
Técnicos .....	174	207
Management .....	15	19
<b>Total .....</b>	<b>268</b>	<b>295</b>

In the principal directorates, the number of employees increased by 20% (16 employees) in the Directorate-General of Securities Market Participants, by 14% (four employees) in the Directorate-General of Legal Affairs and Inspection and by 9% (five employees) in the Directorate-General of Markets and Investors. Changes in personnel in the other directorates were minimal: their workforce increased by 2% overall (two employees).

As a result of the distribution of newly-hired staff, the ratio of line to horizontal personnel has increased from 1.70 in 2001 to 1.85 in 2002.

The personnel were selected through the government recruitment processes. Eleven processes (37 vacancies) were open to university graduates with experience in audit firms or financial institutions. As part of the internal promotion initiative in the context of the 2002 Government Recruitment Campaign, one position of subdirector was open exclusively to pre-existing government employees.

Table 1.4  
CNMV PERSONNEL BY DIRECTORATE

	2001	2002	Change
<b>Line Directorates-General</b>	<b>168</b>	<b>193</b>	<b>15%</b>
Securities Market Participants	82	98	20%
Markets and Investors	58	63	9%
Legal Affairs and Inspection	28	32	14%
Directorates	90	91	1%
<b>Board</b>	<b>10</b>	<b>11</b>	<b>10%</b>
<b>Total CNMV</b>	<b>268</b>	<b>295</b>	<b>10%</b>

The increase in the workforce in recent years and planned new appointments made it necessary to find new office space. To this end, 2,100 m<sup>2</sup> were leased to house all the services and units of the Directorate-General of Securities Markets Participants, including the planned additional staff.

The CNMV currently has 8,150 m<sup>2</sup> of floor space (up 35%), 5,000 m<sup>2</sup> in the building at Castellana 19 (Madrid), which belongs to the CNMV, and the rest in leased offices (including the Catalonia office). The CNMV's premises keep in contact via broadband networks, in such a way that the voice communication and data services are totally transparent for the user.

### **Information systems**

The CNMV enhanced its IT systems in 2002, to make the registration process more dynamic and accessible and to improve physical and logical security.

It also improved the supply of information to the general public. In connection with the applications intended for the activity of registration, the primary market registration process was improved and the processes involving investment services firms were fine tuned.

The statistics applications were also upgraded to add new functions and combine the publication on paper with the presentation of data on the CNMV's web site (see box).

All central servers were replaced and a new physical data storage system was installed which is independent of the servers and has full physical and logical redundancy to provide greater security. Workstations continued to be upgraded to provide personnel with all the features required by new multimedia applications.

The CNMV contracted an network security audit service, providing detailed information at all times about our firewalls' vulnerability to attacks from the Internet, and enabling the Commission to take measures to minimise these risks.

### **Improved web site**

The CNMV's web site ([www.cnmv.es](http://www.cnmv.es)) has established its position as a basic means of disseminating information on the securities markets. This requires constant improvement and the incorporation of all information to facilitate queries and improve the content of the various sections of the site.

The principal actions performed in 2002 include the incorporation of the complete texts of the investment services firms' fee sheets and standard contracts of, and the inclusion of the three-fold leaflets summarising the prospectuses for issues, listings, public offerings and tender offers. In addition to these modifications to the official registers, new communication channels with investors were established, plus access to the Investor Guides, the English version is now up and running, statistical presentation has been reorganised and, in the area of e-administration, additional processes have been included in the «CNMV on line» service.

The developments carried out to implement the SUNI system (Unified Internet Notification System) (1) at the CNMV were noticeable. SUNI is a selective channel for releasing information, agreed on by the regulatory bodies under the Instituto Iberoamericano de Mercados de Valores, in order to disseminate the public information contained on the web site of each regulatory body, initially among their technical staff, according to a pre-defined profile that each user defines according to needs. To date, only Argentina, Brazil and Spain are disseminating their information via SUNI, although other countries are currently developing this system.

(1) See the box on SUNI in chapter 11.

## CNMV office in Catalonia

The office in Catalonia provides the whole range of services offered by the CNMV. Its activity has increased steadily since it was established in 1996. In 2002, there was a notable increase in the authorisation and registration of investment services firms, collective investment scheme management companies and securities investment companies.

Owing to the volume of activity, the Catalonia office has expanded its human and technical resources. It hired new personnel in 2002 (employees numbered 14 at year-end, two more than in 2001) and consolidated the information and communication systems implemented in 2001 to connect the Madrid and Barcelona offices by a fibre optic system which enables the technicians in the office in Catalonia to access the CNMV's common IT network in real time.

## National Securities Numbering Agency (ANCV)

The increasing implementation of the Straight Through Processing system (STP) in financial institutions has led to a greater use of international standards in the sector and, consequently, a greater demand for services from coding agencies, and for speed in assigning codes and ease in disseminating these codes. The National Securities Numbering Agency was very active in 2002. Variations in its databases and the assignment and maintenance of ISIN and CFI codes increased by 8% to 18,918 due mainly to the large number of new SIMCAV registrations, the increase in commercial paper and warrant issues and the growth in securitisation fund issues.

The ANCV handled 2,140 direct enquiries in 2002, compared to 2,785 in 2001. As in previous years, this decline is due to the increased use of other channels, primarily the CNMV web site, which affords ISIN code users round-the-clock access to information on securities issues and eliminates the need for direct involvement of agency personnel.

### ISIN and CFI codes

In its function as National Securities Numbering Agency (ANCV), the CNMV has the task of identifying all Spanish issues and financial instruments, which it performs by assigning an international code known as the ISIN code (International Securities Identification Numbering System). The ANCV's actions must be completed by distributing codes among users for use in securities clearance and settlements and, in general, all back-office procedures and controls that require them. Therefore, the distribution of securities codes is not limited to Spanish issues, but includes codes assigned in other countries.

In order to facilitate access to all this information, the International Association of National Numbering Agencies established the ANNA Service Bureau (ASB), which, at the end of 2002, offered information on more than 1.5 million securities issues from 180 countries. The easiest way to access the ASB is via the internet, although the system offers other options. The ASB is updated on a daily basis with information provided by the majority of ANNA's agencies, from 64 countries.

In addition to the ISIN code, the National Securities Numbering Agency assigns CFI codes (Classification of Financial Instruments), which enable financial instruments to be distinguished and classified automatically.

# 2

## REGULATION

In 2002, the Law on Measures to Reform the Financial System<sup>(5)</sup> introduced major new features into Spain's securities market regulations. The Law deals with a variety of subjects in order to stimulate efficiency and competitiveness in the Spanish markets and to reinforce investor protection.

In Europe, the EU advanced with its Financial Services Action Plan in order to accelerate the creation of a single market in financial services. In particular, progress was made in accounting harmonization: companies listed in official markets in the European Union will be obliged to prepare consolidated accounts in accordance with international accounting standards from 1 January 2005 onwards.

Accounting and corporate conduct problems at a number of listed companies, especially in the US, had an impact on the regulations of several countries. In line with moves by regulators in the EU, there were initiatives in Spain to analyse recent experience and reinforce transparency in the markets.

### Law on Measures to Reform the Financial System

Law 44/2002, dated 22 November, on Measures to Reform the Financial System (the "Finance Law") was the main new item of legislation in 2002; it was necessary for integration with the EU and for the progress and development of Spain's markets. The Finance Law regulates a variety of subjects in the fields of banking, insurance, securities and other financial services and its main objectives are as follows:

- Ensure that Spanish law does not impose unnecessary obstacles that place Spanish financial institutions at a disadvantage with respect to their counterparts in other EU countries. With that aim, measures were adopted and instruments were created to increase the efficiency and improve the competitiveness of the Spanish financial industry.
- Ensure that the increase in competition and the use of new technology do not leave financial services customers unprotected. Therefore, the protection for financial services users was improved.
- Stimulate the transfer of savings to the real economy. Therefore, the conditions of financing small and mid-sized enterprises (SMEs) were improved.

From a formal standpoint, as regards financial services in the securities markets, the Finance Law transposes several EU Directives<sup>(6)</sup> into Spanish law. The main repercussions of the Finance Law on the securities market regulations are as follows:

- *Comisión Nacional del Mercado de Valores*. The Finance Law confers power on the CNMV Board to approve the Internal Regulation, which will regulate, inter alia, the CNMV's organic structure, the powers of its several

(5) Law 44/2002, dated 22 November, on Measures to Reform the Financial System.

(6) Directive 2000/26/EC of the European Parliament and Council, dated 16 May 2000, on the approximation of the laws of the member states relating to insurance against civil liability in respect of the use of motor vehicles; Directive 2000/64/EC of the European Parliament and Council, dated 7 November 2000, as regards exchange of information with third countries; Directive 2000/46/EC of the European Parliament and Council, dated 18 September 2000, on the taking-up, pursuit of and prudential supervision of the business of electronic money institutions; Directive 2000/28/EC of the European Parliament and Council, dated 20 March 2000, relating to the taking-up and pursuit of the business of credit institutions.

bodies, its internal procedures, the specific system of incompatibility governing former staff of the CNMV, and the CNMV's selective hiring procedures. The CNMV will have an internal control body whose functional accountability and disclosure capacity will be governed by the principles of impartiality, objectivity and avoidance of conflicts of interest. The CNMV will prepare an annual report about its oversight function, for submission to the Spanish Parliament and government, detailing the efficacy and efficiency of the procedures applied in this area.

- *Investors.* A Commissioner for Investor Protection<sup>(7)</sup> was created that is organically attached to the CNMV. In the discharge of his/her duties to protect and defend investor rights and interests, this commissioner will act in accordance with the principles of independence and autonomy. Likewise, all credit institutions, investment services firms and insurers will be obliged to attend to, and resolve, customer complaints and claims. Customer services departments must be created for this purpose.
- *Market structure.* Spain's various securities clearance and settlement systems will be integrated. The Finance Law has designed a flexible, open legal regime which will create the Sociedad de Gestión de los Sistemas de Registro, Compensación y Liquidación de Valores (Sociedad de Sistemas) through the merger of the SCLV (the Spanish Securities Clearance and Settlement Service) and CADE (the Government-Debt Book-entry System). This company can also include other existing systems in Spain and manage interconnections and alliances with other countries' systems. Another new feature of the Finance Law is that it envisages the creation of one or several central counterparties in order to eliminate the counterparty risk in transactions.
- *Primary market.* The types of securities that can be issued are expanded (territorial bonds, equity interests in savings banks and the possibility of securitising debt claims against the government and mortgages).
- *Audit committees.* Issuers of shares and bonds listed in official secondary markets must have an audit committee comprising a majority of non-executive directors. The Audit Committee's Chairman must be chosen from among the non-executive directors.
- *Listed companies.* The regime for listed companies was developed, with an emphasis on transparency. The following are regulated:
  - Significant events, which must also be published on the listed company's web site.
  - Transparency regulations for related-party transactions.
  - The reform of the suppression of preferential rights in capital increases at listed companies.
  - The introduction of a new regulation on the treatment of insider dealing and market manipulation, in advance of the Market Abuse Directive.
- *Financial intermediaries.* The regulation also covers financial intermediaries in terms of treatment of insider dealing and market manipulation. It specifies organisational measures to prevent information leakage between departments or between companies of the same group (Chinese walls). Firms must have rules of conduct. The legislation also affects other

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(7) Created in conjunction with the Commissioner for protection of banking services customers, organically attached to the Bank of Spain, and the Commissioner for protection of policyholders and pension plan participants, organically attached to the Directorate-General of Insurance and Pension Funds.

factors: the requirements for administrative organisation and internal control, the regulation on analysts' conflicts, new requirements for executive transparency and the extension of the good standing requirements to authorised signatories.

- *Electronic trading.* The legal effects of electronic trading of financial products will be regulated in the future<sup>(8)</sup>.
- *Collective investment schemes and venture capital firms*<sup>(9)</sup>.
  - *Mutual funds and their management companies.* The Finance Law confers the power to authorise management companies on the Economy Ministry and the power to authorise funds on the CNMV. Filing the funds with the Mercantile Register is optional and fund mergers are regulated in detail. It is required that the depository be a member of the clearance, settlement and registration systems of the Spanish markets.
  - *Venture capital firms.* The Finance Law increases the financing possibilities for innovative small and mid-sized enterprises<sup>(10)</sup>. It allows venture capital firms to own shares of companies not listed at the time of acquisition but which were subsequently listed. It also enables venture capital firms to invest in companies belonging to their own group, provided they meet the transparency requirements. The Law also expedites venture capital firms' operations by allowing equity contributions in kind after their incorporation.

## Other Spanish legislation

### Primary and secondary securities markets

- *Resolution, dated 20 February 2002, of the Directorate-General of Treasury and Finance on market makers in public debt.* It redefines the conditions for collaboration between these entities and the Treasury as regards their activity in the primary and secondary markets.
- *CNMV Circular 2/2002, dated 27 November, on periodic disclosure forms of issuers of securities listed on the stock markets.* The goal is for all listed companies to use the CIFRADO/CNMV encryption and electronic signature system when sending periodic disclosures to the CNMV. This will expedite compliance with disclosure obligations and enable investors to access periodic disclosures more quickly.
- *Economy Ministry Order 3235/2002, dated 5 December, on the special features applicable to the official secondary markets in olive oil futures and options.*

### Investment services firms

- *Law 53/2002, dated 30 December, on Tax, Administrative and Labour Measures.* This introduced several changes in the regulations on investor indemnity systems: it amended article 77 of the Securities Market Law, added an additional provision 19 to that Law and amended several articles of Royal Decree 948/2001, dated 3 August, on Investor Indemnity Systems. The changes were introduced as a result of the need to amend the system for calculating the contribution to the Investment Guarantee Fund so that members' contributions are more balanced. Portfolio management companies also became members of that Fund.

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(8) See box in chapter 8 for greater detail about the Law on Measures to Reform the Financial System as regards supervised entities.

(9) See previous note.

(10) Thereby amending the Venture Capital Firm Law 1/1999, dated 5 January.

## Collective investment schemes

- *CNMV Circular 1/2002, dated 16 September, on statistical information requirements for collective investment schemes in the European Monetary Union.*

## Other regulations

- *Law 34/2002, dated 11 July, for the information society and electronic commerce.* This Law is aimed at transposing into Spanish law the European Parliament and Council Directive 2000/31/EC, dated 8 June, on certain legal aspects of information society services, particularly, electronic commerce, in the internal market.
- *Law 39/2002, dated 28 October, for the transposition into Spanish law of several EU consumer and user protection directives.*
- *Law 46/2002, dated 18 December, on the partial amendment to Personal Income Tax which also amends the Corporate Income Tax Law and the Non-Resident Income Tax Law<sup>(11)</sup>.*
- *Royal Decree 705/2002, dated 19 July, regulating the authorisation of public debt issues by local government entities.* This amended Royal Decree 291/1992, dated 27 March, on securities issues and public offerings (article 6) and Royal Decree 116/1992, dated 14 February, on bookentry securities and the clearance and settlement of stock market trades (article 10).
- *Royal Decree 1443/2001, dated 21 December, implementing Law 16/1989, dated 17 July, on defence of competition, as regards the control of economic concentration<sup>(12)</sup>.* In its additional provision, this Royal Decree amended Royal Decree 1197/1991, dated 26 July, on tender offers for securities. This amendment was detailed in chapter 6 of the CNMV's 2001 Annual Report in the section on "Intervention by the Administration in business concentration processes: effects on tender offers".
- *Economy Ministry Order 2652/2002, dated 24 October, on the obligations to disclose operations in certain countries to the Commission's Executive Service for the Prevention of Money Laundering and Monetary Violations.*

## EU regulations approved in 2002

- *Directive 2002/47/EC, dated 6 June 2002, on financial collateral arrangements.* This Directive contains measures to simplify the requirements for creating and arranging collateral for obligations under financial contracts. The Directive is particularly important for repurchase agreements (repos) since it considerably reduces the uncertainty caused by the existence of different legal regimes for providing and foreclosing on collateral in the EU.
- *Regulation 1606/2002, dated 19 July 2002, of the European Parliament and Council on the application of international accounting standards.* Through this Regulation, the Commission, aided by an accounting regulation committee, declares the international accounting standards (IAS) that meet pre-established criteria to be applicable in the EU. Companies listed on official markets in the EU have until 2005 to prepare consolidated financial statements in accordance with those criteria. Member states can extend this accounting system to individual company financial statements and the financial statements of unlisted companies.

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(11) See box in chapter 8 on the impact of the new partial amendment to personal income tax on the taxation of collective investment products.

(12) Published in the Official State Gazette on 18 January 2002.



- *Directive 2002/65/EC, dated 23 September 2002, on the distance marketing of consumer financial services.* This Directive liberalises, with safeguards, the distance marketing of financial services, including via the Internet. The Directive is aimed at increasing competition in financial services marketing in the Single Market and at enhancing investor confidence and certainty in distance marketing mechanisms. The Directive covers a broad range of financial services and regulates several investor protection measures such as the establishment of obligatory disclosure requirements prior to the contract, the prohibition of providing unsolicited financial services and restrictions on marketing techniques (in particular, unsolicited communications).
- *Directive 2002/87/EC, dated 16 December, on the supplementary supervision of credit institutions, insurance undertakings and investment services firms in a financial conglomerate.* This Directive is aimed at covering the special supervisory needs of financial conglomerates (groups of banking, insurance and securities companies). The Directive establishes special capitalisation requirements and regulates risk concentration and intragroup operations, the requirements for managers' professional qualifications and the risk and internal control systems.
- *The Market Abuse Directive adopted by the Council on 3 December 2002 (see box).*

## The Market Abuse Directive

The Market Abuse Directive, approved on 3 December 2002, is aimed mainly at guaranteeing financial market integrity. Market abuse is harmful for investors, reduces their confidence and, therefore, makes it difficult for companies to raise funds in the market. The Directive introduces regulations aimed at eradicating some practices observed in the recent financial scandals and at serving as an instrument to combat financial operations related to terrorist organisations.

The Directive is noteworthy because it was the first to apply the regulation system recommended by the Lamfalussy Report. The Directive envisages the preparation of Level 2 Measures, which are expected to be approved shortly, that deal with subjects such as the definition of the elements of insider dealing, the conditions for transactions with own shares and the stabilisation of securities. The most important measures of the Directive have already been transposed into Spanish legislation through the Law on Measures to Reform the Financial System.

The Directive was the first EU initiative to provide a single approach to market abuse in its two main forms: insider dealing and market manipulation. The Directive applies to transactions with all types of financial instruments, including commodity derivatives, and to all the parties related to said markets.

The definition of market abuse is broad. The Directive contains numerous examples of manipulation: front-running (when an intermediary executes orders on his own account before executing significant orders for clients), wash sales (simulating an active market), marking the close, and scalping (when the party recommends operations to investors but operates to the contrary). Internet is considered to offer major opportunities for information exchange but it can also be used to spread false or misleading news.

The Directive also includes major measures to foster transparency in transactions with securities by directors and managers of companies, analysts' recommendations, and even the publication of statistics that may significantly impact share prices. Listed companies are required to disclose their significant events through the regulatory body and their own web sites.

The Directive confers broad investigative powers on the bodies that oversee market integrity and envisages major obligations as to international cooperation among regulatory bodies in order to make the control of abusive practices more effective in increasingly globalised markets.

## Development of the EU's Financial Services Action Plan

In 2002, the Financial Services Action Plan (FSAP<sup>(13)</sup>) continued to be developed although the progress in certain directives was slow. By December 2002, of the 42 measures initially projected, 31 had been adopted, seven were still in process and the other four were pending specific legislative proposals<sup>(14)</sup>.

Of the main measures adopted in relation to securities markets in 2002, there were four directives (market abuse, additional supervision of financial conglomerates, distance marketing of financial services and financial collateral) and two communications by the European Commission (distinction between professional and retail investors, and clearance and settlement). Moreover, the expert group's final report on company law was presented on 4 November. The Commission is consulting other parties in order to establish an action plan on company law.

The main measure under way regarding securities markets is the Directive on Prospectuses<sup>(15)</sup>, which may be adopted in 2003. The Investment Services Directive, under review, is very important because of its implications on investment services firms operating under the European passport and the configuration of European trading infrastructure<sup>(16)</sup>. The Directive on Takeover Bids is also under review. Nevertheless, both initiatives still require considerable work and it is difficult to project an implementation date.

The main pending matters are the Directive on Periodic Disclosure Requirements for Issuers and the update of the Capital Adequacy Directive (CAD), which will set the equity requirements for credit institutions and financial intermediaries. The update of the CAD will be inspired by the recommendations of the New Basel Capital Accord (Basel II), which may be completed by 2003 year-end.

### 1<sup>st</sup> Conference on European Regulations

The CNMV held the 1<sup>st</sup> Conference on European Regulations on 23 September 2002 with the following objectives:

Provide information to several groups (Spanish consumers, legal professionals, consultancy firms, issuers, the financial services industry) about the directives and other legislation that the EU is promoting in order to integrate the European securities markets.

Stimulate greater participation by those groups in the public consultation processes regarding EU legislation.

The conference was attended by over 400 representatives of markets, consumers and listed companies, and it provided broad information about the proposed Directives on investment services, takeover bids, prospectuses, accounting standards, market manipulation and insider trading, electronic commerce, and distance marketing of financial services and collective investment schemes.

(13) The Financial Services Action Plan was published in May 1999 at the request of the Council of Economy and Finance Ministers (ECOFIN). The Plan envisages the implementation mainly of legislative measures to stimulate the integration of the EU's financial services markets.

(14) Legislative proposals in process: Prospectuses, Pension Funds, Amendments to Fourth and Seventh Directives on Accounting Standards, Cross-Border Savings, Takeover Bids and Update of the Investment Services Directive. Pending legislative proposals: Upgrade of the Directive on Periodic Disclosure by Issuers, Tenth and Fourteenth Directives on Company Law and Review of the Directive on Financial Institutions' Capital Adequacy.

(15) See box in chapter 5.

(16) See box in chapter 3.

## European Commission documents for consultation

The documents resulting from the work and activity performed by CESR<sup>(1)</sup> (Committee of European Securities Regulators), whether at its own initiative or under the European Commission's mandate, are usually released for public consultation in order to obtain the opinion of all interested parties. The documents drafted by CESR<sup>(2)</sup> and the responses it has received are available at its web site and that of the CNMV<sup>(3)</sup>. In 2002, the following documents were submitted for public consultation:

- Clearance and Settlement: the first consultation was held on the joint work performed by CESR and the European Central Bank (commenced in 2002) on clearance and settlement systems.
- Market abuse: CESR drafted a document, which is being submitted to public consultation in several phases, in order to advise the European Commission about the technical measures required for implementing the Market Abuse Directive. The document includes possible Level 2 measures<sup>(4)</sup>.
- Prospectuses: also as part of providing technical advice to the European Commission, CESR has submitted for consultation several documents about the implementation of the future Directive on Prospectuses with possible Level 2 measures<sup>(4)</sup>.
- CESR-Fin: this is a permanent working group of the CESR that deals with accounting matters. In 2002, it submitted to public consultation a proposal containing the principles for applying European accounting standards.

The need for active participation in public consultation by financial institutions, companies and consumer organisations is increasingly evident. The greater the involvement of all parties, the greater the quality of the final regulation. Access to the documents released for consultation and to the responses via CESR's web site facilitate and enhance this type of procedure.

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(1) See chapter 11 (International activity).

(2) [www.europefesco.org](http://www.europefesco.org)

(3) [www.cnmv.es](http://www.cnmv.es)

(4) Level 2 measures refer to technical rules or rules implementing basic regulations (Level 1 measures), such as the Market Abuse Directive and the future Directive on Prospectuses.

## European accounting harmonisation

The year 2002 saw major activity in accounting regulation due to the approval of EC Regulation 1606/2002, which envisages that all companies listed in European regulated markets adopt IFRS<sup>(17)</sup> for their consolidated financial statements from 1 January 2005 and that member states can extend this requirement to other types of entities and to individual companies' financial statements.

At 2002 year-end, the European Commission had not identified the specific international accounting standards which are obligatory under that Regulation due to the difficulty in completing the translations of each standard into the eleven languages of the member states. There were also objections from some states and sectors to the project of international accounting standards for financial instruments set up by the IASB<sup>(18)</sup>.

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(17) The former IAS (International Accounting Standards) issued by the IASB (International Accounting Standards Board) were renamed IFRS (International Financial Reporting Standards) in 2001.

(18) See note 13.

At the same time, the European Commission adopted a number of measures in order to update and modernise existing accounting directives so that their conceptual framework and principles are based on, and are as close as possible to, generally accepted accounting standards (e.g. IFRS). The main feature was the introduction of fair value as the valuation criterion for specific financial instruments, through Directive 2001/65 and the proposed Directive to amend the existing European Union Accounting Directives, which envisages that European companies not affected by the previous Regulation should bring their financial statements into line with IFRS.

On 22 October 2002, the CESR published a document with a number of general principles which the regulators believe should govern the mechanisms for overseeing compliance with IFRS. The document responds to the European Commission's request and to the preamble of the Regulation with a view to enabling European securities regulators and supervisors to jointly develop a common harmonised approach to monitoring the application of IFRS.

### **Accounting harmonisation in Spain**

In order to assess the impact of accounting harmonisation and propose the necessary amendments, on 16 March 2001 the Spanish Economy Ministry created a committee of accounting experts (including CNMV representatives) which published a White Paper on 25 June 2002 entitled "Report about the current accounting situation in Spain and guidelines on amending it". The main recommendations were as follows: (i) extend the scope of application of the IFRS valuation criteria to the financial statements of individual companies and unlisted companies; (ii) transpose Fair Value Directive 2001/65 and apply it to all types of companies; (iii) clearly determine the reliability of the valuation models; (iv) extend the disclosures in the financial statements and management reports; and (v) boost the mechanisms of reinforcement and control of compliance with accounting standards in individual and consolidated financial statements. Finance Law 44/2002 also introduced significant measures with regard to auditors (stricter requirements to ensure their independence) and companies' governing bodies (Audit Committee).

The CNMV was also active: it formed part of CESR, it maintained a representative on the SAC<sup>(19)</sup> (the IASB's advisory committee) and it organised meetings in the Spanish stock markets in collaboration with their governing bodies in order to provide information about the scope and impact of the implementation of IFRS in Spain from 2005 onwards. The CNMV also published a document entitled "Questionnaire on International Accounting Standards" in October in order to analyse the degree of compatibility with IAS/IFRS of the accounting standards of the countries represented by the Latin American Securities Commissions.

### **IASB activity**

In the international arena, the IASB is actively progressing with standards: it commenced a major project to amend and issue new IFRS (tackling specific previously-unregulated aspects), planned to be completed before 2004. Several draft standards were released in 2002 for public consultation.

Another highlight was the Norwalk Agreement in September 2002, in which the IASB and the US FASB<sup>(20)</sup> agreed to harmonise and converge their standards (see box).

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(19) Standards Advisory Council.

(20) Financial Accounting Standards Board.

## IASB-FASB agreement to converge accounting standards

On 18 September 2002, accounting regulatory bodies IASB and FASB reached an historic agreement in Norwalk (US), i.e. to make their existing and future reporting standards fully compatible as soon as is practicable and to coordinate their future work programs to ensure that once achieved, compatibility is maintained. The agreement does not imply that future standards will be identical in all aspects, but they will not diverge in substance: identification principles, transaction measures and accounting recognition. The agreement is the first response to the long-standing demands from the UN and other supranational bodies (OECD, World Bank and IMF) for comparability of corporate financial information worldwide.

The project is divided into two phases. The first phase is aimed at reducing differences on which agreement can be reached in the short term. It will conclude in late 2003 or early 2004 and will include, inter alia, differences between IAS/IFRS (currently being reviewed by the IASB) and the recently-published FASB. The second phase will deal with more complex matters.

From 2005, the project will enable European issuers of securities listed on the US markets to file their IFRS-compliant financial statements with the SEC without having to reconcile them to US GAAP, as at present. In the longer term, compatibility of accounting standards between the world's two largest markets (the US and Europe represent 90% of worldwide capitalisation) will facilitate the comparison of financial information of European and US companies and will reduce the cost of producing that information.

## The impact of the recent financial scandals on US and European regulations

The series of financial scandals that commenced in the US at the end of 2001 with the Enron affair, followed by other crises such as WorldCom and Global Crossing, evidenced major weaknesses in several areas and institutions vital for market integrity. The debate about the necessary measures to avoid those situations led to proposals at a worldwide level in three basic regulatory matters: disclosure of accounting information, audit supervision and corporate governance.

### United States

In the US, the main response to the corporate scandals was the Sarbanes-Oxley Act of 2002 (approved on 30 July), which introduced a number of regulations that affect companies (including foreign ones) listed on the US markets and the professionals that provide services to them.

The main features of the Act were as follows: (i) an oversight board for listed companies' auditors (Public Company Accounting Oversight Board) was created, and measures to ensure the independence of listed companies' auditors were adopted; (ii) listed companies are obliged to have an audit committee comprising independent members only; (iii) CEOs and CFOs are obliged to personally certify the veracity of their accounting information; (iv) the SEC<sup>(21)</sup> recognises the accounting standards of the FASB and can accept those by other bodies such as the IASB; (v) greater transparency in transactions by executives, managers and core shareholders; and (vi) new criminal violations are established for certain actions and the penalties for other violations were toughened. The Sarbanes-Oxley Act also empowers the SEC to regulate situations of conflicts of interest between analysts and the investment bank for which they work.

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(21) Securities and Exchange Commission.

The Sarbanes-Oxley Act also affects foreign companies listed on the US markets. Nevertheless, the SEC has already announced that it will exempt European companies from complying with some requirements that differ from those of their home country, particularly regarding the audit committee. There is greater uncertainty as to whether European auditors fall under the Act and it is still not possible to determine the extent of supervision by the Public Company Accounting Oversight Board.

## European Union

In the EU, the greatest progress was in accounting harmonisation (see previous section). The EU also approved the Market Abuse Directive (see box in this chapter) and took initiatives to reform company law in Europe, prioritising corporate governance (see next box).

### European debate about corporate governance

In November 2002, a high-level group of company law experts presented the Winter Report, at the request of the European Commission, in order to promote an action plan for company law.

The Winter Report contains numerous ideas and initiatives for amending company law in Europe, focusing particularly on corporate governance. Although it states that the diversity of company law in key areas prevents EU-wide corporate governance recommendations, it does recommend stepping up listed companies' transparency obligations as regards corporate governance, improving communications with shareholders and facilitating their participation in shareholders' meetings.

Unlike the Sarbanes-Oxley Act, the Winter Report does not propose criminal measures for irregular conduct by directors but it does recommend studying the disqualification of directors who engage in fraudulent conduct.

In Europe, numerous reports were drafted on the governance of listed companies. The situation is complex, as evidenced by a study requested by the European Commission, published in March 2002, which revealed the existence of 35 codes of corporate governance in the EU. Since that report, new codes have been created (Austria in September 2002) and some existing ones have been revised (the Cromme Report in Germany in February 2002, Italy in July 2002, the Bouton Report in France in September 2002, and the review of the Olivencia Code in Spain by the Aldama Commission in January 2003).

## Spain

In Spain, the Law of Measures to Reform the Financial System includes stricter requirements in order to reinforce auditor independence and obliges listed securities issuers to have an audit committee comprising a majority of non-executive directors. The Law already transposes the main features of the Market Abuse Directive (see box in this chapter), particularly the measures aimed at preventing conflicts of interest at intermediaries, such as the strict separation of highly sensitive business areas (Chinese walls) and the express obligation that research units conform to transparency requirements and codes of conduct<sup>(22)</sup>. In Spain, there were major initiatives to amend corporate governance requirements (see next box).

(22) See section on the Law of Measures to Reform the Financial System in this chapter and the box "Main new features for entities under supervision introduced by the Law on Measures to Reform the Financial System" in chapter 8.

## **Corporate governance initiatives in Spain: Proposed Code for Mercantile Companies and the Aldama Report**

On 16 May 2002, Spain's Justice Ministry presented a proposal for a Mercantile Company Code, approved by the Mercantile Law section of the General Coding Commission. The proposal included an amendment and a full reorganisation of all types of mercantile companies.

On 19 July 2002, the Spanish Cabinet resolved to create a Special Commission to Promote Transparency and Security in Financial Markets and in Listed Companies, chaired by Enrique Aldama. The mandate was to study the degree of application by listed companies of the code of corporate governance drafted by the Olivencia Commission and to provide recommendations and guidelines for listed companies and the parties professionally involved with them.

The Aldama Commission's report, published on 8 January 2003, recommends a wide scope of self-regulation for listed companies, in line with the Olivencia Report. The features introduced by the Aldama Report refer to the fact that transparency should be considered a cornerstone of securities markets and of good corporate governance. It states that corporate governance information must not be voluntary, but that it must be governed by law, and subject to supervision and control, and that omissions and falsehoods must be punished. It proposes the creation of a basic transparency instrument—the corporate governance report—which must be drafted by the Board of Directors and submitted to the Annual Shareholders' Meeting. It also states that listed companies should use their web sites to inform, and communicate with, shareholders and investors.

Despite its emphasis on self-regulation, the Aldama Report does recommend legislative reforms of aspects where self-regulation may be insufficient. The Report states that directors' duty of loyalty is one of the factors of company law that most requires reform in order to precisely define the content of directors' duties in situations of conflicts of interest with the company itself. Regarding internal organisation, the Report suggests that it should be obligatory to have a Shareholders' Meeting Regulation and a Board Regulation, whose content must be decided by the company itself, in line with guidelines of the Olivencia and Aldama Reports. Lastly, the Report also contains recommendations for the parties professionally involved with listed companies (especially analysts, investment banks and rating agencies).

Throughout 2002, the European Union's major markets continued to take structural measures to improve their position in an increasingly competitive climate. The German stock exchange, Deutsche Börse, acquired 100% of Clearstream, the clearing and settlement services provider, while Euronext continued to develop and implement market merger agreements which had been approved in 2000 and 2001. The fragmentation and inherent complexity of the clearing and settlement systems continued to hinder effective integration of Europe's financial markets.

In Spain, a single holding company was created to integrate all the country's organised markets and registration, clearing and settlement systems in order to ensure that the markets work together and coordinate in adopting strategic decisions. Other initiatives included the extension of the Spanish public debt electronic trading system, MEFF's plan to become a central counterparty in the fixed-income securities market and the proposed creation of a second market in derivatives on commodities, specifically olive oil.

### Strategic steps in European Union markets

The strategies of the main European stock markets were once again focussed on enhancing their competitive position. Decisions were taken in unfavourable market conditions that intensified rivalry between the stock markets in their capacity as demutualised companies listed on their own markets. The proposed reform of the Investment Services Directive (see box) has a significant impact on the structure of Europe's markets.

Both Deutsche Börse AG and Euronext, two of Europe's main securities markets, plan to improve market efficiency through integration. However, their approaches are quite different; Deutsche Börse has focussed on creating a comprehensive service provider for the securities industry, encompassing everything from trading and market information to clearing, settlement and custody. Euronext, on the other hand, has focussed on mergers with other markets with the aim of providing a single efficient pan-European trading platform for a wide range of products.

In April, Deutsche Börse AG acquired the remaining 50% of Clearstream, the clearing and settlement system in which it already had a 50% stake. The German stock exchange also announced its segmentation in September 2002, dividing into two segments, each with different regulatory standards. The Domestic Standard segment will include securities of German companies, which will have to meet minimum transparency requirements. The Prime Standard segment will supersede the current Neuer Markt (which lists technological securities) and will have even stricter requirements<sup>(23)</sup>.

Euronext focussed on developing the merger agreements reached in 2001<sup>(24)</sup>. Following the acquisition in January 2002 of LIFFE, one of Europe's largest derivatives markets, the company decided to concentrate its derivatives trading in London,

(23) Additional transparency requirements include: quarterly publication of financial information, the use of International Accounting Standards, at least one presentation to analysts per year and the publication of *ad hoc* information in English about the company.

(24) Euronext was created in September 2000 by merging the Amsterdam, Brussels and Paris stock exchanges. In 2001 it launched a bid for LIFFE (London International Financial Futures Exchange) and reached an agreement to incorporate the Lisbon and Oporto stock exchanges (BVLP).

# 3

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using LIFFE's electronic trading platform. This enables Euronext to offer a wide range of products to customers, increase market liquidity and reduce costs to its members. Trading will be transferred to London during the course of 2003, following the necessary technical modifications to Euronext's trading systems.

Euronext also achieved harmonisation and technological integration of spot trading in the Lisbon and Oporto stock exchanges (BVLP)<sup>(25)</sup>. Since September, members of Euronext Lisboa have had access to all securities listed on the Euronext Paris, Brussels and Amsterdam spot markets. Euronext's mergers and alliance strategy was completed with the signing of an interconnection agreement with the Polish stock market and a cooperation agreement with the Tokyo stock exchange.

Another step taken by Euronext was to improve the flow of financial information from listed companies to the public. In January 2002, Euronext announced the launch of two new market segments, with voluntary membership for companies which trade in Euronext's markets. The Next-Economy segment groups companies in sectors related to the new economy, while the NextPrime segment encompasses the traditional securities sectors. All companies joining these segments must comply with additional financial transparency requirements<sup>(26)</sup>.

The London Stock Exchange did not undertake any further integration with the European markets. However, it did announce the joint creation with OM London<sup>(27)</sup> of a new equity derivatives business called EDX London.

## **Multilateral trading facilities (MTF) o sistemas organizados de negociación (SON)**

Competition in traditional markets has increased in the last few years due to the establishment of private electronic trading systems<sup>(28)</sup>, which generally offer cost advantages over traditional markets and provide institutional investors with fast, transparent trading at lower costs. The most significant developments in these systems have been in fixed-income securities markets, whereas expansion has been limited in Europe's equity markets, which already have efficient electronic trading systems. As a result, Swedish group OM (which owns the Stockholm stock exchange) decided to close the Jiway electronic trading platform. In contrast, MTS<sup>(29)</sup> has strengthened its position as the benchmark trading system for public debt in various European Union countries. In May, its Spanish organized trading system (MTS España SON) for fixed-income securities was included in the MTS network of systems (see next section).

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(25) BVLP (Lisbon and Oporto stock exchanges) is now known as Euronext Lisbon following the approval of the merger with Euronext.

(26) Transparency requirements will be adopted gradually. From January 2002, all financial information must be published in English and posted on the company's web site. The company will also be required to give at least two presentations to analysts per year and announce its programme of publications and meetings. The additional requirements as of January 2004 include the publication of quarterly reports and the adoption of International Accounting Standards.

(27) OM London is a subsidiary of the Swedish stock market group, OM, and handles the Scandinavian equity derivatives business.

(28) These electronic trading systems are known as Multilateral Trading Facilities (MTF). In Spanish legislation these systems are called «sistemas organizados de negociación (SON)».

(29) The MTS group includes the company EuroMTS, a London-based electronic fixed-income securities trading platform for wholesale investors, denominated in euros. At the end of 2002, this system traded the main public debt references of eleven European Union countries. EuroMTS has systems in nine of these countries, including Spain since May 2002.

## Investment Services Directives reform: new procedures for executing orders

On 19 November 2002, the European Commission released a draft Directive relating to investment services and regulated markets, aimed at updating the current Directive<sup>(1)</sup> to take account of the significant structural changes in the European Union's (EU) financial markets over the last few years. These modifications to the regulatory framework are vital in order to achieve a true internal market in financial services.

The proposal includes the following changes:

- Provision of an effective «single passport» for investment services firms, allowing them to offer financial services in other member countries, simply with the authorization of their home country.
- Establishment of a comprehensive regulatory framework for organised trading, encompassing stock exchanges, multilateral trading facilities (MTF) and investment services firms.
- Widening the scope of the Directive to include more investment services and financial instruments.

These changes should be made whilst maintaining EU market integrity and transparency and guaranteeing a high level of protection to investors in all member countries.

The new regulatory framework will introduce a significant new aspect as regards the execution of orders since investment firms will be able to execute orders internally, matching customers' orders 'in-house', without having to go through a regulated market. This will occur, for example, when the firm matches a customer's purchase order with another customer's sale order or with their own portfolio.

In order to justify this new process, the Commission cites its potential advantages for intermediaries and investors, including cost savings and ease of payment. However, it also considers that there are risks in internal matching which must be reduced and, therefore, this process can only occur when it is in the customer's best interests.

The proposed Directive considers that complete transparency is the best means of ensuring efficiency in investor transactions, regardless of where they are executed. Intermediaries must disclose the price and volume of all off-market transactions to the deepest market, as well as customer orders which were not executed according to the customer's requested terms. Additionally, intermediaries are subject to the best execution or best deal principle for customer orders. In any case, off-market transactions are subject to the customer's prior and express knowledge.

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(1) Directive 93/22/EEC, regarding investment services for marketable securities.

## Clearing and settlement systems

Clearing and settlement systems across Europe have been under close scrutiny from regulators, who recognize that it is vital to improve efficiency in processing cross-border operations in order to achieve effective integration of European Union securities markets.

Integration is hindered by the fact that in some cases there are ownership links between the clearing and settlement systems and the markets, as is the case with Clearstream and Deutsche Börse.

In July 2002, Euroclear, the international securities clearing platform linked to the Euronext group, decided to merge with CRESTCo, a British clearing system.

Various international initiatives<sup>(30)</sup> have been introduced to help the integration process. In addition to the proposed reform of the Investment Services Directive, the European Commission also consulted sector opinion (see box below).

## European Commission consultation on clearing and settlement

In May 2002, the European Commission held an open consultation on clearing and settlement with two main objectives:

- The removal of obstacles to national post-trading processes as regards technical requirements and market practices, taxation and regulation.
- The removal of distortions to competition and discriminatory treatment between entities offering similar clearing and settlement services.

The consultation sought sector opinion on the following areas:

- The best way to remove technical obstacles and legal barriers.
- How to ensure freedom and right of access to clearing and settlement systems.
- The need to create a common regulatory framework to adopt community directives, if necessary.

The responses<sup>(1)</sup> highlighted that there is no consensus on whether a single entity or several linked entities should carry out clearing and settlement processes. However, there was agreement that the system model and its structure should be determined by the markets and their participants and not the national authorities. With regard to regulation, there was no common stance on what the regulatory hierarchy for clearing and settlement rules would be, but the need to avoid excessive regulation was expressed.

The Commission will use the results of the consultation along with other public and private initiatives to establish a strategy report, which will continue to work towards attaining these objectives. A future document will set out the EU's general clearing and settlement policy and could include legislation to regulate the basic aspects of these activities, such as provision of basic services, investor protection, and solvency, and the risk coverage and management of the various systems.

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(1) 61 entities (mainly financial institutions) from 16 countries replied to the questionnaire.

## Integration of Spain's markets into one holding company

In 2002, the integration of Spain's financial markets and registration, clearing and settlement systems into one holding company was completed. This strategic decision was made in June 2001 by the governing companies of the Madrid, Barcelona, Bilbao and Valencia stock exchanges, MEFF-AIAF-SENAF Holding de Mercados Financieros, S.A., FC&M, Sociedad Rectora del Mercado de Futuros y Opciones sobre Cítricos and IBERCLEAR, Promotora para la Sociedad de Gestión de los Sistemas Españoles de Liquidación (owned by SCLV and the Bank of Spain).

This restructuring of the Spanish markets and settlement systems property regimen will pave the way for collaboration and integration with other international markets. At the same time, it will

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(30) Among these initiatives, the most significant include the work of the Giovannini group, The Group of Thirty and the organizations within the Committee of European Securities Regulators and the central banks.

also encourage more efficient resource management, which will have positive repercussions in terms of costs for members and end users of Spain's markets and systems.

In December 2001, a Seventeenth Additional Provision added to Spain's Securities Market Law<sup>(31)</sup> established the legal framework necessary to create the new holding company, which has been constituted in successive stages throughout 2002. In February, the company "Bolsas y Mercados Españoles, Sociedad Holding de Mercados y Sistemas Financieros, S.A." was officially created. The shares of the new company were subscribed to in exchange for shares in its shareholders in a capital increase approved by the Shareholder's Meeting in June 2002. Following a favourable proposal from the CNMV, the required authorization from the Spanish Cabinet was granted on 27 September, 2002.

## Other strategic initiatives in the Spanish markets

### *Electronic trading platforms in fixed-income securities de renta fija*

The extension of the MTS network to the Spanish market in 2002 is indicative of the widespread adoption of Europe-wide electronic trading in fixed-income securities. In April 2002, the Spanish cabinet approved the creation of the multilateral trading facility MTS ESPAÑA.SON. Spain's markets now have two multilateral trading facilities in fixed-income securities<sup>(32)</sup>: SENAF and MTS ESPAÑA.

MTS ESPAÑA commenced with outright trades in government debt securities listed in the Spanish government bond book-entry centre (CADE) and incorporated repos in February 2003. SENAF had offered this type of trade since September 2002.

As shown in table 3.1, public debt spot market trading grew significantly in 2002 in the wholesale segment. Electronic trading accounted for 68% of total trading, replacing «second-step» trading<sup>(33)</sup>. SENAF handled 47% of wholesale trading and MTS handled 25%, via its local platform and the group's pan-European platform. These figures show the increasingly important roles of both platforms in generating liquidity in the government bond market.

### *Latibex*

Latibex, the Madrid-based market in Latin American equities listed in euros, grew significantly in 2002, partially due to the incorporation of eight new securities: six Brazilian securities in the energy sector and two Chilean securities, one in the banking sector and one in distribution.

The main development with regard to the way the market operates was the incorporation on a remote basis of the members of Latin American stock exchanges which trade securities listed on Latibex, with the aim of improving market liquidity. The procedures, requirements and documentation to be presented by members of the home securities markets were established through an operating instruction<sup>(34)</sup>. The instruction also established that the activity of remote members will be limited to receiving and executing orders from those markets

(31) The amendment was passed in Law 24/2001, of 27 December, on Tax, Administrative and Labour Measures.

(32) Regulated as «sistemas organizados de contratación» (SON) under article 31.4 of the Securities Market Law.

(33) Bilateral trading.

(34) Operating instruction 9/2001: Admission of members of Latin American stock exchanges to the Latin American equity market

Table 3.1

**ELECTRONIC MARKET AND SECOND-STEP TRADING:  
SPOT MARKET TRADES IN BONDS AND DEBENTURES**

As % of total trading and millions of euros

	Electronic market					Second-step trading <sup>(5)</sup>	Total (millions of euros)
	SENAF <sup>(1)</sup>	MTS ESPAÑA <sup>(2)</sup>	Euro MTS <sup>(3)</sup>	Brokertec <sup>(4)</sup>	Total		
1995	54	–	–	–	54	46	386,733
1996	56	–	–	–	56	44	523,203
1997	51	–	–	–	54	49	454,553
1998	49	–	–	–	49	51	421,976
1999	41	–	1	–	42	58	468,340
2000	45	–	11	0	56	44	487,832
2001	43	–	16	1	59	41	743,313
2002	46	11	11	1	68	32	962,941

(1) SENAF began operations in 1999. The percentages given for previous years relate to the «blind broker» activity, which was integrated into SENAF.

(2) MTS ESPAÑA began operations on 27 May 2002.

(3) EuroMTS began operations in November 1999.

(4) Brokertec began operations in November 2000.

(5) Second-step trading refers to the system of bilateral trading between market members, either directly or through an intermediary.

Source: Spanish Treasury.

## MEFF

The good performance and growth potential of trading in futures on shares<sup>(35)</sup> led MEFF to reduce the registration fees for large-scale operations. This cost reduction is applied when transactions fulfil the following requirements: they have a minimal nominal value of 50 million euros and a minimum of 25 thousand contracts, and trading must be bilateral between two accounts in MEFF RV.

Additionally, MEFF intends to become a central counterparty, firstly for clearing and settlement of repos and subsequently for all fixed-income securities trades. This decision was based on the amendments to the Securities Market Law introduced by the Law on Measures to Reform the Financial System, by which the governing company of an official secondary futures and options market can act as a central counterparty in clearing and settlements of contracts which it did not issue (see box in chapter 7).

## Securities Clearing and Settlement Service (SCLV)

On 28 January 2002, securities listed on AIAF were included in settlement by Iberclear using the CADE platform. This occurred following the redenomination in euros of the remaining AIAF securities which were not already in euros (both book entries and physical securities).

As a result, from that date all securities traded in AIAF follow the CADE procedures, in similar conditions to securities issued by the Treasury and the regional governments. This means that trades in these securities can be settled on a single trade basis (gross settlement) and in real time. Financial institutions now have a wider range of public debt securities which can be used as collateral in credit operations with the European System of Central Banks, as well as intraday liquidity in purchase and sale operations.

(35) According to MEFF's estimates, the volume of futures on shares traded OTC was, at least, similar to those traded in MEFF, due to the registration costs. In 2002, trading in futures on shares increased 44%, exceeding 12.5 million contracts.

## **Olive oil futures market**

In 2002, the CNMV continued to study the project to develop an olive oil futures market (MFAO). The legal process for its creation is now at an advanced stage<sup>(36)</sup>. Once this market is operational, it will be Spain's second market in derivatives on commodities<sup>(37)</sup>.

One of the main novelties of this market is the admission, as trading members, of companies linked to the underlying asset (olive oil producers, merchants, intermediaries and distributors). This aspect has been key to the success of international markets in commodities derivatives. Such members are only allowed to trade for their own account and must fulfil the solvency, specialist and professional requirements laid down by the CNMV. They are also required to periodically publish financial statements.

Another feature of this market is that members can access it via the Internet, which will keep costs low. Secure internet access has been specially guaranteed.

Reliable benchmark prices in the underlying market are crucial for the efficient formation of future contract prices. The project guarantees the quality and quantity of the spot market information using the POOL system, promoted by the Fundación para la Promoción y Desarrollo del Olivar y del Aceite de Oliva, which offers daily information on the purchase and sale prices for different olive oil categories in transactions made by entities representing approximately half of Spain's total production.

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(36) Ministerial Order ECO/3235/2002, dated 5 December 2002, setting out the special features applicable to the secondary official olive oil futures and options markets was published at the end of 2002. At the beginning of 2003, CNMV Circular 1/2003 set out the special requirements for industrial members and regulated the accounting and statistical information required from the governing companies of these markets.

(37) Spain's first market in derivatives on commodities was the FC&M citrus futures market.

# 4

## MARKET ACTIVITY, ISSUERS AND SECURITIES MARKET ENTITIES

The markets' performance in 2002 was marked by the uncertainty caused by postponement in the expectations of recovery in the major markets (principally the US and Germany), the financial scandals in some major corporations (Enron, Global Crossing, WorldCom, Vivendi, etc.) and the risk of an attack on Iraq.

In Spain, not all the markets performed negatively. While equity trading was stable and issues slumped, issues and trading in private fixed-income increased significantly. Trading in contracts on MEFF decreased, but there was greater activity in foreign derivatives channelled through MEFF, in line with the use of securities from other markets in the Monetary Union as «benchmark assets».

Despite the financial uncertainty, the number of entities registered with the CNMV again increased significantly. The number of EU investment service firms notifying their intention of operating in Spain increased significantly. The number of collective investment schemes increased due to SIMCAVs since the number of mutual funds fell.

### Secondary market activity

#### Stock exchanges

The Spanish bourse was not immune to the sharp fall in international stock markets, but it outperformed other European stock markets: the Ibex-35 fell 28.1%, compared with losses of over 30% in most of Europe's leading markets (see box). Equity trading remained at levels similar to 2001 (see table 4.1).

#### Stock market performance in 2002

For the third consecutive year, the world's main stock markets fell sharply, particularly in Europe: in the US, the Dow Jones fell by 16.8% in 2002 and the Nasdaq by 31.5%; in Japan, the Nikkei was down 18.6%; and, in Europe, the Euro Stoxx 50 fell 37.3%. Together with the markets in Milan (Mib-30: 26.0%) and London (FT-100: 24.5%), the Spanish stock markets had the best performance in Europe: the Ibex-35 fell by 28.1%, the IGBM (Madrid Stock Exchange General Index) by 23.1% and the Nuevo Mercado by 47.3% (Nasdaq -31.5% and the Nasdaq Europe 64.5%).

The stock markets lost ground steadily throughout 2002, except in October and November. The decline in the first three quarters was marked by various factors: i) the uncertainty about the world economic recovery; ii) the negative surprises in corporate earnings; iii) doubts as to the veracity of major corporations' accounting and financial information; iv) the heightened geopolitical risk due to the potential US attack on Iraq; and v) instability in some Latin American countries. The moderate recovery by the markets in October and November reflected the lower geopolitical risk and improved expectations in Brazil following the elections in that country. The economic projections remained poor, triggering a further cut in interest rates in the US, which was welcomed by the markets.

The further decline in the stock markets in December 2002 was due to the same factors that had driven the decline in previous months and to new factors, including the worsening geopolitical situation as a result of the conflict with North Korea and the rise in oil prices due to the reduction in supplies from Venezuela. The sizeable interest rate cut in the European Monetary Union did not have a positive effect on European equities since it had already been discounted by the market.

In this context, Europe's stock markets underperformed those of the US since they were hurt by a weaker economic situation, especially in Germany. The sectors most affected were technology, energy and telecommunications. In general, the performance of the Spanish stock markets was shaped by the same factors as the main international markets, particularly the European markets. The main difference is that Spain's markets were especially affected by the situation in Argentina and Brazil, which had a direct impact on the largest companies in Spain's indexes.

The sharpest falls in the General Madrid Stock Exchange, by sector, were in Communication and IT Services (41.6%), Financial Services (26.3%) and Energy (20.3%), due to the slump in European banking and telecommunications share prices. The greatest gains were in Construction (+4.2%) and other related subsectors (Real Estate, Construction Materials), in line with the dynamic performance of the construction business throughout 2002. The Beverages & Tobacco and Transport & Distribution subsectors also reported considerable increases.

*Table 4.1*  
**TRADING IN THE SECONDARY AND DERIVATIVES MARKETS**  
**SUPERVISED BY THE CNMV**

	Trading <sup>(1)</sup>		
	2001	2002	Change (%)
<b>Markets</b>			
<b>Equities</b>	<b>444,302</b>	<b>444,936</b>	<b>0.1</b>
SIB	440,539	439,721	-0.2
Latibex	66	230	250.0
Other	3,697	4,985	34.8
of which SIM, SIMCAV	3,467	4,419	27.5
<b>Fixed-income</b>	<b>57,463</b>	<b>71,140</b>	<b>23.8</b>
Electronic market	2,384	2,046	-14.2
Other	55,079	69,094	25.4
<b>Warrants<sup>(2)</sup></b>	<b>1,636</b>	<b>1,232</b>	<b>-24.7</b>
<b>AIAF</b>			
<b>Fixed-income</b>	<b>140,810</b>	<b>264,977</b>	<b>88.2</b>
Commercial paper	97,385	204,887	110.4
Other securities	43,425	60,090	38.4
<b>MEFF</b>			
<b>Interest rate contracts</b>	<b>291</b>	<b>54</b>	<b>-81.3</b>
<b>Share and index contracts</b>	<b>36,319</b>	<b>35,853</b>	<b>-1.3</b>
<b>Activity in other markets<sup>(3)</sup></b>	<b>3,236</b>	<b>4,199</b>	<b>29.8</b>

<sup>(1)</sup> Bourses and AIAF: Million euros. MEFF: Thousands of contracts.

<sup>(2)</sup> Since 11/11/02, warrants are traded in a specific new segment of the electronic market.

<sup>(3)</sup> Trading of products listed on other European markets, which MEFF members and customers can access via the securities company, MEFF Euroservices, S.V. (EuroMEFF).

Trading in the fixed-income segment increased substantially in 2002 due to strong growth in Cataluña regional government bond issues, which represented over 90% of total trading. Warrants trading fell significantly due to the sharp drop in the equity warrant sector, which fell by almost €400 million compared to 2001.



## AIAF

Fixed-income trading on AIAF grew by 88% on 2001. This was related to primary market performance, since outstanding issues rose by 27%, with a significant increase in long-term issues, particularly in mortgage bonds, asset-backed bonds and preference shares. The most traded securities, which were the main growth drivers, were commercial paper (especially repos) and, to a lesser extent, mortgage bonds and matador bonds. Conversely, nonconvertible bond trading fell. As a result, AIAF trading was concentrated in commercial paper (77% of the total).

Table 4.2  
ISSUERS IN THE SECONDARY AND DERIVATIVES MARKETS  
SUPERVISED BY THE CNMV

	N.º of issuers <sup>(1)</sup>		
	2001	2002	Change (%)
<b>Markets</b>			
<b>Equities</b>	<b>2,512</b>	<b>3,024</b>	<b>20.4</b>
SIBE	143	141	-1.4
Latibex	17	23	35.3
Other	2,352	2,860	21.6
of which SIM/SIMCAV	2,255	2,749	21.9
<b>Equities excluding SIM/SIMCAV</b>	<b>257</b>	<b>275</b>	<b>7.0</b>
<b>Fixed-income</b>	<b>88</b>	<b>75</b>	<b>-14.8</b>
Electronic market	71	56	-21.1
Other	17	19	11.8
<b>Warrants</b>	<b>7</b>	<b>13</b>	<b>85.7</b>
<b>AIAF</b>			
<b>Fixed-income</b>	<b>206</b>	<b>232</b>	<b>12.6</b>
Commercial paper	43	49	14.0
Other securities	179	200	11.7

<sup>(1)</sup> As at 31 December.

## MEFF

Trading in 10-year notional bond futures<sup>(38)</sup> on MEFF RF<sup>(39)</sup> continued to fall, as it has done since Spain joined the European Monetary Union. Trading in products pegged to the Ibex-35 was also down on last year (8.2%), despite the increased volatility in the spot market.

Total trading in derivatives on individual shares remained stable compared to 2001. Trading in stock futures rose sharply (+44.25%), whereas trading in stock options fell (17.35%).

MEFF activity increased in other markets (+26.76%). The number of contracts traded far exceeded four million in 2002 due to the increase in trading in products on European indexes. More specifically, the DJ Euro Stoxx 50 appears to be well on its way to become the benchmark index for the euro zone: almost one million more contracts were traded in 2002. Trading in derivatives pegged to German debt on Eurex via MEFF Euroservices remained high, although it fell slightly compared to 2001.

(38) The only product currently being traded on this market.

(39) MEFF renta fija.

## Securities issues

### Issues and public offerings

The amount of issues of securities (fixed-income and equities) and public offerings of securities registered at the CNMV rose by less than 2%, basically due to the increase in fixed-income, to almost €80 billion (see table 4.3). The number of fixed-income issues filed rose slightly on 2001. There was a notable increase in the issue of bonds, debentures and other long-term securities. Commercial paper programmes increased slightly compared to the previous year.

Table 4.3

#### ISSUES AND PUBLIC OFFERINGS REGISTERED

Amounts in million euros

	N.° of files		Amount <sup>(1)</sup>	
	2001	2002	2001	2002
<b>Total fixed-income and equities</b>	<b>225</b>	<b>212</b>	<b>85,320</b>	<b>86,733</b>
<b>Fixed-income</b>	<b>158</b>	<b>165</b>	<b>73,818</b>	<b>79,136</b>
Commercial paper <sup>(2)</sup>	55	58	44,029	44,456
Other	103	107	29,790	34,680
<b>Equities</b>	<b>67</b>	<b>47</b>	<b>11,501</b>	<b>7,597</b>
Capital increases <sup>(3)</sup>	57	43	9,468	4,692
Secondary offerings	8	4	1,878	2,905
Primary offerings	2	0	155	0
<b>Other issues</b>	<b>1,303</b>	<b>1,169</b>	<b>7,573</b>	<b>3,997</b>
<b>Warrants</b>	<b>1,219</b>	<b>1,135</b>	<b>4,817</b>	<b>2,339</b>
<b>Other financial contracts<sup>(4)</sup></b>	<b>84</b>	<b>34</b>	<b>2,757</b>	<b>1,658</b>
<b>Total</b>	<b>1,528</b>	<b>1,381</b>	<b>92,893</b>	<b>90,812</b>

<sup>(1)</sup> Effective amount offered in the domestic tranches only.

<sup>(2)</sup> The effective amount coincides with the nominal amount.

<sup>(3)</sup> The total for 2001 includes the Arcelor capital increase registered on 21/12/2001, linked to the tender offer for Aceralia, that was vetted by the CNMV on 03/01/2002.

<sup>(4)</sup> Includes certificates.

The amount of issues and public offerings registered in the equities segment fell to €7.7 billion (33.2%). The number of issues filed fell slightly. The number of capital increases without waiver of the pre-emptive subscription rights halved, although it should be noted that this is due to a single operation in 2001 which accounted for almost half of the total in that year<sup>(40)</sup>. There were no capital increases via primary offerings in 2002 and there were four secondary offerings (the same number as in 2001). The Gas Natural secondary offering, which exceeded €2 billion, and the Enagas IPO were the most notable because of their volume (see table 4.4).

### Other issues registered with the CNMV

Warrant issuing slowed significantly in 2002 in terms of amount, which fell by over 50% (see table 4.3). The number of issues fell less sharply, while the number of new issuers rose from seven in 2001 to eight in 2002. Three entities issued 68% of warrants, which were still mainly call warrants on shares of listed shares

The amount of other financial contracts issued in 2002 fell considerably (39.8%), as did the number of issues filed. The number of issuers fell from 23 in 2001 to 12 in 2002, and there was only one issue of certificates, compared to eight in 2001.

(40) The capital increase performed by Arcelor, which totalled €4.6 billion.

*Table 4.4*  
**PUBLIC OFFERINGS REGISTERED**

*Amounts in million euros*

<b>Company</b>	<b>Amount<sup>(*)</sup></b>	<b>Domestic</b>	<b>International</b>	<b>IPO</b>	<b>Offering type</b>
Zeltia	2.4	2.4	0	No	Secondary
Gas Natural	2,008.3	2,008.3	0	No	Secondary
ENAGÁS	917.1	573.2	343.9	Si	Secondary
Banesto <sup>(**)</sup>	402.0	321.6	80.4	No	Secondary
<b>Total</b>	<b>3,329.8</b>	<b>2,905.5</b>	<b>457.1</b>		

<sup>(\*)</sup> Includes the volume offered in the domestic and international tranches.

<sup>(\*\*)</sup> Primary public offering of warrants for a capital increase at Banesto registered simultaneously by SCH. The effective amount of the increase, identical to the nominal amount, totalled €165.8 million, €133 million of which corresponded to the domestic tranche, and the rest corresponded to the international tranche.

On 11 November, a new trading unit was inaugurated within the electronic market for warrants, certificates and other types of deposits. The unit's objective is to achieve greater speed and transparency in operations involving such products, and to stimulate growth in this market.

## **Securities market entities**

### **Authorisations**

In line with previous years, the CNMV continued to authorise and register a sizeable number of entities. Over 1,500 entities were registered and nearly 700 were removed from the register in 2002, mostly SIMCAVs. There were fewer Spanish investment services firms registered, but there were more foreign investment services firms operating in Spain, both via subsidiaries and through free provision of services. The greatest changes in entity registration were in agents and representatives of investment services firms.

At 2002 year-end, there were nearly 14,000 entities registered with the CNMV (table 4.5).

### **Changes in control of registered entities**

There were changes in control of a total of nine entities in 2002, mainly IIC management companies. Foreign financial entities acquired four of them and the other five were acquired by Spanish entities. In line with 2001, there seem to have been fewer take-overs and less involvement in them by foreign groups.

### **Investment services firms**

#### **Spanish investment services firms**

In 2002, six brokers registered with the CNMV, five of which were newly-created (see tables 4.5 and 4.6) and one of which was formerly a portfolio management company. Ten institutions were removed, so the number of Spanish investment services firms fell slightly.

#### **Cross-border transactions by Spanish investment services firms**

In 2002, no Spanish investment services firms applied for EU passports to open branches in other countries in the European Union, whereas ten Spanish institutions opted for the free provision of services.

Table 4.5  
ENTITIES REGISTERED AND REMOVED IN 2002

Entity type	Entities registered at 31/12/01	Registrations	Removals	Entities registered at 31/12/02
<b>Investment services firms</b>	<b>7,217</b>	<b>1,086</b>	<b>780</b>	<b>7,523</b>
<b>Spanish</b>	<b>146</b>	<b>12</b>	<b>13</b>	<b>145</b>
Broker-dealers	48	3	0	51
Brokers	57	6	4	59
Portfolio management companies	41	3	9	35
<b>Foreign</b>	<b>579</b>	<b>113</b>	<b>11</b>	<b>681</b>
Branch	9	7	0	16
Free provision of services	570	106	11	665
<b>Representatives</b>	<b>6,492</b>	<b>961</b>	<b>756</b>	<b>6,697</b>
<b>Collective investment:</b>	<b>4,601</b>	<b>927</b>	<b>180</b>	<b>5,348</b>
<b>Mutual funds</b>	<b>2,472</b>	<b>247</b>	<b>115</b>	<b>2,604</b>
FIM	2,266	246	91	2,421
FIAMM	201	1	24	178
FII	5	0	0	5
<b>Investment companies</b>	<b>1,670</b>	<b>622</b>	<b>23</b>	<b>2,269</b>
SIM	172	1	20	153
SIMCAV	1,498	620	3	2,115
SII	0	1	0	1
<b>SGIIC</b>	<b>124</b>	<b>2</b>	<b>3</b>	<b>123</b>
<b>Depositories</b>	<b>165</b>	<b>5</b>	<b>9</b>	<b>161</b>
<b>Foreign UCITS<sup>(1)</sup></b>	<b>170</b>	<b>51</b>	<b>30</b>	<b>191</b>
<b>Venture capital:</b>	<b>85</b>	<b>21</b>	<b>0</b>	<b>106</b>
FCR	25	6	0	31
SCR	40	11	0	51
SGECR	20	4	0	24
<b>Securitisation:</b>	<b>9</b>	<b>0</b>	<b>1</b>	<b>8</b>
SGFT	9	0	1	8
<b>Total</b>	<b>11,912</b>	<b>2,034</b>	<b>961</b>	<b>12,985</b>

<sup>(1)</sup> Undertakings for Collective Investment in Transferable Securities.

### Foreign investment services firms

In 2002, 105 investment services firms based in other EU member states notified the CNMV of their intention to provide investment services in Spain under the free provision of services, increasing to 763 the total number of institutions that have applied for this process since the entry into force of the Investment Services Directive in January 1996. In 2002, three institutions opted to provide services via branches in Spain, increasing to 19 the number of investment services firms registered with the CNMV under this heading (see table 4.5).

### Collective investment schemes (IICs)

#### Securities investment

The assets managed by securities investment funds decreased in 2002<sup>(41)</sup> for the third consecutive year. Unlike the last two years, the number of funds registered with the CNMV also fell (see

(41) The assets managed by securities investment funds (FIM and FIAMM) amounted to €175 billion in December 2002, i.e. a 3.3% decrease on December 2001. The number of investors fell by approximately 364,000 to 7,090,000. As in 2001, FIMs performed differently from FIAMMs: FIMs lost assets (11.7%) and investors (8.2%), whereas FIAMMs registered rising assets (+21.8%) and investors (+7.1%).

Table 4.6

**REGISTERED ENTITIES AND CONTROL GROUPS:  
INVESTMENT SERVICES FIRMS, SGIICs AND SGECRs. 2002**

<b>Broker-dealers</b>	<b>Control group</b>
<u>Removals</u>	
Inversis, SV, S.A.	Caja Madrid and Banco Zaragozano
Iberagentes Activos, SV, S.A.	Banco Popular and BIL
Credit Lyonnais Securities Europe, SV, S.A.	Credit Lyonnais
SG Securities Madrid, SV, S.A.	Société Générale
<b>Brokers</b>	<b>Control group</b>
<u>Registrations</u>	
BBVA PARTNERS Alternative Investment, AV, S.A.	BBVA
Abante Asesores Distribución, AV, S.A.	Independiente
Credit Agricole Asset Management Distribución, AV, S.A.	Credit Agricole
Plus Ultra Valores, AV, S.A.	Plus Ultra
Gefonsa, S.A., AV.	Caja Caminos (formely de Gefonsa, SGC)
Swiss Life Asset Management España, AV, S.A.	Swiss Life
<u>Removals</u>	
Andino, AVB, S.A.	Fibanc
Robert Fleming Spain, AV, S.A.	J.P. Morgan Chase
<b>Portfolio management companies</b>	<b>Control group</b>
<u>Removals</u>	
Gestefin Patrimonios, S.A., SGC	Independent
Global Index, SGC, S.A.	Independent
Gerencia de Valores, SGC, S.A.	Independent
Gefonsa, SGC, S.A.	Caja Caminos (transformation into a broker)
<b>Investment services firms from other EU countries</b>	<b>Control group</b>
<u>Registrations</u>	
Axa Investment Managers SG limited, branch in Spain	Axa
Fidelity Investment International, branch in Spain	Fidelity
KBC Securities Product Brussels, branch in Spain	KBC
<b>IIC management companies</b>	<b>Control group</b>
<u>Registrations</u>	
Abante Asesores Gestión, SGIIC, S.A.	Independent
Belgravia Capital XXI, SGIIC, S.A.	Independent
Venture Gestión, S.A., SGIIC	Independent
Interdin Gestión, SGIIC, S.A.	Caja Burgos and Caja Ávila
Asesores y Gestores Financieros Fondos, SGIIC, S.A.	Banque Cantonale Vaudoise and independent companies
<u>Removals</u>	
Iberagentes Fondos, SGIIC, S.A.	Caja Madrid y Caja de Salamanca y Soria
Global Gestion, SGIIC, S.A.	Credit Suisse
Ges-BM, SGIIC, S.A.	Espirito Santo
Axa Gestión, SGIIC, S.A.	Axa
<b>ECR management companies</b>	<b>Control group</b>
<u>Registrations</u>	
3R Management, SGECR, S.A.	Independent
Caixa Capital Risc, SGECR, S.A.	Caixa
Clave Mayor, S.A.	Independent

Table 4.7

**CHANGES IN CONTROL AT INVESTMENT SERVICES FIRMS, SGIICs AND SGECRs IN 2002**
**Take-overs by foreign financial institutions**

Name	Institution or group	Type	Buyer
Consors		Broker-dealer	BNP PARIBAS
Benkers		Broker	Beta Capital Meespierson
		SGIIC	
Chase Manhattan Ahorro		SGIIC	BNP PARIBAS
Multigestores		Broker	AFINA (Commerzbank and independent companies)

**Changes in control and take-overs by residents or Spanish institutions**

Name	Firm or group	Type	Buyer
Gesuris		SGIIC	Independientes
Iberagentes Gestión		SGIIC	Banco Popular
B.I. Capital		Broker	Independent
		SGIIC	
Aurea		SGIIC	Banco de Madrid
Gesdiner		SGIIC	Bankpyme

Table 4.8

**FOREIGN INVESTMENT SERVICES FIRMS  
BY COUNTRY OF ORIGIN**

Country	No. of investment services firms	% of total
<b>Free provision of services</b>	<b>763</b>	<b>100.00</b>
United Kingdom	540	70.77
France	56	7.34
The Netherlands	28	3.67
Austria	28	3.67
Ireland	25	3.28
Germany	25	3.28
Belgium	16	2.10
Denmark	8	1.05
Norway	8	1.05
Sweden	7	0.92
Luxembourg	6	0.79
Greece	6	0.79
Portugal	4	0.52
Italy	3	0.39
Finland	3	0.39
<b>Branches</b>	<b>19</b>	<b>100.00</b>
United Kingdom	13	68.42
France	2	10.53
Bélgium	2	10.53
Portugal	1	5.26
Germany	1	5.26

table 4.5). Although 115 newly-created FIMs and three FIAMMs were registered in 2002, the total number of removals (178) far outweighed the total number of registrations, so the number of investment funds on the books (2,544) fell 2.3%. Conversely, the number of registered investment companies increased to 2,779 (2,646 SIMCAV, 131 SIM and two SII) due to the fast pace at which new SIMCAVs were created<sup>(42)</sup>.

With regard to the investment approach of funds created in 2002, there was a sharp decline in equity funds, except in guaranteed funds. The mixed categories also had less weighting. In this connection, the new tax treatment may accentuate this tendency in the future since investors will be able to change the composition of their portfolio, dividing it between fixed-income and equities according to their preferences at any given moment, without incurring taxes.

In 2002, the transformation of funds and the creation of new IICs under the new fund types introduced in 1998 as a result of the reform of the Securities Market Law continued. In particular, the number of FIMs registered as funds of funds (FIMF) increased substantially due to newly-created funds in the year (31 of the 115 registered FIMs) and the conversion of existing funds. At 2002 year-end, 272 FIMFs, 31 FIMPs (seven more than in 2001) and 60 FIMS were registered with the CNMV.

*Cuadro 4.9*  
**NEW FIM BY INVESTMENT APPROACH**

Type of FIM	2001		2002	
	Number	% of total	Number	% of total
Short-term fixed-income	27	10.98	16	13.91
Long-term fixed-income	3	1.22	2	1.74
Mixed fixed-income	3	1.22	0	0
International fixed-income	6	2.44	5	4.35
International mixed fixed-income	12	4.88	6	5.22
Mixed equities	6	2.44	2	1.74
Spanish equities	8	3.25	8	6.96
International mixed equities	21	8.54	3	2.61
Euro equities	19	7.72	3	2.61
International equities	61	24.80	17	14.78
International equities Europe	-	-	0	0
International equities Japan	-	-	1	0.87
International equities European Union	-	-	3	2.61
International equities Emerging countries	-	-	1	0.87
International equities Others	-	-	12	10.43
Guaranteed fixed-income	42	17.07	11	9.57
Guaranteed equities	23	9.35	25	21.74
Global funds	15	6.10	17	14.78
<b>Total</b>	<b>246</b>	<b>100.00</b>	<b>115</b>	<b>100.00</b>

### *Mutual fund mergers*

The number of applications for fund mergers increased significantly in 2002 due to the need to rationalise the offering. These merger operations are the main reason for the lower number of mutual funds registered. The CNMV registered 110 mergers in 2002 (compared to 47 in 2001) that

(42) The number of SIMCAVs increased from 2,115 to 2,646, boosting the number of shareholders in these collective investment schemes from 254,000 to 306,000. However, assets remained at a similar level to 2001 (around €16.9 billion).

affected 280 funds (170 funds were absorbed). At 31 December, 45 more mergers had been authorised and were pending registration; this will cause 85 more removals from the register. At that date, 15 mergers affecting 25 funds were pending authorisation.

### **Real estate investment**

A second real estate investment company (SII) was registered in December 2002; it has a share capital of €9,015,200. Its shares are not listed and its sole corporate purpose is to invest in urban buildings for lease with the commitment of allocating at least 50% of assets to student homes and residences, and retirement homes. Three new projects were authorised. Therefore, there will shortly be five SIIs registered with the CNMV. There were no changes in the registration of mutual funds in 2002.

### **IIC management companies (SGIICs)**

The number of SGIICs registered increased by one since five new SGIICs were registered (mainly independent groups) and four were removed (three from banking groups and one from an insurance company)<sup>(43)</sup>.

### **Foreign IICs**

A considerable number of new foreign IICs (UCITS<sup>(44)</sup>) were registered to be marketed in Spain (40, compared to 51 in 2001). At 2002 year-end, 219 UCITS were registered with the CNMV. The bulk of the new institutions were domiciled in Luxembourg, Ireland and France and, for the first time, an UCITS registered in The Netherlands was entered in the register.

*Table 4.10*  
**UCITS BY COUNTRY OF ORIGIN**

<b>Country</b>	<b>Number of UCITS</b>	<b>% of total</b>
Luxembourg	158	72.15
Ireland	28	12.79
France	19	8.68
Germany	9	4.11
United kingdom	4	1.83
The Netherlands	1	0.46
<b>Total</b>	<b>219</b>	<b>100.00</b>

### **Venture capital firms**

In line with previous years, the number of registrations by venture capital firms with the CNMV continued to rise, even though it is voluntary. In 2002, nine venture capital companies (SCR), three funds (FCR), three management companies (SGEGR), two from independent groups and one from a company belonging to a lending institution registered with the CNMV.

(43) See table 4.6.

(44) Undertakings for Collective Investment in Transferable Securities.



# 5

## ISSUERS'S DISCLOSURE

In the area of periodic disclosure, the CNMV continued to place special emphasis on companies obtaining clean auditors' report and making them available to the public promptly and completely. The CNMV also considered it positive that listed companies supply information about the degree of adoption of, and compliance with, the Code of Corporate Governance, even though such disclosure is not obligatory.

The CNMV was actively involved in the new European regulation on transparency; for example, the Prospectus Directive (currently in the last phase) and the future Transparency Directive (in the initial phase; see next box). Those Directives and other initiatives envisaged by the Financial Services Action Plan will have a direct impact on Spanish primary markets and regulations.

In 2002, the CNMV also participated in other key areas of primary markets related to the development of new products, such as asset-backed securities, warrants and atypical financial contracts.

### **Periodic disclosure by listed companies**

In 2002, the CNMV changed the format of the periodic disclosures that must be filed by listed companies by establishing a single encryption and electronic signature system: CIFRADO/CNMV. In order to facilitate adaptation, this measure will become final on 1 July 2003. It will simplify the disclosure procedure, benefiting the issuers themselves and investors, and it will maintain the legal security of communications with the CNMV.

### **Financial statements and auditors' reports**

The CNMV believes it is vital for issuers to present clean auditors' reports about their financial statements, so that investors and other users can base their decisions on financial statements that, in all respects, represent a true and fair view of the company's net worth, financial situation and earnings. Table 5.1 shows that 80%-85% of audits received carry a favourable opinion.

In line with previous years, the CNMV focused initially on ensuring that auditors' reports were made available to the public promptly and completely, and subsequently, if required, it requested issuers to provide information about the reasons for the auditors' qualifications and the plans to resolve them and to elaborate on the information disclosed in the financial statements. In particular, the CNMV's main measures were as follows:

- A total of 242 demands were issued to companies in connection with their 2001 auditors' report; 46 related to qualified auditors' reports and 49 were requests for additional information not contained in the notes to financial statements and/or explanations of discrepancies between the notes to financial statements and other periodic disclosures.
- Trading in the securities of European Paper and Packaging Investment Corporation, S.A. (in liquidation) continued to be suspended following the auditor's denial of opinion regarding its financial statements. On the other hand, the precautionary suspension of trading in the securities of Grupo Inmocaral, S.A. (former Grupo Fosforera, S.A.) was lifted since the causes for that suspension were resolved.

- The projections in the management reports contained in the financial statements were included in the analysis of the degree of compliance with expectations and/or of projections of issuers registered with any of the CNMV's registers (as periodic public information, significant events, issue prospectuses, etc.).
- The following information was made available to the public in the CNMV's web site: the full text of the auditors' reports of issuers, responses to demands and requests for amplification of the information in the annual report (Table 5.2 details the types of responses received in connection with qualified auditors' reports), special auditors' report<sup>(45)</sup> and the CNMV's 2001 annual report on auditors' reports of issuers.

*Table 5.1*  
**AUDITS OF ISSUERS FILED WITH THE CNMV<sup>(1)</sup>**

	1999		2000		2001	
	N.º	%	N.º	%	N.º	%
<b>1. AUDITORS' REPORTS FILED WITH THE CNMV</b>						
<b>Total auditors' report filed</b>	<b>614</b>	<b>100.0</b>	<b>651</b>	<b>100.0</b>	<b>657</b>	<b>100.0</b>
– Individual financial statements	397	64.7	423	65.0	429	65.3
– Consolidated financial statements	217	35.3	228	35.0	228	34.7
– Special reports under Ministerial Order 30/9/92	69		91		70	
<b>2. AUDITORS' OPINION</b>						
– Clean opinion	541	88.1	556	85.4	563	85.7
– Qualified opinion	73	11.9	95	14.6	94	14.3
<b>3. TYPES OF QUALIFICATION</b>						
– No. of auditors' report with exceptions	43	7.0	64	9.8	45	6.8
– No. of auditors' report with uncertainties, etc.	37	6.0	36	5.5	49	7.5
– No. of auditors' report with limitations	10	1.6	7	1.1	15	2.3
<b>4. EFFECTS OF EXCEPTIONS</b>						
<b>ON EARNINGS</b>						
– No. of auditors' report with positive effect	16	2.6	25	3.8	18	2.7
– No. of auditors' report with negative effect	20	3.3	31	4.8	19	2.9
<b>ON NET WORTH</b>						
– No. of auditors' report with positive effect	22	3.6	28	4.3	16	2.4
– No. of auditors' report with negative effect	4	0.7	3	0.5	1	0.2
<b>5. NATURE OF UNCERTAINTIES ETC.</b>						
– Going concern	14	2.3	9	1.4	8	1.2
– Tax contingencies	8	1.3	11	1.7	8	1.2
– Recovery of assets	12	2.0	15	2.3	12	1.8
– Effect of devaluation of Argentinean peso	0	0.0	0	0.0	11	1.7
– Litigation	8	1.3	9	1.4	7	1.1
– Denial of opinion or adverse opinion	2	0.3	2	0.3	1	0.2
– Other uncertainties	7	1.1	15	2.3	15	2.3

(1) Data from the CNMV's Public Audit Register. They relate to auditors' report on financial statements and special reports filed with the CNMV through 31 December each year. Percentages calculated with respect to the total number of auditors' reports.

(45) Special auditors' report are aimed at updating qualified audit information. The update is done as of the end of the first half of the year after the audit is filed.

Table 5.2

**DEMANDS ISSUED TO LISTED COMPANIES IN 2002 IN CONNECTION  
WITH THE AUDIT OF THE 2001 FINANCIAL STATEMENTS**

**Companies with qualified auditors' report which remedied the situation or have established a plan for doing so**

<b>Issuer</b>	<b>Market/Segment</b>
ACCIONA	Electronic market
CAMPOFRIO ALIMENTACIÓN	Electronic market
EADS	Electronic market
FUNESPAÑA <sup>(1)</sup>	Electronic market
GLOBAL STEEL WIRE	Electronic market
GAMESA CORPORACIÓN TECNOLÓGICA	Electronic market
SOGECABLE <sup>(1)</sup>	Electronic market
SOL MELIÁ	Electronic market
TABLEROS DE FIBRAS	Electronic market
UNIÓN FENOSA <sup>(1)</sup>	Electronic market
SERVICE POINT SOLUTIONS <sup>(1)</sup>	Nuevo Mercado
COMPAÑIA DE INVERSIONES Cinsa <sup>(1)</sup>	Open outcry market
IBÉRICA DE MANTENIMIENTO INDUSTRIAL	Open outcry market
LIBERTAS 7 <sup>(1)</sup>	Open outcry market
OROZCO <sup>(1)</sup>	Open outcry market
PASCUAL HERMANOS <sup>(1)</sup>	Open outcry market
INTERECONOMÍA CORPORACIÓN	Second market
SAAREMA INVERSIONES <sup>(1)</sup>	Second market
CAJA DE AHORROS DE VITORIA Y ÁLAVA	Fixed-income
AS INVERSIONES	Delisted
OMSA ALIMENTACIÓN	Excluded
CAJA RURAL DE ZAMORA, COOP. DE CRÉDITO	No listed

**Companies with qualified auditors' report whose resolution depends on future events or will not be resolved in the short term**

<b>Issuer</b>	<b>Market/Segment</b>
AUREA CONCESIONES DE INFRAESTRUCTURAS	Electronic market
CIE AUTOMOTIVE	Electronic market
KOIKE	Electronic market
LA UNIÓN RESINERA ESPAÑOLA	Electronic market
NATRA	Electronic market
NUEVA MONTAÑA QUIJANO <sup>(2)</sup>	Electronic market
REPSOL YPF <sup>(1)</sup>	Electronic market
SNIACE <sup>(1)</sup>	Electronic market
SOCIEDAD ESPAÑOLA DEL ACUMULADOR TUDOR	Electronic market
SOCIEDAD GENERAL DE AGUAS DE BARCELONA <sup>(1)</sup>	Electronic market
TELEFÓNICA <sup>(1)</sup>	Electronic market
TELEFÓNICA MÓVILES <sup>(1)</sup>	Electronic market
URBANIZACIONES Y TRANSPORTES <sup>(1)</sup>	Electronic market
VIDRALA	Electronic market
AVANZIT <sup>(1)</sup>	Nuevo Mercado
AYCO GRUPO INMOBILIARIO	Open outcry market
CARROGGIO, S.A. DE EDICIONES <sup>(2)</sup>	Open outcry market
CARTEMAR	Open outcry market
HULLAS DEL COTO CORTES	Open outcry market
MINERO SIDERÚRGICA DE PONFERRADA	Open outcry market
PROMOCIONES Y CONCIERTOS INMOBILIARIOS	Open outcry market
LEFA <sup>(1)</sup>	Second market
EPPIC (EN LIQUIDACIÓN)	Suspended
RECOL NETWORKS <sup>(1)</sup>	No listed

**Companies requested solely to expand the information in the notes to financial statements and/or explain discrepancies detected between the information disclosed therein and that contained in the periodic public disclosures in the second half of 2001**

<b>Issuer</b>	<b>Market/Segment</b>
ADOLFO DOMÍNGUEZ	Electronic market
AZKOYEN	Electronic market
BANCO SANTANDER CENTRAL HISPANO	Electronic market
C.C. CARREFOUR	Electronic market
DOGI	Electronic market
ENACO	Electronic market
FAES FARMA	Electronic market
FASTIBEX	Electronic market
FEDERICO PATERNINA	Electronic market
GRUPO CATALANA OCCIDENTE	Electronic market
GRUPO FERROVIAL	Electronic market
INDO INTERNACIONAL	Electronic market
MECALUX	Electronic market
NH HOTELES	Electronic market
OBRASCON HUARTE LÍAN	Electronic market
PARQUES REUNIDOS	Electronic market
PROMOTORA DE INFORMACIONES	Electronic market
SOS CUÉTARA	Electronic market
TELE PIZZA	Electronic market
AMADEUS	Nuevo Mercado
AMPER	Nuevo Mercado
TECNOCOM	Nuevo Mercado
TERRA NETWORK	Nuevo Mercado
BODEGAS BILBAÍNAS	Open outcry market
CARTERAS REUNIDAS	Open outcry market
CLEOP	Open outcry market
EGUARAS	Open outcry market
FLETAMENTOS MARÍTIMOS	Open outcry market
INMOBILIARIA BARRIO DE BILBAO	Open outcry market
INMOLEVANTE	Open outcry market
MANUFACTURAS DE ESTAMBRE	Open outcry market
PMRK INVESTMENT	Open outcry market
RÚSTICAS	Open outcry market
S.A. DAMM	Open outcry market
S.A. PLAYA DE ALBORAYA	Open outcry market
SOCIEDAD DE ADMINISTRACIÓN DE VALORES MOBILIARIAS	Open outcry market
UNIÓN DE VALORES	Open outcry market
AEGIS	Second market
BARCELONESA DE INVERSIONES MOBILIARIAS	Second market
ESTABANELL Y PAHISA	Second market
ESTEBAN ESPUÑA	Second market
GRUPO FIATC	Second market
HIJOS DE JOSÉ BASSOLS	Second market
INMOCAHISPA	Second market
PLARREGA INVEST	Second market

<sup>1)</sup> The demand sent to these companies also included a request to elaborate on the information in the notes to financial statements and/or explain discrepancies detected between the information disclosed therein and that contained in the periodic public disclosures relating to the second half of 2001.

Note: the companies' replies to the CNMV's demands can be accessed through the CNMV web site ([www.cnmv.es](http://www.cnmv.es)).

## **Disclosure of the degree of adoption of, and compliance with, the Code of Good Governance for listed companies**

The CNMV believes that the widespread adoption by listed companies of the Code of Good Governance increases disclosure transparency and the quality of business conduct. It also believes that the Code should be adopted voluntarily and that companies should consider how best to adapt the Code's recommendations to their corporate structure.

In order to monitor the adoption of the Code of Good Governance by listed companies, in 1998 the CNMV drafted a questionnaire to standardise the information disclosed to the market. This questionnaire has been completed voluntarily by listed companies in the last three years. In 2002, 59 companies completed the questionnaire and another 20 disclosed their rules of good governance in their annual report.

Using the information compiled from the questionnaires, the CNMV published a report, whose principal conclusions are as follows:

- The information was substantially similar to that obtained with regard to 2000 and 1999. One cannot conclude from the data that the companies have progressively increased their degree of compliance with the Code of Good Governance.
- In line with the previous year, the Code of Good Governance appears to be more oriented towards listed companies with a large free float and, therefore, do not have majority shareholders.
- Only eight issuers report that they adhere to all 23 recommendations of the Code of Good Governance, and nine issuers report they apply less than 2/3 (seven of which trade on the open outcry market). On average, issuers report that they adhere to 80% of the recommendations.
- The recommendations which were applied least related to transparency about remuneration, age limits for directors, and the existence of control committees composed solely of external directors.
- The ratio of independent to domanial directors should be increased in line with the ratio between floating and stable holdings. Although that objective has not yet been attained, of the issuers that completed the questionnaire in the 1999-2001 period, the number of independent directors and their percentage of total Board members have increased.
- Some recommendations (directors' conflicts of interest, related-party transactions and transparency in remuneration) are not being applied as much as would be desirable.

## **Disclosure of stock options held by directors of listed companies**

In compliance with the regulations governing disclosure of the acquisition and disposal by directors of options on their companies' shares, in 2002 the CNMV received notification from 65 directors relating to the acquisition or disposal of options on the stock of 22 companies.

Table 5.3 lists the companies whose directors have disclosed stock options since the entry into force of the legislation in August 2000; most related to remuneration systems established by the companies themselves. Detailed information can be accessed through the CNMV's web site ([www.cnmv.es](http://www.cnmv.es)) in the section on official filings of significant holdings.

Table 5.3  
DISCLOSURE OF STOCK OPTIONS<sup>(\*)</sup>

Company	Index/Market	Directors
ACS	Ibex	3
ALTADIS	Ibex	3
BANKINTER	Ibex	2
BBVA	Ibex	4
BODEGAS Y BEBIDAS	Electronic market	1
SCH	Ibex	10
CAF	Electronic market	4
CAMPOFRIO	Electronic market	9
CORPORACIÓN ALBA	Ibex	3
GRUPO PRISA	Ibex	7
IBERDROLA	Ibex	2
IBERIA	Ibex	2
INDITEX	Ibex	9
INDRA	Ibex	14
INFORMES Y PROYECTOS	Electronic market	1
JAZZTEL	Electronic market	7
LOGISTA	Electronic market	1
METROVACESA	Electronic market	1
PROSEGUR	Electronic market	2
RECOLETOS	Electronic market	3
SERVICE POINT	Electronic market	2
SOGECABLE	Ibex	1
SUPERDIPLO	Electronic market	1
TAVEX ALGODONERA	Electronic market	2
TELE PIZZA	Electronic market	6
TELEFÓNICA	Ibex	4
TELEFÓNICA MÓVILES	Electronic market	1
TERRA	Ibex	3
TPI	Ibex	1
TRANSPORTES AZKAR	Electronic market	1
UNIÓN FENOSA	Ibex	5
URALITA	Electronic market	2
VALLEHERMOSO	Electronic market	3
<b>TOTAL</b>	<b>33</b>	<b>120</b>

<sup>(\*)</sup> In 2002, the following companies were added to this list: Iberia, Prosegur and Telefónica Móviles. Five directors owned stock options on their companies.

## Disclosure of significant holdings

Spanish legislation establishes the obligation to disclose acquisitions or transfers of listed securities through which the percentage of capital owned by the acquirer reaches or falls below 5% or multiples thereof.

In 2002, 6,012 disclosures of significant holdings were filed, of which 3,902 related to SIM and SIMCAV. This data can be accessed through the CNMV's official files and web site.

The CNMV web site received approximately 53,000 queries about significant holdings in 2002 (5% more than in 2001). Table 5.4 shows the number of significant shareholders of Ibex-35 companies, by percentage group.

*Table 5.4*  
**NO. OF SHAREHOLDERS OF IBEX 35 COMPANIES<sup>(\*)</sup>**  
**BY PERCENTAGE GROUP**

Company	5%-10%	10%-25%	25%-50%	Over 50%
TELEFÓNICA	2	-	-	-
BSCH	1	-	-	-
BBVA	1	-	-	-
REPSOL YPF	4	1	-	-
ENDESA	3	-	-	-
IBERDROLA	3	1	-	-
B. POPULAR	2	1	-	-
INDITEX	1	-	-	1
GAS NATURAL	1	1	1	-
ALTADIS	2	1	-	-
UNIÓN FENOSA	1	1	-	-
ACESA	3	-	1	-
TERRA	-	-	1	-
T. MÓVILES	-	-	-	1
DRAGADOS	-	2	-	-
FERROVIAL	1	-	-	1
ACERINOX	2	2	-	-
ACCIONA	1	-	-	1
AMADEUS	-	-	3	-
ACS	2	2	-	-
BANKINTER	3	-	-	-
FCC	-	1	-	1
GAMESA	-	1	1	-
IBERIA	3	2	-	-
CORPALBA	-	2	1	-
ZELTIA	1	1	-	-
TPI	-	-	-	1
SOGECABLE	1	2	-	-
INDRA	-	1	-	-
NH HOTELES	7	-	-	-
PRISA	-	-	-	1
CARREFOUR	-	-	-	1
REE	-	4	1	-
SOL MELIÁ	1	-	-	1
<b>TOTAL</b>	<b>46</b>	<b>26</b>	<b>9</b>	<b>9</b>

(\*) For reasons of uniformity, Arcelor is not included because it is governed by different legislation since its registered offices are in Luxembourg.

## **New financial products**

### ***Asset-backed securities***

Securitisation fund issues increased significantly in 2002. The volume of these issues rose 74% with respect to 2001, whereas the number of registered funds totalled 33 (18 in 2001). This substantial growth in issues came on top of an increase in the type of securitised assets. In addition to mortgage securitisation, car purchase and property developer loans were securitised for the first time in 2002. In 2002, numerous asset securitisation fund applications were received from non-financial companies, many of which will materialize in 2003.

Another new feature in 2002 was the application of a faster, more flexible vetting procedure specifically for securities issued by securitisation funds aimed exclusively at institutional investors and not planned to be listed on the secondary market. Four funds applied under this procedure in 2002.

In order to definitively boost asset securitisation in Spain, the CNMV worked with the Directorate-General of Treasury and Finance and the Bank of Spain to amend the necessary legislation. One of the main issues, which is expected to be resolved in 2003, was the establishment of a legal framework for synthetic securitisation and the treatment of future collection rights. Also, an accounting plan will shortly be implemented for securitisation funds which will include an obligatory periodic disclosure form.

### ***Warrants and atypical financial contracts***

Warrants, atypical financial contracts and, to a lesser extent, certificates have been placed among retail investors in the last few years as an alternative to shares and fixed-income. Those products are financially complex and their risk is higher than that of the traditional products with which Spanish small and mid-sized investors are familiar. Therefore, the CNMV recommends those investors to be prudent with those new products and it has focused particularly on raising public awareness about their features.

Regarding atypical financial contracts, CNMV Circular 3/2000 obliges financial institutions to include the prospectus vetted by the CNMV in the contract signed with their clients. In order to ensure that investors knew that the attractive yields offered in the marketing of atypical financial contracts are not guaranteed and they can actually incur a loss, the number of warnings in the prospectuses was increased and the financial institutions were advised to make their advertising campaigns less aggressive.

Regarding warrants, the CNMV has tried to guarantee a degree of liquidity in this market. The CNMV requires that issuers arrange for a market maker. The operational rules of the new segment for electronic trading of warrants in SIBE, which became operational in November 2002, ensure liquidity in this area (see chapter 7).

Certificates represent a lower amount than the two preceding products (see chapter 4). Nevertheless, the variety of underlying products to which certificate yields are pegged (some of which were unlisted) meant that sometimes an independent expert was required in order to determine their price. As in the case of warrants, issuers must guarantee the existence of a market maker.



## Prospectus and Transparency Directives

On 5 November 2002, the European Council approved the draft Prospectus Directive. This document can be amended by the European Parliament, but the general principles will be maintained.

The new system will establish a single European passport. Therefore, companies registered in the EU or in third countries will be able to sell or list securities on any regulated European market with the authorisation from a single competent authority in the EU. The supervisors of the host country will not be able to impose additional requirements. A feature of the proposal is that, in the case of debt or derivatives issues, the issuer can freely choose the authority with which to file the prospectus.

Issuers will save costs not only because the issue and listing procedures will be simpler and faster but also as a result of the new rules on prospectus translation and advertising. Prospectuses need not be translated into the local languages of the EU countries where the securities will be sold or listed; it will be sufficient to produce them in English and, if the supervisor of the host country wishes, a summary of the prospectus will be translated into the local language. Moreover, publishing the prospectus on the regulator's or issuer's web site will eliminate the obligation to distribute it on paper.

The proposal provides greater flexibility since it extends the exemptions from filing a prospectus and it establishes forms that are better adapted to the type of issuer, securities or targeted investors.

In November 2002, the European Commission's draft Transparency Directive was officially presented. This new regulation will further enhance securities market transparency and standardise listed companies' disclosures.

New features of the draft:

- Auditors' reports, financial statements and management reports must be filed within three months from the closing date of the audited year (the current deadline in Spain is 15 June).
- The obligation of periodic disclosure will be extended to companies with securities listed on regulated markets (this currently affects companies listed on the stock exchange and, in the case of auditors' reports, companies that issue and file prospectuses).
- The cases requiring disclosure of significant holdings are extended to cover certain transactions with shares that affect the exercise of voting rights.
- Shareholders will be authorised to vote via electronic means at Shareholders' Meetings.

A total of 17 tender offers were authorised in 2002 (compared with 19 in 2001) for a lower total amount than last year. The bids were mainly performed by Spanish groups and companies; only three were made by foreign groups (all European). Six of the offers were for delisting purposes, requiring the CNMV to express an opinion on the price. In addition to supervising the offers, it also monitored certain acquisitions that were not performed via tender offers, in order to verify compliance with current legislation.

Table 6.1  
TENDER OFFERS

Millions of euros

	1998	1999	2000	2001	2002
Filed in the year <sup>(1)</sup>					
Number	18	13	16	19	17
Potential amount <sup>(2)</sup>	4,683	711	3,059	7,865	5,589
Performed <sup>(3)</sup>					
Number	18	13	14	18	17
Actual amount	4,411	601	2,606	4,648	4,318

<sup>(1)</sup> Authorised in the year.

<sup>(2)</sup> Does not include the potential amount of offers which were withdrawn.

<sup>(3)</sup> All those filed in the year, even if concluded in the following year, not including those which failed or were withdrawn.

## Aspects of particular relevance for supervision

The bidders' compliance with the principles of transparency and of treating all shareholders equally is the main focus in the supervision of all tender offers. In 2002, the CNMV also paid special attention to certain matters, including:

- *Analysing and examining all documents relating to the valuation of the target companies*, where the offers were accompanied by independent appraisals of the proposed consideration.

Six delisting tender offers were authorised in 2002, in which legislation requires express authorisation of the price. In each case, the CNMV examined at length the valuation reports which supported and explained the offered prices. Two other bids, the purposes of which included delisting the target shares, were accompanied by valuation reports which were also examined by the CNMV. These valuations provided shareholders with the same information as in a delisting tender offer, enabling them to cross-check the offer price in order to make their decision.

In another four bids where the consideration consisted of shares, independent opinions were obtained as to the fairness of the swap equations.

- *Studying and monitoring acquisitions of stakes close to 25% in three notable operations* (Dragados, Metrovacesa and Vallehermoso)<sup>(46)</sup>.

Since these offers were for less than 25% of the target, it was not necessary to formulate a tender offer, as long as the final stake did not attain that per-

(46) As a result of these operations, the government announced its intention to introduce some amendments to the legislation on tender offers.

# 6

## TENDER OFFERS

centage. Therefore, the calculation of the stake was checked to ensure that no securities were omitted that belonged to the purchasing group's entities or to other persons acting on behalf of or in concert with the purchaser.

- *The implementation, for the first time, of the amendments in the area of business concentrations which came into effect in 2001*, on five operations that had to be notified to the competition authorities.

Three of these operations were approved for business concentration before the tender offers were authorised<sup>(47)</sup>. In the other two cases<sup>(48)</sup>, following authorisation by the CNMV, the announcements and the acceptance periods were postponed until the concentrations had been approved by the competent authorities.

## The notion of control and obligatory tender offers in Spanish law

Current legislation in the area of tender offers(\*) requires an offer to be made when a person intends to acquire a significant stake in a listed company. For these purposes, a “significant stake” means a stake equal to or greater than 25% of the target company's capital or 50% of its voting capital.

In accordance with current legislation, in order to acquire 25% of a listed company, it is necessary to perform a tender offer for at least 10% of its capital. In the event that the bidder owns a stake over 25% and under 50% and intends to increase it by at least 6%, it is necessary to perform a tender offer for at least 10%. Finally, in order to attain a stake of 50% or more of a company, it is necessary to perform a tender offer for a number of shares that enables the bidder to attain at least 75% of the target company. When a person with a stake greater than 50% intends to modify the company's bylaws for the first time since it acquired this percentage, they must launch a tender offer for the rest of the company's voting shares.

The current regulatory model is based on the existence of several cases of obligatory tender offers, the most common being partial and *a priori* tender offers. In the *a priori* tender offer model, the tender offer is the means by which a significant stake is acquired, unlike in the rest of Europe, where there is a total and *a posteriori* tender offer model according to which the obligation to make a tender offer is triggered by the acquisition of a specific percentage of a company's shares.

In 2002, there were several controversial bids for significant shareholdings. Consequently, following the unanimous approval of a motion by Congress, the government is currently drafting a reform of the Royal Decree on tender offers in order to consider factors, other than the percentage of shares, that are indicative of a situation of effective control (such as the intention to promote the appointment of members of the Board of Directors) in order to increase the cases where a tender offer becomes obligatory.

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(\*) Royal Decree 1197/1991, dated 26 July, on tender offers for securities.

## Main features of the tender offers processed in 2002

The 17 tender offers authorised in 2002 represented a potential amount of 5,589 million, of which €4,318 million actually materialised (7% less than the amount corresponding to the 18 offers in 2001). The tender offer for Aceralia represented approximately 50% of the total this year.

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(47) Offers by Arcelor for Aceralia, Áurea for Iberpistas and Nefinsa for Uralita.

(48) Offers by Acesa for Iberpistas and Caprabo for Enaco.

The initial conditions were modified in five of the offers in 2002: in the tender offer for Aceralia, the share swap was improved; in the bid for Enaco, the price was increased and the acceptance threshold was reduced; the consideration was modified in the bid for Nueva Montaña Quijano; and the conditions offered by the bidders were improved in the tender offers for Uralita and Iberpistas.

The tender offers for Uralita and La Seda were rejected by the directors of these companies, mainly on the basis that the price was too low and the offer was partial.

The CNMV agreed to the withdrawal of Banesto's request for its shares to be delisted and of the delisting tender offer which the latter had presented, accepting its principal shareholder's commitment to perform a public offering so that the floating capital amounted to at least 10%. Banesto justified this decision in view of minority shareholders' demands to remain in the stock market and so as to increase the liquidity of shares. This required Banesto to adopt the necessary measures to protect integrity, transparency and price formation. Among other measures, Banesto undertook to maintain a standing purchase order at the same price for the delisting tender offer for one month in order to avoid disappointing the expectations created by the announcement of its intentions to launch a tender offer, and it undertook to facilitate the liquidity of its shares on the market via a counterparty until the public offering was made official<sup>(49)</sup>.

The goals in the tender offers performed in 2002 were as follows:

- Seven tender offers were made for 100% of the target<sup>(50)</sup>, five of them with the purpose of gaining control of the target company, and two with the purpose of increasing the stake of the controlling shareholder or group.
- In four offers, the acquisition was limited to a maximum number of shares so that the resulting stake remained below 50%<sup>(51)</sup>, either in order to attain a sizeable stake without exceeding 50% (one), increase the stake from 25% or below (two), or attain a maximum of 25% (one). Acceptance exceeded the maximum limit in only one of the four partial bids, triggering proration.
- The other six offers were made to acquire own shares in order to delist the company<sup>(52)</sup>.

Five of the tender offers were conditional upon obtaining a minimum number of shares, which was exceeded in all cases<sup>(52)</sup>.

### **Competing offers, offers for stock and offers for stock plus cash**

In 2002, there were competing bids for the third consecutive year. The target company was Iberpistas. The competing offers were made by Acesa and Aurea. The first offer made by Acesa was for cash. The competing offer by Aurea involved a higher payment in cash plus newly-issued preference shares as an alternative consideration. Acesa ultimately improved the bid by offering an even higher cash price and including a newly-issued preference share swap as an alternative consideration, with better terms than the competing offer.

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(49) The public offering was formalised on 7 November 2002.

(50) Offers by Arcelor for Aceralia, Acesa for Iberpistas, Caprabo for Enaco, Áurea for Iberpistas, Hortañoia for Pascual Hermanos, Coal Trade for Nueva Montaña Quijano and Carrefour for Centros Comerciales Carrefour.

(51) Offers by Nefinsa for Uralita, PC S. XXI for La Seda, Invafi for Funespaña and Corporación Caixa Galicia and Banco Zaragozano for Ence.

(52) Offers by Filo, Hidrocantábrico, Omsa, Saba, Iberpistas and Mapfre Vida. This last tender offer was actually executed in January 2003.

(53) Offers by Arcelor for Aceralia, Caprabo for Enaco, Hortañoia for Pascual Hermanos, Nefinsa for Uralita and PC S. XXI for La Seda.

This type of tender offer is complex. Tender offers involving the offer of newly-issued shares require the issue requirements to be met as well as those of the tender offer regulations. In the competing offers discussed in the above paragraph, this complexity, plus the fulfilment of the legal periods for the Shareholders' Meetings of the offering companies to authorise the issuance of shares for exchange, once the offers had been authorised, as well as several episodes in the struggle for control of the target, resulted in these tender offers taking approximately four months.

*Table 6.2*  
**STOCK DEALS OFFERED BETWEEN 1995 AND 2002**

Year	Target	Bidder	Purpose	Share exchange ratio
1995	Corporación Industrial y Financiera Banesto	Banco Español de Crédito	Increase holding	2 shares of Banesto + 200 ptas. per 1 share of Corporación Banesto
1996	BNP España	Banque Nationale de Paris	Increase holding	1 new share of BNP for 78 shares of BNP España
1998	Banco Español de Crédito	Banco Santander	Increase holding	5 new shares of Santander for 16 shares of Banesto
	Meliá Inversiones Americanas NV	Sol Meliá	Increase holding	9 new shares + 9 warrants of Sol Meliá (newly-issued) for 10 shares of MIA
1999	Ferrovial Agromán	Grupo Ferrovial	Increase holding	5 new shares of Grupo Ferrovial for 12 shares of Ferrovial Agromán
2000	Hidroeléctrica del Cantábrico	Unión Eléctrica Fenosa	Acquire control Withdrawn due to legal imperative	24 euros per share or, alternatively (for 1/3 of the shares), 1 new share of Fenosa for 1 share of Hidrocantábrico
	Superdiplo	Koninklijke Ahold NV	Acquire control	37 new shares of Ahold for 50 shares of Superdiplo
2001	Testa Inmuebles en Renta	Vallehermoso	Increase holding	13 new shares of Vallehermoso + 140 euros for 20 shares of Testa
	Energía e Industrias Aragonesas	Uralita	Increase holding	9 new shares of Uralita for 10 shares of Aragonesas
2002	Aceralia Corporación Siderúrgica	Arcelor	Acquire control	4 new shares of Arcelor for 3 shares of Aceralia
	Ibérica de Autopistas	Autopistas Infraestructuras	Increase holding	13.65 euros per share or, alternatively, 1 new preference share of Acesa for 1 share of Iberpistas
	Ibérica de Autopistas	Área Concesiones de Infraestructuras	Acquire control	13 euros per share or, alternatively, 14 new preference shares of Área for 29 shares of Iberpistas
	Centros Comerciales Carrefour	Carrefour	Increase holding	3 shares of Carrefour for 10 shares of Centros Comerciales Carrefour

Following the finalisation of the competing offers, Iberpistas made a delisting offer in the final months of 2002 and it was delisted in 2003.

In addition, a further two tender offers were registered involving share swaps or exchanges. Aceralia's bid, filed in 2001, was authorised in the early days of 2002. The other offer for stock was made by the French group Carrefour and four of its companies for Spain's Centros Comerciales Carrefour. Five bidders were involved because the shares to be swapped included Carrefour shares owned by its subsidiaries as well as newly-issued shares. In this case it was necessary to combine the demands for information about the issues as laid down in both Spanish and French regulation.

### **Other noteworthy features of the tender offers authorised in 2002**

- *Size in monetary terms.* The tender offer for stock for Aceralia exceeded €2.150 billion. The tender offer for cash performed by Acesa for Iberpistas amounted to over €840 million, approximately €363 million of which was in cash (the difference corresponds to the value of the shares involved in the share swap—see table 6.3).
- *Tender offers by foreign groups.* The three offers made by foreign groups totalled 2.970 billion (including the bid for Aceralia), less than €4 million of which was in cash.
- *Delisting tender offers and other delisting procedures.* The following companies were delisted directly by means of tender offers: Filo, Hidrocantábrico, Iberpistas, Mapfre Vida, Omsa and Saba. A further two companies that were targets of tender offers in 2002 are currently being delisted—Enaco and Pascual Hermanos.
- *Competing offers.* The 17 bids that were authorised in 2002 affected only 15 listed companies since three of the offers were for the same company (two competing offers and one delisting offer). Six of the target companies in 2002 (Filo, Hidrocantábrico, Mapfre Vida, Omsa, Pascual Hermanos and Saba) had been targets of tender offers in previous years<sup>(54)</sup>.

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(54) Four tender offers were made for Filo, six for Hidrocantábrico, three each for Omsa and Saba and two each for Mapfre Vida and Pascual Hermanos. In each case the final bid was a delisting tender offer, with the exception of Pascual Hermanos, although this company is in the process of being delisted.

## Harmonisation of legislation on tender offers in the European Union

Following the rejection of the proposed directive on tender offers by the European Parliament in July 2001, the Internal Market Commissioner (DG XV), Frits Bolkestein, entrusted a high level company law experts group with drafting a report analysing the principal difficulties experienced in the conciliation process with the European Parliament and providing solutions to some of these problems. The group, which was led by Jaap Winter, presented the report to the European Commission on 4 November 2001. It contained solutions to the following matters:

- Calculating an equitable price in obligatory tender offers.
- Creating a squeeze-out right and a sell-out right for minority shareholdings as from specific thresholds.
- Creating a level playing field in the performance of tender offers in the European Union.

After consulting the Member States, the Commission drafted a new draft directive on tender offers, dated 2 October 2002, which incorporates the contents of the previous proposal and the group of experts' recommendations, but with significant differences:

- With respect to the equitable price of obligatory tender offers, the proposal uses the highest price paid immediately prior to the bid as a general criterion.
- The sell-out rights of minority shareholders are subject to certain conditions.
- The issue of the level playing field for tender offers seems to be the most complex. The proposal maintains and reinforces the principle of directors' neutrality (they cannot thwart a tender offer without the Shareholders' Meeting's consent), but it adds significant new material in the area of anti-tender offer defence, including several transparency obligations.

The proposal's basic objectives are to protect shareholders and facilitate tender offers in the European Union. However, there are issues pending negotiation, such as defensive tactics and the treatment of offers made by third-country companies.

Table 6.3  
TENDER OFFERS AUTHORISED IN 2002

Target	Bidder	Purpose	% of capital covered by the offer	Actual cash amount (million euros)	Outcomes as % of securities initially targeted
Aceralia Corporación Siderúrgica	Arcelor	Acquisition of control	100.00 (min.=75%)	2,156,616 <sup>(i)</sup>	94.80
Filo	Filo	Delisting	2.12	4,172	74.38
Ibérica de Autopistas (I)	Autopistas Infraestructuras	Increase stake	91.93	840,275 <sup>(ii)</sup>	98.25
Enaco	Caprabo	Acquisition of control	100.00 (min.=64.16%)	156,812	99.52
Ibérica de Autopistas (II) "competidora con (I)"	Área Concesiones de Infraestructuras	Acquisition of control	100.00	Failed	Failed
Hidroeléctrica del Cantábrico	Hidroeléctrica del Cantábrico	Delisting	3.65	83,362	73.86
Omsa Alimentación	Omsa Alimentación	Delisting	10.28	8,254	77.22
Pascual Hermanos	Hortañoia	Acquisition of control	100.00 (min.=80%)	3,814	92.33
Nueva Montaña Quijano	Coal Trade	Increase stake	71.74	2,132	23.10
Saba Aparcamientos	Saba Aparcamientos	Delisting	4.25	11,804	77.35
Uralita	Nefinsa	Increase stake	41 (max.) (min.=25%)	179,198	40.99 (prorated)
Centros Comerciales Carrefour	Carrefour	Increase stake	20.27	809,227 <sup>(iii)</sup>	86.08
La Seda de Barcelona	PC S. XXI Inversiones Bursátiles	Acquire stake	25 (máximo) (min.=5%)	8,210	54.73
Funespaña	Invafi	Increase stake	10 (max.)	3,233	68.42
Ibérica de Autopistas	Ibérica de Autopistas	Delisting	1.61	12,941	83.59
Grupo Empresarial Ence	Corporación Caixa Galicia y Banco Zaragozano	Increase stake	10 (max.)	32,344	87.58
Mapfre Vida de Seguros y Reaseguros	Mapfre Vida de Seguros y Reaseguros	Delisting	0.72	5,635	66.36

<sup>(i)</sup> The actual cash amount was calculated by assigning to Aceralia shares a value of €18.20, i.e. the result of the share exchange ratio (4 newly-issued shares of Arcelor for 3 shares of Aceralia) for a price of Arcelor shares of €13.65, which was the reference price on opening.

<sup>(ii)</sup> The actual cash amount was calculated by assigning the offered price of €13.65 to the shares paid for in cash and assigning a value of €12.90 to the shares of Iberpistas that elected stock, i.e. the result of the share exchange equation (one newly-issued preference share of Acesa for each share of Iberpistas) for a price of shares of Acesa of €10.55 based on the closing price in the market session prior to the announcement of the transaction and including the estimated value of the preference dividend of the preference shares exchanged (€2.35).

<sup>(iii)</sup> The actual cash amount was calculated by assigning to Centros Comerciales Carrefour shares a value of €13.74, i.e. the result of the share exchange ratio (3 shares of Carrefour for 10 shares of Centros Comerciales Carrefour) for a price of shares of Carrefour of €45.80 based on the closing price on Euronext Paris in the market session prior to the announcement of the transaction.



# 7

## MONITORING OF SECONDARY MARKETS

In addition to the usual control of secondary markets (significant events, oversight of trading, price formation in particularly sensitive times, suspensions of trading, delistings, etc.), in 2002 the CNMV closely monitored certain operations, especially day trading and security loans. In line with the recommendations of international regulatory forums, the CNMV intensified its monitoring of transactions for reasons unrelated to the market, in order to stop markets from being used for illegal activities.

The CNMV also closely monitored the new features and projects in market operations and clearance and settlement systems. In this context, the following were implemented: a new electronic trading segment for warrants, certificates and other deposits in the Spanish electronic market (SIBE) and MEFF's project to become the central counterparty for public debt repos.

In the field of regulation, the Law on Measures to Reform the Financial System made substantial amendments to the obligation to disclose significant events (summarised in the next box).

### **The obligation to disclose significant information under the Law on Measures to Reform the Financial System**

The Law on Measures to Reform the Financial System made substantial amendments to article 82 of the Securities Market Law, which previously obliged securities issuers to *"inform the public, as soon as possible, of any event or decision that may substantially influence securities prices"*. The new text of the article goes into greater detail regarding the following:

- *Type of information to be disclosed.* Issuers are obliged to disclose *"all significant information"*, which is defined as information *"whose knowledge might reasonably lead an investor to acquire or sell securities or financial instruments and may therefore substantially influence their prices on the secondary markets"*. Therefore, an essential feature of significant information is its capacity to reasonably influence investor behaviour, if known. The potential influence of the information on financial markets other than securities markets (e.g. derivatives) is also considered.
- *Deadline.* The law strictly states that disclosure to the market must be immediate.
- *Disclosure.* Disclosure to the market must be through a communiqué to the CNMV. This communiqué *"must be sent before disclosing through other means and as soon as the event becomes known, the decision has been adopted or the agreement or contract with third parties has been signed"*. Issuers are also obliged to disclose this information through their web sites.
- *Content of communiqués.* The content of the communiqué *"must be truthful, clear and complete and, if required by the nature of the information, quantified, so as not to confuse or mislead"*.

The amended article empowers the Economy Minister and, with its express authorisation, the CNMV to regulate the procedures and forms of the communiqués, the deadline for publishing significant information on issuers' web sites and any other factor related to the obligation to disclose significant information.

## Features of general interest in market supervision

### *Transactions for reasons unrelated to the market*

Defending market integrity is not simply confined to obliging companies to strictly comply with the applicable sector regulations; it also includes preventing markets from being used easily for unethical or simply illicit activities. This has been acknowledged by international financial regulatory bodies and forums in recent years, and they require securities supervisors to be more involved in the prevention or detection of those activities.

In line with the recommendations of international bodies, in 2002 the CNMV reinforced its own control mechanisms while encouraging stock exchange governing bodies, members and, in general, market participants to be more zealous in the detection and prevention of unacceptable activities.

The CNMV requires greater attention to the operations that do not appear to be driven by market reasons. Such operations may be due to very different reasons which may not necessarily be illicit. Nevertheless, monitoring is necessary in order to hamper evidently reprehensible operations, such as money laundering and tax evasion.

Better monitoring of those operations will also make it difficult to perform other activities that harm investors and the market's reputation and which are specifically prohibited in the securities market regulations, such as churning in order to generate commissions or to distribute results unfairly among clients.

### *Day trading and bilateral security loans*

Although actual trading in equities barely increased in 2002, the number of operations grew significantly<sup>(55)</sup> due to a rise in day trading and, to a lesser extent, to bilateral security loans. These operations were monitored closely by the CNMV.

The prevailing uncertainty favoured very short-term operations. Day trading increased 14% compared with 2001 and represented 28% of total trading in 2002. The outstanding balance of bilateral security loans grew 7%, boosted partly by the bearish strategies by market participants.

## New features in market operations

### *MEFF*

One of the main amendments to MEFF's operations in 2002 was aimed at stimulating the stock futures and options segment and, specifically, at reducing commissions. In addition to the reduction in registration fees for large bilateral trades in stock futures (see chapter 3), MEFF brought the commissions charged to members' corporate groups into line with those applied on their own accounts. Until then, the former had been treated as client accounts, so this amendment reduced trading commissions.

Another main feature was that the registration time for bilateral trades was extended to ten minutes after market close to enable these transactions to use the closing auction price as well as the average daily trading price as the reference.

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(55) In 2002, the number of transactions in SIBE totalled nearly 15,700,000 (+8.6% vs. 2001).

Finally, the offering of contracts on equities was expanded in order to cover the bulk of the Ibex-35 capitalisation<sup>(56)</sup> and the general conditions of those contracts were amended. Specifically, settlements were facilitated since they can now be done by differences, as well as through the delivery of shares upon maturity, provided there is a counterparty that has chosen this type of settlement.

## Central counterparty activity in public debt repos

MEFF has a strategic project to provide central counterparty services in public debt repos (see Chapter 3). This type of service usually has the following advantages for users and markets:

- It reduces the margins required of participants.
- It facilitates the anonymity of “blind” trading since it equalises the settlement risk of all the participants.
- It reduces the operating risk of back-office activities since it simplifies and expedites post-trade processes.

MEFF filed its application for this initiative with the CNMV in December 2002 and it is currently in the processing stage. This project is aimed at providing central counterparty facilities for public debt repos traded in SENAF’s blind trading platform, although the service will foreseeably be expanded to include other types of trades and securities.

The counterparty system will respect the current procedures of SENAF trading and CADE settlement. The counterparty activity will be established through the novation of the parties’ rights and obligations in registered operations, absorbing the counterparty risk and guaranteeing completion. The margin system will offset positions for the purposes of risk management, in a similar way to European clearing organisations such as London Clearing House, Clearnet<sup>(1)</sup> and Eurex Clearing.

(1) Clearnet is the clearing house and central counterparty for the markets in Euronext.

## **SIBE. New trading segment for warrants, certificates and other products**

On 11 November 2002, SIBE’s new segment for trading in warrants, certificates and other financial products became operational. This specific trading platform for those assets was created in order to make this market more flexible and improve trading and information quality for both issuers and investors. Until then, those products were traded on the Madrid Stock Exchange electronic fixed-income market.

The new segment is a completely electronic order-driven market, so execution is governed by two priorities: price and entry time. Each traded security must have a specialist or market member appointed by the issuer to ensure the security’s liquidity through compliance with certain obligations of presence in the market throughout the session. Volatility auctions are envisaged to enable flexible price changes in an orderly way. Information is also provided in real time about the features of each security, market depth, and traded prices and volumes.

(56) MEFF added trading of futures and options on Inditex and Telefónica Móviles, and futures on Iberdrola and Terra (options on both companies were already available). With the extension of this offering, the number of Ibex-35 securities with derivatives contracts increased to 20, i.e. approximately 90% of the Ibex-35 capitalisation.(57) Norma 23.4 de la Circular 9/2001, de 26 de noviembre, del SCLV sobre tarifas y penalizaciones.

## Temporary suspensions of trading and delistings

In 2002, there were 69 cases of temporary suspension of trading, affecting 49 issuers. The most frequent cause of suspension continued to be the disclosure of significant events which might alter normal trading. A large number of temporary suspensions were also triggered by the presentation of tender offers at the CNMV.

Table 7.1  
TEMPORARY SUSPENSIONS OF TRADING

	2001	2002
<b>Number of issuers suspended</b>	<b>35</b>	<b>49</b>
<b>Number of suspensions</b>	<b>54</b>	<b>69</b>
Presentation of tender offer	15	14
Disclosure of significant information	35	43
Expiry of period for acceptance of delisting offers	3	5
Other	1	7

In 2002, 35 companies were delisted (24 in 2001). As shown in table 7.2, the reasons for delisting were as follows:

- Nine companies, by decision of the regional governments within the scope of their power.
- Four companies, at their own initiative, through the "intermediate procedure".
- Five companies, after the presentation, approval and settlement of a delisting offer.
- Nine companies, for technical reasons: three companies due to mergers, three companies due for withdrawal from the Mercantile Register and three other companies because they were securities investment companies that were taken off the CNMV's official registers.
- Seven companies which simultaneously listed on two Spanish markets delisted from one of the markets at their own initiative but continued to be listed on the other.
- One company listed on Latibex, because it delisted from its home market.

### Delisting through the intermediate procedure

The two standard delisting procedures are through a tender offer by the majority shareholder or the controlling shareholders of the company itself, and via a technical delisting based on corporate reasons (mergers, removal from the Mercantile Register, withdrawal from the CNMV's SIM/SIMCAV Register, etc.) or on the violation of the listing requirements adopted by the CNMV. Moreover, the CNMV can authorise a delisting through an intermediate procedure, which is designed for companies with very concentrated capital and very low liquidity. In order to expedite delisting, the obligation to make a delisting tender offer has been eliminated, although minority shareholders are guaranteed an appropriate exit strategy.

The procedure is as follows. The company requests delisting from the CNMV after approval by the Shareholders' Meeting. This decision is made public through a significant event disclosure and publication in the Official State Gazette (BOE). The CNMV decides whether to approve the delisting after reviewing shareholders' pleadings.

In order to provide minority shareholders with an exit, the CNMV requires issuers to maintain a buy order until the delisting materialises. The CNMV analyses the purchase price in line with the criteria for approving delisting tender offers. The agreed price is disclosed to the market as a significant event.

In 2002, this intermediate delisting procedure was used by four companies: two listed on the electronic market (Bodegas y Bebidas and Heineken España) and two on the open outcry market (Frimancha Industrias Cárnicas and Orozco)<sup>(\*)</sup>.

(\*) In January 2003, two other companies listed on the open outcry market (La Unión Resinera and Inversiones Ibersuizas) were delisted based on applications filed in 2002.

Table 7.2  
DELISTINGS IN 2002

Company	Market	Reason	Date
SUPERDIPLO	EM <sup>(6)</sup>	Delisting tender offer	30/01/2002
BODEGAS Y BEBIDAS	EM	Intermediate procedure	12/03/2002
HEINEKEN ESPAÑA	EM	Intermediate procedure	15/05/2002
IMPSAT FIBER NETWORKS	EM	Delisting on home market <sup>(1)</sup>	24/05/2002
FILO	EM	Delisting tender offer	27/05/2002
HIDROCANTABRICO	EM	Delisting tender offer	26/06/2002
OMSA ALIMENTACION	EM	Delisting tender offer	18/07/2002
PORTLAND VALDERRIVAS	EM	Technical: merger	30/09/2002
COVIMOSA	OOM <sup>(7)</sup>	Technical: withdrawal from Mercantile Register	17/01/2002
LEPANTO	OOM	Delisted by Cataluña regional government	20/02/2002
LUCTA	OOM	Delisted by Cataluña regional government	04/03/2002
DRAFT INVERSIONES	OOM	Continues to be listed on other markets <sup>(2)</sup>	21/03/2002
HENDUN 19	OOM	Technical: withdrawal from the SIM/SIMCAV Register	27/03/2002
TECVAL INVERSIONES	OOM	Technical: withdrawal from the SIM/SIMCAV Register	22/04/2002
INVERPAMPLONA	OOM	Technical: withdrawal from Mercantile Register	26/04/2002
RANK INVERSIONES	OOM	Continues to be listed on other markets <sup>(3)</sup>	24/05/2002
FONINVES	OOM	Delisted by Cataluña regional government	28/05/2002
EGUARAS	OOM	Continues to be listed on other markets <sup>(4)</sup>	17/06/2002
INRA DE INVERSIONES	OOM	Continues to be listed on other markets <sup>(3)</sup>	12/07/2002
HERA IBEROAMERICANA	OOM	Delisted by Cataluña regional government	18/07/2002
EARNING INVERSIONES	OOM	Continues to be listed on other markets <sup>(2)</sup>	26/07/2002
INVERSIONES GREC	OOM	Technical: withdrawal from the SIM/SIMCAV Register	30/07/2002
FRIMANCHA INDUSTRIAS CARNICAS	OOM	Intermediary procedure	03/09/2002
INVERSIONES GARBI	OOM	Continues to be listed on other markets <sup>(3)</sup>	20/09/2002
DACINVER	OOM	Continues to be listed on other markets <sup>(5)</sup>	02/10/2002
FINANCIERA INTERNACIONAL	OOM	Technical: withdrawal from Mercantile Register	04/10/2002
PROMOCIONES EUROBUILDING	OOM	Technical: merger	14/11/2002
SABA	OOM	Delisting tender offer	25/11/2002
ARGENTARIA AHORRO	OOM	Technical: merger	20/12/2002
OROZCO	OOM	Intermediate procedure	23/12/2002
WAT DIRECCIONES	SM <sup>(6)</sup>	Delisted by Basque regional government	12/03/2002
AGRUPACIO ENERGIAS RENOVABLES	SM	Delisted by Cataluña regional government	10/06/2002
AS INVERSIONES	SM	Delisted by Basque regional government	01/10/2002
ALZAMORA PACKAGING	SM	Delisted by Cataluña regional government	06/11/2002
EMBUTIDOS Y JAMONES NOEL	SM	Delisted by Cataluña regional government	05/12/2002

(1) Listed on Latibex.

(2) Delisted from Barcelona stock exchange, continues to be listed on Madrid stock exchange.

(3) Delisted from Bilbao stock exchange, continues to be listed on Madrid stock exchange.

(4) Delisted from Bilbao stock exchange, continues to be listed on Barcelona stock exchange.

(5) Delisted from Valencia stock exchange, continues to be listed on Madrid stock exchange.

(6) EM: Electronic market.

(7) OOM: Open outcry market.

(8) SM: Second market.

## Securities clearing and settlement

### *SCLV activity*

In 2002, settlement volumes were similar to 2001. Daily monitoring of the settlement account evidenced a significant reduction in transaction numbers and in delayed settlement volumes due mainly to more progressive penalties<sup>(57)</sup>.

### *Settlement cycles*

Since improving efficiency in the clearing and settlement systems is particularly important for increasing competition in the Spanish securities markets, the SCLV approved Circular 3/2002, dated 20 November, which amended the settlement system to enable more than one daily settlement cycle<sup>(58)</sup>. The amendments came into force on 24 March 2003.

Compared with the current single daily cycle system (at 10.00h), the new regulation envisages up to three multilateral cycles during the day. The first settlement cycle takes place at 9.00h and settles all the purchases, facilitating the reuse of cash. The second settlement cycle takes place at 13.30h, giving more time for entities to support their sales. The third multilateral cycle is optional. The SCLV can also perform a daily bilateral cycle aimed at facilitating certain financial operations (payment of dividends and interest, redemptions, etc.) and other settlement transactions (provision and withdrawal of collateral, remuneration of centralised loans, etc.).

In addition to the general efficiency advantages, the new system provides firm trading settlements of cross-border trades, enabling the firm reuse of financial assets in different settlement systems during the day. A correct implementation of this system requires speedy resolution of delivery on payment processes in each cycle.

### *Centralised security loans*

Some of the technical aspects of centralised security loans<sup>(59)</sup> were amended in October 2002. Firstly, the remuneration to the lender during the loan term is at a fixed interest rate that is published every month. The main new feature is that the SCLV will pass on to members the cost of failure to deliver securities. Securities must be returned immediately upon request. If the securities are on loan, the SCLV will undertake a new loan creation process or the pertinent repurchase mechanisms.

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(57) Rule 23.4 of SCLV Circular 9/2001, dated 26 November, on tariffs and penalties.

(58) The SCLV complemented this rule with Operating Instruction 1/2003, dated 28 January.

(59) Centralised security loans enables securities to be delivered to members of purchase settlement companies when the entities in charge of settling the sales do not comply with their obligations. The SCLV receives securities on loan and guarantees their repayment to lenders.

# 8

## SUPERVISION OF INTERMEDIARIES AND OF COLLECTIVE INVESTMENT

In view of the persisting unfavourable market situation, in 2002 the CNMV reinforced its prudential supervision of the entities under its charge. In particular, the CNMV closely monitored investment services firms making a net or operating loss. Although investment services firms were hard hit by adverse market performance, the sector overall amply complied with equity requirements.

Collective investment schemes' compliance with prudential requirements was also satisfactory overall. Because of the nature of those institutions (principally mutual funds), the CNMV's supervision priorities in 2002 also focused on other essential investor protection issues: detection of situations that potentially generate conflicts of interest, the legal suitability of the investments in portfolio, the activity of collective investment scheme depositories, auditors' opinion and recommendations, and the reports on compliance with internal control regulations.

The CNMV's supervisory activity was not confined to the two main sectors under its jurisdiction: investment services firms (broker-dealers, brokers and portfolio management companies) and collective investment schemes (mutual funds, investment companies and collective investment scheme management companies). It also directly monitored other entities with a significant impact on the Spanish markets, such as agents or representatives of registered entities, branches of foreign investment services firms, self-managed investment companies, asset securitisation fund management companies (SGFTAs) and collective investment scheme depositories. Moreover, the CNMV monitored the Investment Guarantee Fund, which started to effectively pay indemnities in 2002.

In 2002, the Law on Measures to Reform the Financial System<sup>(60)</sup> introduced new regulations for investment services firms, collective investment schemes, depositories and venture capital firms. The new measures combine flexibility (expediting procedures and enabling entities to adapt to the market) with stronger control mechanisms and a stricter penalty system (see box). Changes were also introduced in the scope of the Investment Guarantee Fund<sup>(61)</sup>.

### Main new features for entities under supervision introduced by the Law on Measures to Reform the Financial System

The Law on Measures to Reform the Financial System introduced significant novelties in the regulations for entities under supervision: it combines stimuli for efficiency and competitiveness in the financial sector with strengthened investor protection mechanisms. The main new features are as follows:

- *Speedier procedures and extension of operating possibilities*
  - *Incorporation and merger of funds.* Prior authorisation from the Economy Ministry is no longer required; powers in this area now lie exclusively with the CNMV.

(60) Law 44/2002, dated 22 November, on Measures to Reform the Financial System

(61) Law 53/2002, dated 30 December, on tax, administrative and labour measures.

- *Authorisation for collective investment scheme management companies.* This procedure is now similar to that for investment services firms; authorisation is granted by the Economy Ministry at the proposal of the CNMV.
- *Investments suitable for collective investment schemes.* Security lending is authorised, under limits and guarantees to be regulated by the Economy Ministry.
- *Investments suitable for venture capital firms.* Among other measures, holdings in companies that become listed in organised secondary markets after the holding is acquired and investments in securities issued by companies in the management company's group can be maintained in the portfolio subject to certain transparency requirements.
- *Netting contracts with investment services firms or credit institutions.* The recognition of the validity and enforceability of these contracts vis-à-vis third parties is extended to new instruments, including safeguard of the resulting rights in the event of bankruptcy or administrative intervention of one of the parties.
- *Extension of the business and professional standing requirements to the authorised signatories of investment services firms with general powers of representation.* Such authorised representatives are now subject to the same requirements regarding business and professional standing as directors, general managers and similar.
- *Reinforcement of the rules of conduct and of investor protection in entities that provide investment services and other entities that act or provide advisory services in securities markets*
  - *Establishment of Chinese walls and other measures to avoid the undesirable flow of privileged information and prevent conflicts of interest.* In particular, at least the proprietary portfolio, third-party portfolio and research departments must be kept separate.
  - *Research and advisory services are expressly subject to the rules of conduct.* In particular, providers of those services must be loyal to their clients, which requires, inter alia, disclosing any significant links that may exist between the provider or its group and the company or entity to which the analysis or recommendation refers.
  - *Reinforcement of internal regulations.* The Economy Ministry and, with its authorisation, the CNMV may establish specific measures to be included in internal regulations.
  - *Regulation on transacting investment services by electronic means.* The Economy Ministry is to develop detailed rules in order to provide adequate investor protection in a framework of full freedom to transact.
  - *Investment services firms are required to establish a customer care service or, alternatively, appoint an ombudsman, in common with other entities, in order to process and resolve client complaints.* The ombudsman's decisions is binding on the entity. In both cases, the ombudsman is required to intervene before the complaint is referred to the Investor Defence Commissioner—a position which was also created by the new regulation.
- *Greater guarantees in the regulation on securities deposit and administration*
  - *Review of securities deposit and administration activities.* Entities that perform those activities must file a semi-annual review by an independent expert with the CNMV. The Economy Ministry is to develop the content of the report, based on proposals from the CNMV and the ICAC.
  - *Depositories of collective investment schemes.* These entities must be members of the clearance, settlement and registration systems of the Spanish markets.
  - *Requirements for the deposit of foreign securities owned by collective investment schemes.* The foundations were laid for regulating the requirements applicable to entities that provide this service.



- *Supervision and penalties*
  - *Collaboration with other EU countries to supervise entities that make use of the European passport.* The system of cooperation was developed and includes the possibility of requesting assistance from other European supervisors in the CNMV's investigations.
  - *Assistance from auditors.* The CNMV can require auditors to provide the documentation and clarification it deems necessary for the exercise of its powers in very serious cases and when it cannot obtain that information directly from the entities under its supervision.
  - *Amendment to the penalty system and new powers for the CNMV.* Deficiencies in the administrative organisation, in the accounts and in internal control procedures are now considered to be very serious breaches when those deficiencies endanger an entity's solvency and viability. Persons or entities that provide investment services without authorisation are also subject to the administrative penalty system, in addition to any criminal liabilities that may apply. The CNMV may issue subpoenas and impose fines as well as publish warnings for the public in relation to those activities.

## Investment services firms

### Distance supervision <sup>(62)</sup>

- *Supervising legal coefficients.* The prudential supervision and, in particular, the control of compliance with legal coefficients by investment services firms became especially important in 2002. In general, those coefficients were amply complied with and only some isolated minor breaches were detected. In those cases, a demand by the CNMV to the affected entities was generally sufficient for immediate satisfactory correction of the causes of the breach.
- *Specific controls:*
  - *Checking, via depositories, of the information filed with the CNMV regarding the positions held by clients of investment services firms.* As described in the box on the measures introduced by Law 44/2002, in the future the CNMV will have semi-annual information, reviewed by an independent expert, about the securities deposit and administration services provided by financial entities.
  - *Checking that balances receivable from clients are in fact temporary and minimal* in accordance with rule 12 of CNMV Circular 1/1998 <sup>(63)</sup>.
  - *Calculating equity requirements based on the base requirements:* review of the calculations made by broker-dealers and brokers for this purpose; this is particularly important due to the impact of the revised equity requirements introduced in 2001 (see next box).
  - *Reviewing audits and financial statements.* In addition to the usual controls (auditor's opinion, matching audited financial statements with the provisional reserved statements prepared at year-end, and the correct application of accounting criteria), the CNMV paid special attention to compliance with the formal requirements established by the Spanish Corporations Law regarding the preparation of financial statements and their subsequent approval—the CNMV President had already informed the entities of this obligation in a letter in March 2002.

(62) Distance supervision comprises mainly the analysis of the information supplied periodically by the entities themselves, in accordance with the regulations in force. The CNMV completes this type of control with on-site inspections (visits).

(63) CNMV Circular 1/1998, dated 10 June, on internal systems for control and continuous evaluation of risks.

## Impact of the new solvency requirements on investment services firms

The new legal regime for investment services firms<sup>(1)</sup> approved in 2001 substantially reduced the initial share capital required for broker-dealers and brokers<sup>(2)</sup>, which was clearly above the minimum requirements envisaged in the EU Directive on Capital Adequacy and those for similar entities in other EU countries. The new regulation also introduced an additional calculation method for the minimum equity requirement, applicable to broker-dealers and brokers that provide portfolio management services<sup>(3)</sup>.

The reduction in the initial share capital had a significant effect on the calculation of the minimum equity requirement of broker-dealers and brokers since the main basis for that calculation at most entities was precisely share capital<sup>(4)</sup>. In aggregate terms, the measure has reduced the sector's minimum equity requirements by approximately 22%. Although the sector's qualifying equity also fell substantially, overall it still amply exceeds the minimum legal requirement. At December 2002, qualifying equity amounted to €1.203 billion, six times the minimum requirement.

The new legal regime for investment services firms had a different effect on portfolio management companies. With the aim of reinforcing those entities' client protection, the new regulation increased the initial share capital from €60,101 to €100,000. The calculation for qualifying equity was standardised with that applicable to broker-dealers and brokers that perform this activity (5% of the market value of managed portfolios)<sup>(5)</sup>. This measure increased equity requirements by approximately 35% in the sector, mainly in the entities that manage a larger volume of funds.

(1) Royal Decree 867/2001, dated 20 July, on the legal regime of investment services firms.

(2) The capital required of broker-dealers decreased from €4,507,591 to €2,000,000 and of brokers from €901,518 to €300,000, or €500,000 if they perform specific activities.

(3) The minimum equity requirements for broker-dealers and brokers are now the highest of the following amounts: (a) 2/3 of initial share capital; b) the level of risks assumed; c) the base requirements, equivalent to 25% of structural expenses; and d) 5% of the market value of managed portfolios.

(4) The new regulation has substantially reduced the number of entities that must use the share capital criterion as the main one for calculating qualifying equity and increased, by the similar number, those that are required to use the base requirements criterion.

(5) According to the previous regulation, the equity requirements for portfolio management companies was an initial minimum capital of €60,101 plus 5% of managed assets up to \_60.1 million plus 3% of assets exceeding that amount.

- *Reviewing annual reports to ascertain the degree of compliance with the internal control regulations approved by the Board of Directors or the Audit Committee of the entities, referred to in rule 15 of CNMV Circular 1/1998<sup>(64)</sup>.*
- *Insurance coverage.* In order to assess coverage of risk, particularly operating risk, the CNMV demanded information from several entities.
- *Monitoring claims.* The most frequent claims related to lack of control over representatives' actions, the breach of the obligation to register client orders and the lack of adequate internal control systems. The CNMV made the corresponding checks and, when appropriate, demanded that the problems it had detected be corrected.

(64) CNMV Circular 1/1998, dated 10 June, on internal systems for control and continuous evaluation of risks.

## On-site supervision

Most of the visits to investment services firms in 2002 were aimed at a general inspection of those entities, although some visits were of a limited scope, focusing on specific aspects of importance or on monitoring problems disclosed by previous inspections. Notwithstanding the predominance of general inspections, the supervisors paid special attention to specific matters, mainly:

- *Assessing the entities' net worth and checking their compliance with the liquidity and solvency coefficients.*
- *Checking that the securities entrusted to investment services firms were deposited, and any subdeposits entrusted to other Spanish or foreign financial intermediaries.* Checks were made in the portfolio management activity and in the intermediation activity where securities custody or control was involved.
- *Checking the obligations of broker-dealers and brokers as regards temporary client receivable balances:* effective temporariness (the time required to execute orders), liquidity (investment in liquid assets) and minimisation.
- *Checking compliance with the rules of conduct regarding relations with clients:* identification of clients, duty to inform clients and conformity of portfolio management contracts to the regulations<sup>(65)</sup>.
- *Analysing the conditions and commissions charged for transactions on behalf of clients, especially in the case of mutual funds belonging to the same financial group.*
- *Analysing the appropriateness of entities' human and material resources, organisation, internal control procedures and systems, and rules of conduct.* In this matter, the CNMV paid special attention to analysing the mechanisms to prevent conflicts of interest, especially at entities that, either on their own or because they belong to financial groups, simultaneously perform several types of activities that may create such conflicts.

Apart from the inspections at Spanish investment services firms, in 2002 the CNMV started to perform on-site reviews of branches of foreign investment services firms in order to check their compliance with the rules in accordance with the Investment Services Directive.

The CNMV also performed inspections, with a limited scope, of representatives of investment services firms in order to check the effective integration of their clients' transactions into the procedures and records of the entity they represented, particularly the risk control procedures.

## Collective investment schemes (IICs)

### Distance supervision

- *Supervising mandatory coefficients.* In 2002, it became necessary to continue with the work to adapt controls to the latest amendment to the IIC Regulation<sup>(66)</sup>. The CNMV also analysed the comments about possible breaches of mandatory coefficients by IICs, sent to the CNMV by the depositories, in compliance with their oversight obligations. In both cases, the CNMV immediately ordered the management entities to remedy the matter.

(65) Economy Ministry Order dated 7 October 1999 implementing the general code of conduct and rules for action in the management of investment portfolios, and CNMV Circular 2/2000, dated 30 May, on standard contracts for discretionary and individual management of investment portfolios and other regulations implementing that Order.

(66) Royal Decree 91/2001, dated 2 February, which partially amends Royal Decree 1393/1990, dated 2 November, which approves the Regulation of Law 46/1984, dated 26 December, regulating the Collective Investment Scheme Law.

- *Systematically analysing yields.* This supervision tool detected atypical daily fund yields that were mostly due to errors in the calculation of net asset values but may occasionally have a negative repercussion on investors.
- *Specific checks:*
  - *Examining compliance with the measures introduced in 2001 in the amendment to the IIC Regulation regarding the treatment of conflicts of interest.* A satisfactory resolution of conflicts of interest is vital in mutual funds since their specific legal structure and the growing focus on universal banking by the financial groups to which many fund operators belong have created a framework that favours the appearance of those problems. Special attention was paid to this matter in 2002 and distance supervisory actions were complemented with visits.
  - *- Detecting investments in unsuitable products.* In this section, the actions focused mainly on the analysis of investments in structured products and in collective investment schemes. In the first case, the main objective was to detect investments in credit derivatives or in mutual fund derivatives since the regulation does not authorise these products as suitable. In the second case, the aim was to detect institutions with net asset values not calculated on a daily basis since the regulations authorise this type of asset only to institutions specialising in mutual funds that calculate their net asset value with similar periodicity as the institution in which they invested.
  - *Overseeing the deposit of IICs' securities.* In this section, the main action was cross-checking the detail of the positions disclosed in the reserved statements by the IICs against those supplied to the SCLV by member entities for a specific Spanish equity. The CNMV also exercised oversight of deposits and depositories through visits.
  - *Analysing auditors' reports and financial statements, auditors' recommendation letters and the report on the degree of compliance with the internal control report.*
  - *Overseeing compliance with the regulation applicable to subscription and reimbursement of holdings in the case of securities in which trading was suspended after the 11 September attacks (temporary suspension of trading in the US markets).* Even though some IIC management companies had not established the IT procedures necessary to comply with the regulations, it was found that most entities adopted alternative mechanisms to safeguard investor interests.
  - *Reviewing the limits of derivatives transactions.* The CNMV detected some situations in which the limits had been exceeded and demanded an immediate solution from the management companies.
  - *Detecting open-end securities investment companies (SIMCAV) with net worth or outstanding capital below the legal limits<sup>(67)</sup> and formulating the corresponding corrective actions.*

## **On-site supervision of collective investment scheme management companies (SGIICs)**

In the visits to SGIICs, the supervisors paid special attention to specific matters, namely:

- *Checking compliance with the conditions established in the IIC Regulation for related-party transactions regarding the transactions performed on behalf of the managed IICs.* In this

(67) The regulation establishes that outstanding capital must exceed initial capital at all times and that the company's net worth must be more than 2/3 of subscribed capital; the entities have one year to adapt to these requirements.

section, the CNMV analysed the brokerage commissions charged for securities trades and the depositories' commissions when the entities that provided those services formed part of the same financial group as the management company.

- *Reviewing the allocation of executed orders and checking the existence of general prorating rules to avoid conflicts of interest in transactions that affect two or more IICs.*
- *Reviewing the IICs' securities deposits, especially securities deposited outside Spain.* Special attention was paid to the requirement of the IIC Regulation that deposits outside Spain guarantee the IIC's ownership, full domain and free disposition of its assets.
- *Analysing the net worth situation of management companies.* The negative impact of market performance on managed assets and the consequent decrease in management commission revenues and earnings made it advisable for the CNMV to pay special attention to the net worth situation of management companies. In this context, the CNMV has requested those companies to send in their viability plans.

### **Supervision of self-managed investment companies**

A noteworthy supervisory activity in 2002 was the extension of on-site inspections to self-managed investment companies, i.e. those not administered by SGIICs or portfolio management companies. The objective of those checks is to provide greater guarantees for the rights of investors in this sector.

### **The new tax system for collective investment**

One of the main novelties of the new tax system for IICs envisaged in the recent amendment to the Personal Income Tax Law(\*) is the possibility of deferring taxes on the reimbursement or transfer of investments in IICs when the amount obtained is invested in other IICs.

The new tax regulation states that, in general, taxpayers are entitled to the tax deferral if they do not have the amount of the reimbursement or transfer of shares or holdings at their disposal in any way. In the case of IICs with a corporate structure, both Spanish and foreign ones marketed in Spain, there are two additional requirements: that the number of shareholders of the company whose shares are transferred be higher than 500 and that the taxpayer has not held over 5% of capital of the IIC in the twelve months prior to the transfer.

Transitional Provision Five and Final Provision Three of the Law that partially amends personal income tax also envisage an amendment to the IIC Law, which regulates the system of transfers among IICs, in order to establish the necessary checks of compliance with the conditions established for enjoying the new tax system. Although the transfer system is quite extensive as a result of the large number of cases which may arise, the regulation has the following three main characteristics:

- Investors must make two orders: a sell order to the original fund management company and a buy order to the new fund management company.
- The periods for executing transfers are very short so as to avoid unnecessary delays.
- There are no specific transfer commissions.

Finally, to complete the general description of the transfer system, it is noteworthy that, as the tax system for IICs with a corporate structure depends on certain variables (number of shareholders and percentage

of ownership), knowledge of those variables is very important for investors, marketers and the tax authorities themselves. That information is now sent to the CNMV and has been added to the official registers since mid-January. The public can access this information via the CNMV's web site in "other communications" within the section on significant events.

The new tax system for collective investment products is not only an improvement for investors, as taxpayers, but it may increase competition among management companies in the sector since it eliminates all remaining tax penalties on switching between IICs.

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(1) Law 46/2002, dated 18 December, on the partial amendment to Personal Income Tax which also amends the Corporate Income Tax Law and the Non-Resident Income Tax Law.

## Supervision of IIC depositories

Another new feature in 2002, clearly of greater importance than the previous one due to the number of investors and quantity of net worth affected, was that the CNMV began to supervise IIC depositories through visits. Although the CNMV already indirectly analysed compliance by depositories with the oversight functions assigned to them by law in relation to IICs (particularly the deposit and settlement of securities trading on behalf of administered IICs and the process of subscription and reimbursement of holdings in mutual funds) during the supervisory visits to SGIICs, that review was not complete without direct supervision of the depositories themselves.

## Investment Guarantee Fund

The Investment Guarantee Fund started to function effectively in 2002, when its structure and action regime were configured and the claims handling and indemnity payment system began to operate.

### Claims handling

In 2002, the Fund's management company received a total of 8,522 claims from investors; nearly all of them have been analysed<sup>(68)</sup>. Approximately 54% of claimants were asked to provide additional documentation to justify their position.

Since there were no new cases, all the claims considered in 2002 related to broker-dealers or brokers that became insolvent before the Fund was created. Law 24/2001, dated 27 December, on tax, administrative and labour measures established 1 January 2002 as the initial date for the calculation of the three-month period legally provided for payment of those claims<sup>(69)</sup>; the CNMV subsequently extended this period by another three months at the request of the Fund's management company as it did not have sufficient material and human resources at the time.

In order to expedite the reception and management of claims, the Fund's management company published standard claim forms and, early in January, it published advertisements in the media referring to the procedures to follow, including the documents that investors had to provide in order to accredit their position.

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(68) Unlike the credit institutions' deposit guarantee fund, the Investment Guarantee Fund cannot pay indemnities ex officio; consequently, investors must claim the due amount from the Fund and provide the documentation that justifies their position.

(69) Article 13 of Royal Decree 948/2001, dated 3 August, on investor indemnity systems. The period is calculated from when the CNMV declares the entity to be insolvent.

## **Indemnity payments**

Law 24/2001 also stated that indemnity payments for insolvencies before 2002<sup>(70)</sup> were to be charged to the credit institutions' deposit guarantee funds and to the Investment Guarantee Fund, in proportion to the net worth of each of these institutions at 31 December 2001. Based on this, the Investment Guarantee Fund had to pay 0.17% of indemnities of this type.

The Investment Guarantee Fund's management company and the credit institutions' deposit guarantee funds agreed on the procedure to follow in order to expedite indemnity payments and avoid delays in payment to investors.

## **The Investment Guarantee Fund management company's resources and 2003 budget**

The Fund's management company held its first General Meeting on 17 January 2002, which approved the conduct of business until then and appointed a new Board of Directors. In order to adequately represent the different types of broker-dealers and brokers, the Board was formed by 15 members plus non-voting representatives of the autonomous regions with powers in securities market matters and of the CNMV.

In 2002, that Board adopted the necessary resolutions to provide the Fund's management company with sufficient material and human resources. A General Manager was appointed on 1 March, after the CNMV's approval, and the new headquarters in Paseo de la Habana, no. 82 (Madrid) were opened in mid-May. Since then, the Fund's management company has increased its material resources, especially IT equipment, and human resources; it had 12 employees at 31 December 2002.

In November 2002, the Fund's management company presented its 2003 budget to the CNMV, which approved it. The new budget envisages operating expenses of just over €850,000, with personnel expenses amounting to slightly over 54% of the total and a large amount being allocated to develop a web site in order to facilitate communications with investors. Since the only revenues that the Fund's management company receives arise from the Fund management commissions, all the Fund's management company's expenses were budgeted as commissions, as in 2002.

## **Amendment to the criteria governing contributions to the Fund**

Law 53/2002, dated 30 December, on Tax, Administrative and Labour Measures amended, inter alia, the system of contributions by investment services firms to the Investment Guarantee Fund<sup>(71)</sup>. The new regulation, which will apply to the 2003 budget, introduced a new feature: it imposes a fixed component in the contribution, which is designed in three stages or scales based on the entity's gross revenues, and two variable components, one based on the cash and securities deposited or managed for the clients covered by the guarantee and the other based on the number of clients covered and the maximum indemnity per client envisaged by the regulation.

The preparation of the 2001 and 2002 budgets had evidenced the existence of some problems in relation to the previous contribution allocation method. In particular, difficulties were detected in calculating and cross-checking the data provided by the entities and severe inequalities were detected in the breakdown of the resulting individual contributions<sup>(72)</sup>; the impression was that the contributions bore no relation to the potential risks. The amendment introduced by Law 53/2002 ensures a breakdown that is simpler, more transparent and balanced.

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(70) Those payments relate to the claims relating to the insolvency of AVA and Gescartera.

(71) Article 8 of Royal Decree 948/2001, dated 3 August, on investor indemnity systems.

(72) For example, in the 2002 budget, which amounted to €3.8 million, just six entities contributed over half of the required funds, whereas over 30% of entities did not contribute anything.

## ***Inclusion of portfolio management companies***

Law 53/2002 established that portfolio management companies must be members of the Investment Guarantee Fund. The previous regulation had established a special regime to cover client compensation in this sector, obliging portfolio management companies to arrange third-party liability insurance amounting to a minimum of €1,225,000. However, most of them had major difficulties in arranging that type of insurance since they did not find suitable offers in the market. Making them members of the Fund resolves those problems and ensures greater protection for their clients.

## **Other entities**

### ***Venture capital firms***

March 2002 was the deadline for the first presentation of reserved statements to the CNMV by venture capital firms, after the entry into force of Circular 5/2000<sup>(73)</sup>. That information enables the CNMV to analyse those firms' compliance with the mandatory coefficients and investment in suitable assets.

### ***Asset securitisation fund management companies (SGFTA)***

Like IIC depositories, in 2002 the CNMV started to review SGFTAs—of which there are currently only seven. The review initially focused on analysing the resources of those companies in order to adequately oversee their activity.

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(73) CNMV Circular 5/2000, dated 19 September, on accounting standards and standard reserved and public financial statements of venture capital firms and their management companies. (Amended by CNMV Circular 1/2001, dated 18 April, about standard prospectuses of collective investment schemes).



# 9

## MARKET INTEGRITY

### Market Monitoring Unit (MMU)

In 2002, the MMU conducted a total of 26 investigations in its sphere of work: detection of possible causes of market abuse (insider dealing and market manipulation), inappropriate practices by issuers with own shares, and violation of the “client first” principle by intermediaries. A noteworthy feature of the MMU’s activities in 2002 was the increase in requests for information from foreign regulators, mainly European ones<sup>(74)</sup>.

Table 9.1

THE MARKET MONITORING UNIT’S ACTIONS

	No. of actions	
	2001	2002
<b>Investigations concluded</b>	<b>41</b>	<b>26</b>
Insider dealing	14	14
Market manipulation	16	9
Other	8	3
“Client first” principle	3	0
<b>Subpoenas</b>	<b>343</b>	<b>268</b>
<b>Requests for assistance from foreign institutions</b>	<b>6</b>	<b>11</b>
<b>Visit</b>	<b>11</b>	<b>10</b>
<b>Depositions</b>	<b>15</b>	<b>28</b>
<b>Investigations that required subsequent actions</b>	<b>6</b>	<b>6</b>
Prior notification of violations	0	2
Initiation of proceedings	3	2
Other	3	2

Some of the MMU’s investigations required subsequent actions. The main ones were as follows:

- *Prior notification of violations.* Two prior notifications were sent before the potential initiation of disciplinary proceedings for possible omission of mandatory disclosures and for disclosure of information by an issuer prior to filing it with the CNMV. No violations of the current regulations were detected.
- *Initiation of disciplinary proceedings.* Two files were opened: one for market manipulation as a result of an investigation for possible alteration of the share price formation process by the issuer itself; the other for possible insider dealing as regards transactions with company shares by a director of an issuer without complying with the obligation to notify the CNMV.

(74) See section on International Support Unit.

## Proceedings monitoring and institution surveillance unit

### Disciplinary proceedings

In 2002, the CNMV Board initiated 17 new disciplinary proceedings, investigating a total of 54 possible violations. In 2002, the CNMV completed seven proceedings, with a total of seven violations. Of the proceedings completed, two were initiated in 2000, one in 2001 and four in 2002 (see tables 9.2 and 9.3). A total of 16 penalties were imposed: 13 fines (a total of €8.55 million) and three public reprimands (see table 9.4).

Table 9.2  
NUMBER OF VIOLATIONS ENVISAGED IN THE DISCIPLINARY PROCEEDINGS

	2001	2002
<b>1. Violations leading to the initiation of proceedings</b>	<b>6</b>	<b>54</b>
* Very serious	5	21
* Serious	1	29
* Minor	–	4
<b>2. Violations on which proceedings concluded</b>	<b>13</b>	<b>7</b>
<b>Very serious violations</b>	<b>10</b>	<b>5</b>
* proceedings initiated in 2000	6	2
* proceedings initiated in 2001	4	1
* proceedings initiated in 2002	–	2
<b>Serious violations</b>	<b>3</b>	<b>2</b>
* proceedings initiated in 2000	2	–
* proceedings initiated in 2001	1	–
* proceedings initiated in 2002	–	2
<b>Minor violations</b>	<b>–</b>	<b>–</b>

### Unregistered intermediaries

Unlike previous years, the bulk of activities detected and investigated in this field was not by institutions oriented towards acquisition of Spanish investors but mainly by non-Spanish persons and institutions located on the Costa del Sol which provided services to foreign clients owner of deposits or other financial positions in Gibraltar and other tax havens. The services comprised mainly investments in products marketed by financial institutions also located in tax havens. Those intermediaries introduced themselves to investors as financial advisors but there was no legally valid way in which to determine whether or not they actually processed client orders.

Because of the nationalities of their owners and of the clients they targeted, international cooperation among supervisors became vital to detect those institutions and prevent their activities. Of the 44 unregistered institutions investigated in 2002, about 90% were notified to the CNMV by foreign supervisors. Since many foreign supervisors, like the CNMV, have the power to make public warnings about this type of institution and can disclose this to other supervisors, the CNMV created a specific section on its web site to disclose its own warnings and those made by other supervisors<sup>(75)</sup>.

(75) See section on public warnings in chapter 10.

Table 9.3  
**TYPES OF VIOLATIONS INVESTIGATED**

	Opened		Closed	
	2001	2002	2001	2002
<b>VERY SERIOUS VIOLATIONS</b>	<b>5</b>	<b>21</b>	<b>10</b>	<b>5</b>
I. Failure to disclose significant holdings	–	1	1	–
II. Forbidden activities	1	5	3	3
III. Market manipulation	–	1	–	–
IV. Insider dealing	2	–	2	–
V. Breach of coefficients	–	2	–	–
VI. Provision of misleading information	–	1	–	1
VII. Violation of general securities market regulations	–	4	–	–
VIII. Violation of general IIC regulations	–	3	–	–
IX. Accounting irregularities	1	2	1	–
X. Obstruction of inspection	1	–	1	–
XI. Unregistered issues	–	2	–	1
XII. Evasion of tender offer	–	–	2	–
<b>SERIOUS VIOLATIONS</b>	<b>1</b>	<b>29</b>	<b>3</b>	<b>2</b>
I. Accounting irregularities	–	2	–	–
II. Forbidden activities	–	1	–	–
III. Insider dealing	1	–	1	–
IV. Breach of coefficients	–	4	–	1
V. Violation of general securities market regulations	–	2	1	–
VI. Violation of general IIC regulations	–	7	–	1
VII. Breach of code of conduct	–	13	1	–
<b>MINOR VIOLATIONS</b>	<b>–</b>	<b>4</b>	<b>–</b>	<b>–</b>
I. Violation of general securities market regulations	–	4	–	–

### **Collaboration with the Public Prosecutor**

The CNMV attended to all the requests for information from the Public Prosecutor's office and referred to it all the issues where it detected signs of a crime.

Table 9.4  
**PENALTIES IMPOSED**

	2001			2002		
	Number	Amount*	Period**	Number	Amount*	Period**
I. Fines	13	2,677	–	13	8,555	–
II. Disqualification of directors	2	–	6	–	–	–
III. Reprimands	4	–	–	3	–	–

\* Thousand euros.

\*\* Months.

### **Other actions**

In accordance with article 97.1 of the Securities Market Law, notices were received from the mercantile registrars regarding 116 cases where the limits on treasury stock of unlisted companies were potentially being exceeded, and a total of 77 subpoenas were issued to those companies (some of which received more than one).

## International support unit

In its second year, this unit improved considerably in terms of information exchange flow and assistance to other regulators in their investigations. In particular, greater experience and knowledge of the legislation and procedures applicable in other countries expedited and simplified the process of the CNMV's requests to other supervisors. Although the number of cases in which information or assistance was requested was similar to 2001, the number of formal requests which had to be sent decreased by over 50% in 2002 (see table 9.5).

Table 9.5  
INTERNATIONAL REQUESTS FOR ASSISTANCE IN INSPECTION

Requests to foreign regulators			Requests from foreign regulators		
Sent to	Year		Received from	Year	
	2001	2002		2001	2002
<b>Total</b>	<b>33</b>	<b>16</b>	<b>Total</b>	<b>34</b>	<b>27</b>
Bahamas	0	2	Germany	1	1
United States	4	1	Australia	3	0
France	3	1	Austria	1	0
The Netherlands	2	0	Belgium	1	5
United Kingdom	8	3	Brazil	1	0
South Africa	1	0	Denmark	0	1
Switzerland	8	4	United States	1	0
Ireland	1	1	Finland	0	1
Lichtenstein	1	0	France	5	2
Luxembourg	1	1	The Netherlands	0	1
Jersey	1	0	Hong Kong	0	1
Guernsey	1	0	Ireland	10	8
Isle of Man	2	0	Isle of Man	1	0
Portugal	0	3	Jersey	0	1
			Luxemburgo	0	2
			New Zealand	1	0
			Portugal	2	0
			United Kingdom	7	4
<b>Status<sup>(1)</sup></b>	<b>33</b>	<b>16</b>	<b>Estado de las peticiones<sup>(1)</sup></b>	<b>34</b>	<b>27</b>
Closed	23	10	Closed	28	25
Pending	10	6	Pending	6	2

<sup>(1)</sup> At 31 December 2002.

## Criteria of interest applied in resolving disciplinary proceedings

### Double jeopardy (non bis in idem)

At an extraordinary meeting on 22 May 2002, the CNMV Board resolved to initiate disciplinary proceedings against a credit institution for allegedly committing a violation, envisaged in article 99.ñ of the Securities Market Law as very serious, due to, inter alia, disclosing inexact or non-truthful data to the CNMV, providing the CNMV with misleading information or maliciously omitting significant features or data. The resolution was adopted after an investigation into the veracity of the financial information supplied by the credit institution to the CNMV (and, therefore, to the market) as a result of a Bank of Spain inspection report, referred to the CNMV, on the accounting of an extraordinary item in 2000.

At its meeting on 30 December 2002, in view of the criminal proceedings under way regarding identical events or events that are impossible to separate rationally from the aforementioned ones<sup>(76)</sup>, the CNMV Board resolved to suspend the aforementioned administrative proceeding until the courts issued a firm decision on same. That resolution is based on article 96 of the Securities Market Law and on article 7 of the Penalising Power Regulation (RPEPS)<sup>(77)</sup>, which envisage the application of the double jeopardy principle in the CNMV's disciplinary proceedings.

The double jeopardy (*non bis in idem*) principle has two meanings: firstly, it is a material principle, according to which no-one can be penalised twice for the same violation; secondly, it is a procedural principle, by virtue of which no-one can be judged twice for the same events. Although it was not expressly stated in Spain's 1978 Constitution, several rulings by the Constitutional Court<sup>(78)</sup> acknowledge that this principle goes hand in hand with the principles of legality and codification of violations stated mainly in article 25 of the Constitution. That acknowledgement highlights its constitutional currency and makes it a subjective right classified as "fundamental", implying that it merits special protection.

The Law on the Legal Regime of the Public Administration and Common Administrative Procedure (LRJ-PAC)<sup>(79)</sup> clearly acknowledges the material principle in the area of administrative penalties since article 133 states that "*events that have been penalised at criminal or administrative level cannot be penalised in the cases where the subject, event and grounds are found to be identical*". Article 137.2 of LRJ-PAC also establishes that final criminal court decisions are binding when it states that "*the events proved via final criminal court resolutions shall be binding upon the Public Administration with regard to the penalty proceedings from which they arose*".

Regarding securities markets, article 96 of the Securities Market Law includes the procedural principle, stating that "*the exercise of the penalising power shall be independent of the possible existence of crimes or violations of a criminal nature. Nevertheless, when the same events or other events which are rationally impossible to separate from them in accordance with this Law are being processed, the disciplinary proceeding shall be suspended until the criminal court issues a final decision. If and when the proceeding is reinitiated, the decision to be issued shall respect the findings of facts contained in that decision*".

Therefore, in accordance with article 96 of the Securities Market Law, the CNMV is obliged to suspend its disciplinary proceeding when one of the cases contained in that article arises, as occurred in this case. For that purpose, article 7 of RPEPS obliges it, when it becomes aware that there is a criminal proceeding under way for the same events, to ask the court in question for notice of the actions adopted. Once the notification is received, if it is considered that the subject, event and grounds of the administrative and criminal violation are identical, the competent body for resolving the disciplinary proceeding (in this case the CNMV Board) must resolve to suspend it until there is a judicial decision. Once the administrative proceeding is reinitiated, the events found to be proven in the court decision are binding on the CNMV.

## **Atypical financial contracts**

On 13 February 2002, the CNMV Board resolved to initiate disciplinary proceedings against a credit institution for allegedly committing a very serious violation, as stated in article 99.n of the Securities Market Law, for arranging and distributing in the market atypical financial contracts without complying with the requirements established in article 26 of said Law. On 27 September 2002, the Economy Ministry resolved to impose a fine of €300,506.05 on that institution.

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(76) Initial proceedings 160/00-D.

(77) Royal Decree 1398/1993, dated 4 August, which approves the Penalising Power Regulation.

(78) Ruling 2/1981, dated 30 January, and others: 77/83, 159/85, 150/91, etc.

(79) Law 30/1992, dated 26 November, on the Legal Regime of the Public Administration and Common Administrative Procedure.

The Securities Market Law generally provides freedom to issue without prior authorisation<sup>(80)</sup>. Nevertheless, article 26 of the Law contains a rigorous system for disclosure of issue plans to the CNMV, including their public disclosure, and the obligation to file a prospectus with the CNMV. That system is aimed at providing investors with all the information required to make a decision about the proposed investment, which is why issuers are subject to this essential requirement, and omission of that obligation cannot be considered merely a formal violation.

The amendment to the 1998 Securities Market Law<sup>(81)</sup> extended the number of financial instruments covered by the market regulations. The new article 2 of the Securities Market Law includes in the scope of application of this law, in addition to marketable securities grouped in issues, specific financial instruments, including “*b) Forward financial contracts, options contracts and swap contracts, provided that they refer to marketable securities, indexes, currencies, interest rates, or any other type of underlying asset of a financial nature, regardless of the form of settlement and even if they are not traded in an official or unofficial secondary market*”. That same article establishes, in its last paragraph, that “*the rules envisaged in this law for marketable securities are applicable to financial instruments, with the necessary adaptations*”. Consequently, the requirements for securities issues established in article 26 of the Securities Market Law, including the prior filing of the prospectus, is applicable, in addition to other regulations.

The content of the aforementioned prospectus may differ depending on the issuer’s characteristics, issue amount and other features of the securities<sup>(82)</sup> and must conform to the forms approved by the CNMV<sup>(83)</sup>. CNMV Circular 2/1999, dated 22 April, establishes the content of several issue prospectuses. That circular was amended by Circular 3/2000, dated 30 May, which introduced a specific prospectus form for atypical financial contracts.

Circular 2/1999, amended by Circular 3/2000, defines atypical financial contracts as “*contracts not traded in organised secondary markets through which a credit institution receives money or securities, or both, from its clients and undertakes to reimburse them either by delivering specific listed securities or paying a sum of money, or both, depending on the market price of one or more securities, or on the performance of a stock market index, without any commitment to fully reimburse the principal received*”. According to the prospectus model for atypical financial contracts in Annex 8 of said Circular, those contracts combine a deposit with an option and run the risk of partial or total loss of the invested amount.

With the atypical financial contract, Circular 3/2000 does not introduce a new category of financial instruments other than those stated in article 2 of the Securities Market Law since this instrument is simply an “*options contract*”, as expressly covered in the aforementioned article. Circular 3/2000 confines itself to establishing a specific prospectus form, in view of credit institutions’ practice of linking deposit contracts with options contracts<sup>(84)</sup> and of the fact that the prospectus forms established in Circular 2/1999 for securities in general are inappropriate.

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(80) Article 25 of the Securities Market Law.

(81) Law 37/1998, dated 16 November, amending the Securities Market Law.

(82) Article 28 of the Securities Market Law.

(83) Article 18 of Royal Decree 291/1992, dated 27 March, on issues and public offerings of securities.

(84) This is a put option contract issued by the investor to a credit institution. If the option is exercised, the deposit covers the client’s obligations to pay.

Table 9.6

### OUTCOME OF DISCIPLINARY PROCEEDINGS IN 2002

Reference	Resolution
(1/02)	<b>Ministerial Order dated 26 April 2002</b> Resolution on the alleged habitual performance by a company of activities reserved to investment services firms without authorisation and without being registered in the corresponding administrative register, which is a very serious violation of article 99.q of the Securities Market Law. The company was fined €3,298,718 and its two directors were fined €300,506 each.
(2/02)	<b>Ministerial Order dated 26 April 2002</b> Resolution on the alleged habitual performance by a company of activities reserved to investment services firms without authorisation and without being registered in the corresponding administrative register, which is a very serious violation of article 99.q of the Securities Market Law. The company was fined €649,228 and its director was fined €300,506.
(3/02)	<b>Ministerial Order dated 26 April 2002</b> Resolution on the alleged habitual performance by a company of activities reserved to investment services firms without authorisation and without being registered in the corresponding administrative register, which is a very serious violation of article 99.q of the Securities Market Law. The company was fined €2,485,029 and its three directors were fined €300,506 each.
(4/02)	<b>CNMV Board Resolution dated 26 June 2002</b> Resolution on the alleged commission of a serious breach by an investment services firm due to breach of the liquidity coefficient (article 100.g of the Securities Market Law). The company was fined €12,020 and received a public reprimand.
(5/02)	<b>Ministerial Order dated 27 September 2002</b> Resolution on the issue by a credit institution of atypical financial contracts without registration and vetting by the CNMV of the issue prospectus (very serious violation of article 99.n of the Securities Market Law). The company was fined €300,506.
(6/02)	<b>CNMV Board Resolution dated 9 October 2002</b> Resolution on the alleged breach by a SIMCAV of the market risk limit in derivatives transactions (serious violation of article 32.3.j of the IIC Law). The violation was reduced to minor (article 32.2.f of the IIC Law) because it was considered that the breach did not seriously damage shareholders' interests, as required by the definition of the violation. The SIMCAV and its management company were fined €3,005 and received a public reprimand.
(7/02)	<b>CNMV Board Resolution dated 30 December 2002</b> Decision to suspend the administrative disciplinary proceeding in connection with the alleged commission by an issuer of a very serious breach in connection with providing the CNMV with inexact or non-truthful data or misleading information (article 99.n of the Securities Market Law), until the criminal courts issue a final judgment, since the two proceedings are substantially identical.

## Judicial review of disciplinary resolutions

In 2002, the courts issued twenty resolutions regarding contentious-administrative appeals filed against penalties and other resolutions by the CNMV or the Ministry of Economy. Of the resolutions issued (see table 9.7), four appeals were resolved by the Supreme Court.

Table 9.7

### COURT JUDGEMENTS ON MATTERS RELATING TO THE SECURITIES MARKETS IN 2002

No	Date	Court	Appeal no.	Appealed order
1	10/01/2002	National Court	002-DF/2000	Ministry of Economy order 22/09/1999

Confirmed the penalties imposed on the director of a broker for two violations of article 99.s of the Securities Market Law.

<b>2</b>	<b>5/02/2002</b>	<b>Madrid HCJ*</b>	<b>1230/1994</b>	<b>CNMV resolution 24/11/1993</b>
Rejected the contentious-administrative appeal filed by a collective investment institution management company against the penalty imposed for a minor violation of article 32.2.f of Law 46/1984, dated 26 December, which regulates collective investment schemes (breach of other obligations or prohibitions of this Law, of the Spanish Corporations Law, of the regulatory provisions or of the schemes' bylaws or management regulations, provided that, because of their nature, they cannot be considered as a serious or very serious violation).				
<b>3</b>	<b>18/02/2002</b>	<b>Supreme Court</b>	<b>547/2000</b>	<b>National Court decision 26/07/1999</b>
Rejected the appeal for unification of approach filed by virtue of a hypothetical contradiction between the appealed decision and a subsequent decision in the interpretation of article 32.4 of Law 46/1984, dated 26 December.				
<b>4</b>	<b>22/02/2002</b>	<b>National Court</b>	<b>0337/1999</b>	<b>CNMV resolution 16/12/1998</b>
Rejected the appeal against the CNMV resolution which authorised the tender offer for 643,937 shares of Sociedad Financiera y Minera.				
<b>5</b>	<b>1/03/2002</b>	<b>Supreme Court</b>	<b>4789/1999</b>	<b>National Court decision 02/03/1999</b>
Partially rejected the appeal filed by an investment services firm and its directors against a National Court decision which penalised them for four very serious violations of article 99.q of the Securities Market Law in connection with several sections of articles 71 and 76 of said law.				
<b>6</b>	<b>4/03/2002</b>	<b>Supreme Court</b>	<b>8360/1995</b>	<b>HCJ* decision 11/05/1995</b>
Rejected the appeal against a Madrid HCJ decision which confirmed a serious violation of article 100.j of the Securities Market Law by an investment services firm.				
<b>7</b>	<b>7/03/2001</b>	<b>Madrid HCJ*</b>	<b>157/1998</b>	<b>CNMV resolution 26/01/1998</b>
Confirmed the penalties imposed by the CNMV resolution that penalised the members of a limited company for acquiring own shares without the authorisation of the Shareholders' Meeting and in excess of 10% of the company's capital. Breach of articles 75, 76 and 90 of the Spanish Corporations Law.				
<b>8</b>	<b>12/03/2002</b>	<b>Madrid HCJ*</b>	<b>1307/1994</b>	<b>CNMV resolution 24/11/1993</b>
Confirmed the penalties imposed by the CNMV for four serious violations of article 32.3.c of Law 46/1984, dated 26 December, in connection with two FIM and one FIAMM breaching the investment coefficient regulations.				
<b>9</b>	<b>22/03/2002</b>	<b>Madrid HCJ*</b>	<b>235/1997</b>	<b>Ministry of Economy order 20/12/1996</b>
Upheld the appeal and overturned the CNMV's penalty resolution which had imposed a penalty for a serious violation of article 32.3.f of Law 46/1984, dated 26 December, i.e. collection of management commissions without complying with the limits and conditions imposed by this law, in its regulatory provisions and in the schemes' bylaws or regulations. The appeal was upheld because it is impossible to extensively apply the violation definitions of administrative law.				
<b>10</b>	<b>12/04/2002</b>	<b>National Court</b>	<b>43/1999</b>	<b>Ministry of Economy order 17/12/1998</b>
Upheld the appeal against a penalty imposed for a serious violation of article 99.o in connection with article 81 of Securities Market Law 24/1988 for insider dealing, and ruling that an administrative penalty cannot be imposed based solely on circumstantial evidence.				
<b>11</b>	<b>19/04/2002</b>	<b>National Court</b>	<b>744/1999</b>	<b>Ministry of Economy order 1/07/1999</b>
Upheld the contentious-administrative appeal against the Ministry of Economy order that imposed a penalty for a serious violation of article 100.r of Securities Market Law 24/1998, dated 28 July (breach of the duty to safeguard against insider dealing). The appeal was upheld because there was no proof that shares were acquired as a result of wilful misconduct or negligence of the information holder.				
<b>12</b>	<b>30/04/2002</b>	<b>Barcelona Provincial Court</b>		<b>Barcelona Court of 1<sup>st</sup> Instance no. 41 decision 24/02/2002</b>
Upheld the appeal and ordered the respondent to (i) indemnify the plaintiff, (ii) pay the legal costs since the filing of the suit, and (iii) pay the costs in the first instance due to performing a portfolio management activity in financial derivatives without the approval of the plaintiff and violating the disclosure obligation imposed by the General Code of Conduct approved by Royal Decree 629/93.				



<b>13</b>	<b>6/05/2002</b>	<b>Madrid HDCJ*</b>	<b>3250/1995</b>	<b>CNMV resolution 10/05/1995</b>
Confirmed the penalty imposed on the Chairman and CEO of an investment services firm for two violations of article 100.g (not maintaining the liquidity coefficient required of brokers and broker-dealers and maintaining a risk of over 40% of equity) and one violation of article 100.j (not disclosing certain transactions with own shares to the CNMV).				
<b>14</b>	<b>8/05/2002</b>	<b>National Court</b>	<b>680/1998</b>	<b>Ministry of Economy resolution 14/1/1998</b>
Partially upheld the appeal against the penalty resolution that imposed a penalty for a very serious violation of article 99.n (disclosing to the CNMV inexact or non-truthful data, misleading information, or maliciously omitting significant features or data).				
<b>15</b>	<b>19/07/2002</b>	<b>Supreme Court</b>	<b>754/1998</b>	<b>CNMV resolution 10/05/1995</b>
After several irregular securities purchase and sale transactions, two penalties were imposed: an administrative one, for a serious violation of article 100.n of the Securities Market Law, and a criminal one, for a violation of article 252 of Organic Law 10/1995, which approved the Criminal Code. An appeal was filed against the rejection of the administrative appeal filed previously for violation of the double jeopardy principle, violation of the case law regulations applicable for resolving the matters in question, and violation of the essential regulations of the trial for violation of the regulations that govern procedural acts and rights. The three briefs were rejected by the Supreme Court.				
<b>16</b>	<b>25/09/2002</b>	<b>National Court</b>	<b>1067/1999</b>	<b>Ministry of Economy resolution 21/10/1999</b>
Partially upheld the appeal (except in connection with the graduation of the penalty) on the grounds that the appellant had exceeded the limits of its power without being authorised to do so, constituting a very serious violation of article 99.q of the Securities Market Law, and that the mutual agreement, which was not stated in the power of attorney document referred to in the appeal, was not sufficient.				
<b>17</b>	<b>2/10/2002</b>	<b>National Court</b>	<b>302/1999</b>	<b>Ministry of Economy order 14/10/1998</b>
Partially confirmed (except in connection with the amount of the penalty imposed) the imposition of a penalty for a very serious violation of article 99.i of the Securities Market Law (practices aimed at distorting the free formation of prices in the securities market by significantly changing the share price and causing considerable damage to investors).				
<b>18</b>	<b>2/10/2002</b>	<b>National Court</b>	<b>954/1999</b>	<b>Ministry of Economy resolution 20/09/1999</b>
Rejected the appeal filed against the Ministry of Economy resolution which rejected the appeal filed against the CNMV Board resolution that adopted precautionary measures against the plaintiffs for habitually receiving and transmitting investors' order and for managing their clients' portfolios, without authorisation.				
<b>19</b>	<b>17/10/2002</b>	<b>National Court</b>	<b>543/1999</b>	<b>Ministry of Economy resolution 14/10/1998</b>
Partially confirmed (except for the definition of penalty, which is rated as serious, and the amount of the fines) the resolution in question, which resolved the disciplinary proceeding against, inter alia, the plaintiff for a violation of article 99.i of the Securities Market Law (practices aimed at distorting the free formation of prices in the securities market by significantly changing the share price and causing considerable damage to investors).				
<b>20</b>	<b>6/11/2002</b>	<b>National Court</b>	<b>707/2000</b>	<b>Ministry of Economy order 24/04/2000</b>
Rejected the appeal against the Ministerial Order which rejected (due to expiration) the appeal for reversal of the Economy and Finance Ministry order which imposed a penalty for a very serious violation of article 99.q of the Securities Market Law.				

\* Madrid High Court of Justice.

In February 2002, the CNMV created the Investor Department, mainly in response to the growing complexity of securities markets and the increasing participation of small investors. The new department will actively increase investor protection through disclosures, education and monitoring of the marketing practices of entities under supervision (see next box).

One of the Investor Department's functions is to handle investor queries. The Investor Assistance Office was created to enhance this service. The CNMV also devoted efforts to expanding its disclosure capacity through the Internet ("Investor's Corner"<sup>(85)</sup>). Regarding education, the CNMV promoted and collaborated in courses and conferences and in the publication of new guides for private investors.

### Creation of the Investor Department

In line with similar initiatives by other supervisors of developed markets, in February 2002 the CNMV created the Investor Department, accountable to the Directorate-General of Markets and Investors. The new department responds mainly to the need to reinforce protection of small investors through disclosure, stimulating greater knowledge of products and services of the securities markets, which are increasingly complex.

The Investor Department operates on two levels. Externally, its activities are aimed at raising awareness of investor rights, encouraging queries and enhancing comprehension of the information available and, in general, improving market knowledge. For that purpose, the Department handles investor queries, publishes guides on products and services, participates in or promotes courses and conferences, and monitors issuers' and intermediaries' advertising and marketing activities.

Internally, the Investor Department encourages more efficient interaction between investors and the CNMV itself, channelling investors' problems towards the supervision units and facilitating disclosure of supervisory actions to investors.

In order to exchange experiences, in 2002 the Investor Department maintained contact with its counterparts of the FSA<sup>(1)</sup>, CONSOB<sup>(2)</sup>, SEC<sup>(3)</sup> and CMVM<sup>(4)</sup>.

(1) Financial Services Authority (UK).

(2) Commissione Nazionale per la Società e la Borsa (Italy).

### Investor Assistance Office

The Investor Assistance Office handles information queries by several means: telephone<sup>(86)</sup>, e-mail<sup>(87)</sup>, letter or fax, and visits. Since the creation of the Office,

(85) Implementation planned for early 2003.

(86) Telephone 902149200.

(87) inversores@cnmv.es.

# 10

## INVESTORS

11,014 queries have been handled, of which 8,038 were by telephone and 2,204 by e-mail. Written communications (652 queries) and visits (120) represented a small proportion. In the latter case, an appointment is required in order to provide an effective response and the person should bring any necessary documentation. In any event, the Office advises on the use of the Complaints Department, provided that there are sufficient signs and documentary evidence. Queries increased in the year, especially in the fourth quarter.

The main queries were for information from the CNMV (publications, investor guides and web site content), matters relating to delistings (with or without tender offers) and to collection of deposit commissions for securities issued by companies delisted in the past. There were also numerous queries about the investor indemnification system and the functioning of the Investor Guarantee Fund Management Company. Regarding investment services firms, the main queries were about possible errors in order processing and the legality of the items and amounts of the commissions charged.

Through investor queries, the Investor Assistance Office became aware of some events and situations which, by their nature, could require specific intervention by the supervision divisions, in line with the usual monitoring and control procedures. The Office referred those matters to the competent divisions, which adopted the necessary corrective measures.

*Table 10.1*  
**QUERIES IN 2002**

	Número	%
Information from the CNMV	2,161	19.62
Legislation	2,028	18.41
Securities (fixed-income, equities and other)	1,929	17.51
Investment services firms and credit institutions	1,261	11.45
Unregistered firms	953	8.65
Collective investment schemes	461	4.19
Other	2,221	20.17
<b>Total queries attended</b>	<b>11,014</b>	<b>100.00</b>

## Access to Official Registers

In 2002, access to the CNMV's Official Registers was improved, including access via the web site to some registers such as issue prospectuses and special auditors' reports on listed companies. Intermediaries' fee sheets and standard contracts were also made available through the web site and via optical disc.

*Table 10.2*  
**INFORMATION AVAILABLE IN THE CNMV'S OFFICIAL REGISTERS**  
**First year available in each format**

	Direct queries at the CNMV				Diskette & CD-ROM
	Paper	Screen	Optical disc	Internet	
Advance notifications	1989	1989	1994	1989	
Issues	1989	1989	1990	1989	
Issuers' prospectuses	1989	1989	1990	2002	
Listings	1989	1989	1990	1989	
IIC prospectuses	1989	1989	1989	1989	
Registration of broker-dealers and brokers	1989	1989	1998	1989	1998
Audits:					
Issuers	1986	1986	1986	1986	1990
IIC	1989	1989	1993		
ESIs	1988	1988	1993		
ESIs and groups	1993	1993			
Stock exchange management companies	1989	1989			
Special reports	1991	1991	2001	2001	
Financial information:					
Issuers	1989	1989		1985	(*)
Financial information on IICs	1991	1991		4 quarters	
Tender offers	1989	1989	1998	1989	
Book-entry deeds	1989	1989	1998	1994	
Broker fees	1993	1989	1996	1996	
Significant holdings	1990	1990		1990	(**)
Significant events	1990	1989		1990	
Venture capital entity prospectuses	1998		1998	1998	
Brokers' standard contracts	1996	1989	1996	1996	

(\*) ASCII and Windows formats.

(\*\*) ASCII format.

### **Creation of the *Investor's Corner* on the CNMV's web site**

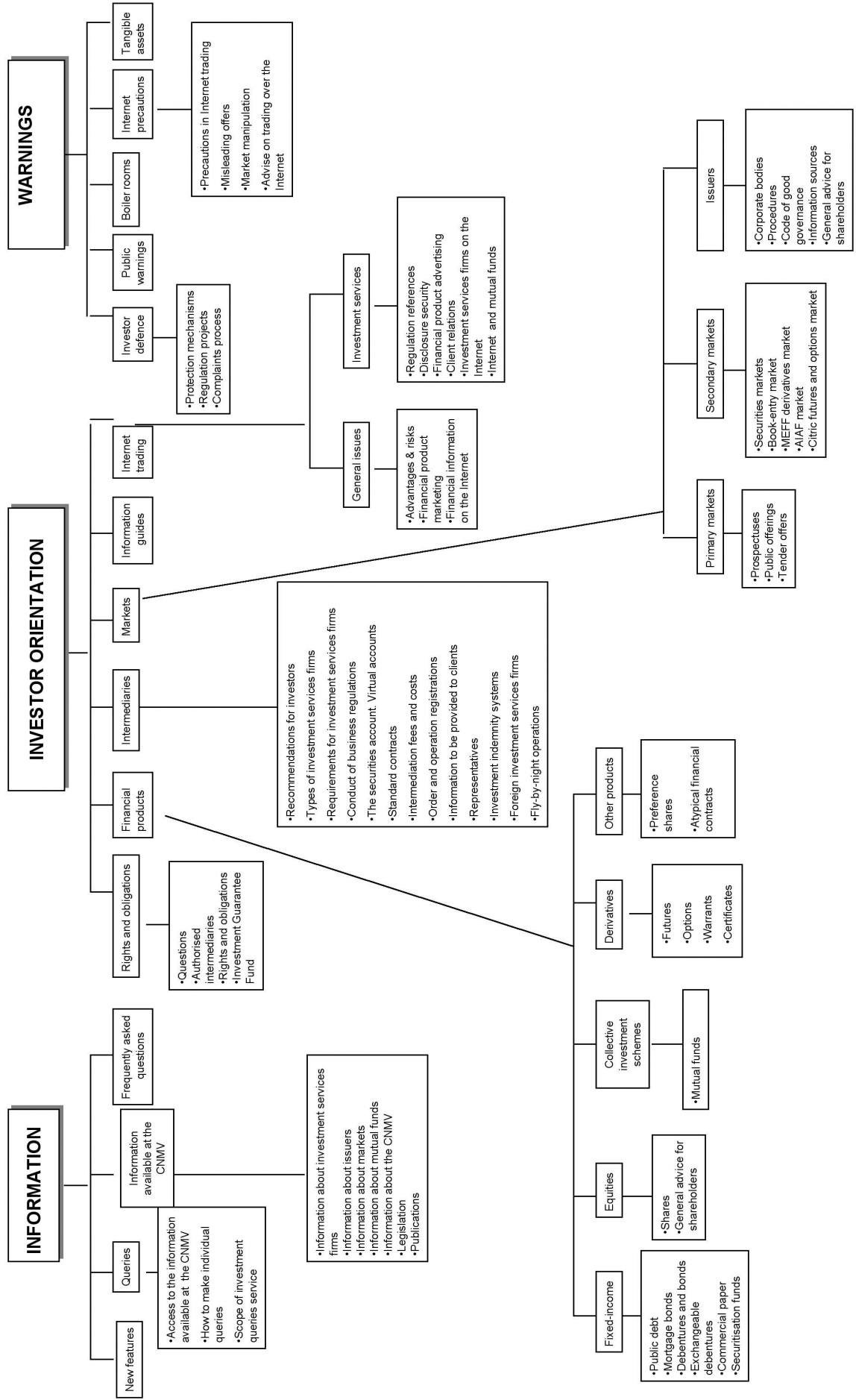
In 2002, an extensive analysis was performed on the scope and content of other regulators' web sites regarding the provision of information to individuals. The study evidenced the importance of education and public information sections in countries with more developed financial systems.

Based on this, the CNMV redesigned its home page and reorganised its web site contents. The main feature was the creation of an information section called *Investor's Corner* aimed at providing knowledge to investors in a simple way. The plan was to combine an attractive design with a modular, selective content structure that facilitates navigation and enables users to rapidly find the information they need. The contents are divided into three large blocks: information, investor orientation and warnings.

- Information: main new features, queries service, information available at the CNMV about entities, markets and legislation, and frequently asked questions.
- Investor orientation: investors' rights and obligations, financial products, intermediaries, markets, information guides and Internet trading.
- Warnings: a section on "boiler rooms", public warnings and Internet precautions (see specific section in this chapter).

The *Investor's Corner* includes a glossary with a brief explanation of over 250 frequently-used terms in securities markets and informs retail investors on how to access the web site's extensive institutional information. This section became fully operational in early 2003.

Figure 10.1  
INVESTOR'S CORNER IN THE CNMV'S WEB SITE



## Education

The CNMV paid special attention to investor education in 2002. The efforts were channelled through its own publications, collaboration in the education initiatives of other entities and participation in the media.

In 2002, the CNMV published new guides for individuals and re-issued previous guides. The sector collaborated enormously to ensure that investors received the guides: 103 collaboration agreements were signed. Those guides were also promoted through the media, and electronic formats were made available on institutional and private web sites. Because of the sizeable foreign investment in Spain, all the guides were translated into English<sup>(88)</sup>.

Over 142,000 copies were distributed to end investors through a number of channels (see table 10.3). The following titles are currently available:

- “What you should know about...mutual funds and collective investment”
- “What you should know about...investment services companies”
- “What you should know about...fly-by-night operations”
- “What you should know about...fixed-income products”
- “What you should know about...the rights and responsibilities of shareholders”

Table 10.3  
INVESTOR GUIDES

	No of agreements	No. of copies	%
Markets: Stock exchanges and MEF	5	49,900	35.13
Investor Assistance Office (CNMV)	–	19,906	14.02
Consumer associations	5	2,378	1.67
Securities market entities	86	67,767	47.71
Broker-dealers	17	30,442	–
Dealers	19	9,859	–
SGCs	13	5,490	–
SGICs	34	20,559	–
Branches of foreign entities	3	1,503	–
Credit institutions <sup>(1)</sup>	1	1,200	0.84
Universities and other education centres	6	874	0.62
<b>Total</b>	<b>103</b>	<b>142,025</b>	<b>100.00</b>

<sup>(1)</sup> Many through their investment services firms.

The CNMV also participated in conferences organised in collaboration with consumers’ associations, chambers of commerce, and public and private universities. There were also presentations at conferences organised by regional media and in the internal training programmes of certain financial institutions’ commercial networks. The CNMV was also involved in other media activities (radio, television and press).

(88) The English version of the guides are only available in electronic format through the CNMV’s web site ([www.cnmv.es](http://www.cnmv.es)).

## Other actions aimed at reinforcing investor protection

### Visits to marketers

In order to analyse the information delivered to investors about the marketed products and services supervised by the CNMV, the Investor Department made 62 visits to credit institutions' branches. In particular, the visits focused on: (i) sales personnel's knowledge and training; (ii) efficiency of internal information distribution channels; and (iii) content transmitted to investors. Some of the problems that were detected are detailed in the next box.

### Main problems detected in the information provided about some of the marketed financial products

*Investment funds.* Often, what is said does not coincide with the official information, the product does not conform to the investor's risk profile, and some information is omitted (especially significant in the case of guaranteed funds).

*Public offerings.* It was detected that one public offering, in addition to other significant issues, did not provide information about the pricing mechanism, the possible reallocation of tranches among investors, order revocations and the issuer. Moreover, the practice of "inflating" the offerings continues to be encouraged.

*Warrants.* Salespeople do not always have sufficient technical knowledge to explain how prices, volatility and trading systems work.

*Preference shares.* Sometimes, fixed-income is marketed as having a guaranteed dividend, with instant liquidity, and the ease of obtaining a higher price than the nominal amount. The following information is omitted: the dividend depends on the guarantor earning sufficient profit, the issue is perpetual, the early redemption clauses, the fact that there is no price guarantee, and the possibility that execution may not be immediate.

*Atypical financial contracts.* Such contracts are sometimes marketed as if they were fixed-term deposits without stating that they depend on the performance of certain shares or indexes. The mechanism that establishes the number of shares to be received is not sufficiently understood or explained in the contract.

### Notices to issuers, insurers and placers

Because of the use of extensive placement networks in issues and public offerings, the CNMV reminded issuers and the numerous participating financial institutions to comply with the requirements for those types of transaction. For that purpose, the CNMV sent 413 notices to issuers, lead managers, underwriters and placers regarding eight issues (nearly all preference shares), two secondary public offerings and one primary public offering. In particular, the CNMV reminded them of the need to have the issue prospectuses and three-fold summaries available to the public and to provide adequate information and observe certain rules of conduct.

### Work groups to improve the quality of investor information

The CNMV created work groups comprising banks, saving banks and investment services firms (mainly Spanish) with a triple objective: 1) improve the efficiency of the channels that distribute information to investors; 2) enhance the quality of oral information given through the distribution networks; and 3) ensure that the information supplied is complete (with no significant omissions) and intelligible to small investors, regardless of the distribution channel.

## Complaints Department<sup>(89)</sup>

In 2002, the CNMV received 1,094 complaints, 21% less than in 2001. As usual, most complaints related to financial institutions (89% of the total), particularly credit institutions (72%). Complaints against broker-dealers and brokers increased substantially and represented 15% of the total (see table 10.4). In contrast, complaints related to unregistered firms and issuers fell significantly.

Table 10.4  
RESPONDENTS IN COMPLAINTS

	No. of complaints		%	
	2001	2002	2001	2002
Stock exchange management companies and supervisory bodies	19	2	1	–
Financial institutions	1,100	969	80	89
Banks and savings banks	976	787	71	72
Brokers and broker-dealers	105	162	8	15
SGC, SGILC and securities investment companies	19	20	1	2
Unregistered firms	104	40	8	4
Issuers	129	60	9	5
Other	33	23	2	2
<b>Total</b>	<b>1,385</b>	<b>1,094</b>	<b>100</b>	<b>100</b>

As shown in table 10.5, the bulk of complaints related to securities transactions (37%) and mutual funds (35%). Complaints about securities issues represented about 10% of the total and complaints relating to other items (portfolio management, tender offers, unregistered firms) accounted for a very small proportion.

Table 10.5  
CONTENT OF COMPLAINTS

	2002	
	No. of complaints	%
Securities issues	106	9.7
Tender offers	22	2.0
Corporate events	27	2.5
Mutual funds	381	34.8
Securities transactions	401	36.6
Share prices, trading frequency, liquidity, etc.	7	0.6
Portfolio management	70	6.4
Unregistered firms	40	3.7
Other	40	3.7
<b>TOTAL</b>	<b>1,094</b>	<b>100.0</b>

Table 10.6 summarises the outcome of the complaints<sup>(90)</sup>. In 2002, a larger proportion of complaints was resolved by sending information to the complainant. Conversely, complaints resolved

(89) The Complaints Service is currently accountable to the CNMV's General Secretariat. In the future, it will depend on the Investor Defence Commissioner, in accordance with the Law on Measures to Reform the Financial System.

(90) In all the responses, the Complaints Department states that the CNMV cannot resolve the problems posed by complainant and includes a declaration of the individual's right vis-à-vis the supervised entity.



through pronouncements (for or against the claimant) fell substantially in absolute and relative terms. Complaints resolved by mutual agreement represented 9% of the total. At 2002 year-end, 14% of complaints were pending resolution.

Table 10.6  
**OUTCOME OF COMPLAINTS**

	No of complaints		%	
	2001	2002	2001	2002
<b>Complaints in which there was a pronouncement or resolution</b>	<b>675</b>	<b>348</b>	<b>49</b>	<b>32</b>
Resolved by mutual agreement	112	102	8	9
Report by CNMV favourable to complainant	250	50	18	5
Report by CNMV not favourable to complainant	306	181	22	17
Complaint withdrawn	7	15	1	1
<b>Complaints not requiring pronouncement</b>	<b>580</b>	<b>595</b>	<b>42</b>	<b>54</b>
Information provided to complainant <sup>(1)</sup>	532	536	38	49
Deficient complaints <sup>(2)</sup>	12	10	1	1
Outside CNMV jurisdiction	36	49	3	4
<b>Pending</b>	<b>130</b>	<b>151</b>	<b>9</b>	<b>14</b>
<b>Total</b>	<b>1,385</b>	<b>1,094</b>	<b>100</b>	<b>100</b>

<sup>(1)</sup> The information which the CNMV supplied to the complainant resolved the matter.

<sup>(2)</sup> Complaints with no name or address of sender, which prevent them from being processed.

## Some particularly significant complaints

### **Guaranteed mutual funds: reimbursements and the fund separation right**

Several complainants stated that, when they tried to withdraw their investment from a guaranteed fund upon the guarantee's maturity, the fund had already entered a new guarantee period, so they were forced to pay a back-end fee and could not obtain all the initially guaranteed amount.

The end of the guarantee period does not entail the automatic reimbursement of the shares in the guaranteed funds; it is necessary to expressly order the reimbursement in order to withdraw the investment. Investors must be informed of this upon subscription. The participants enjoy a separation right of withdrawal at no cost when substantial amendments are made to the fund's characteristics, such as a new guarantee period or changes in investment policies or in commissions<sup>(91)</sup>. Investors must be informed of such amendments in advance.

### **Information about applicable commissions**

Some complainants stated that they had not been warned about the existence of commissions for switching securities to other entities. There were also complaints about possible overlapping of commissions applied on the same service since the fee sheet did not clearly define the services. Entities can freely establish their fees but must give prior notice to the CNMV or the Bank of Spain, as appropriate, and publish a list of maximum fees. They are also obliged to inform their clients of the applicable commissions when arranging a new service.

(91) Article 35.2 of Royal Decree 1393/1990, dated 2 November, which approved the regulation of the Collective Investment Scheme Law 46/1984, dated 26 December.

## **Atypical financial contracts**

Several complaints were received regarding atypical financial contracts due to losses on maturity. Complainants claimed that the seller had not provided sufficient information about the nature and risks of the contract. When replying, the CNMV highlighted the importance of investors understanding those features. In particular, it stated the need to ask entities to provide a copy of the contract and of the prospectus filed with the CNMV. As stated earlier, through the corresponding supervisory unit, the CNMV closely monitored how financial institutions marketed those products<sup>(92)</sup>.

## **Portfolio management**

Complaints in this area related to the formalisation of portfolio management contracts and their departure from the applicable regulations, and to investments made on behalf of clients without their authorisation which should not have been made due to the amount or securities risk.

## **Public warnings about unregistered firms**

In accordance with its powers, the CNMV issues public warnings about entities that are not authorised to provide investment services. As a member of CESR and IOSCO, the CNMV also publishes warnings from foreign regulators about unregistered entities. All of those warnings are made through the media and the CNMV's web site. In 2002, warnings were issued about a total of 42 companies. Only one of those warnings<sup>(93)</sup> originated in Spain<sup>(94)</sup>.

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(92) See box on "Main problems detected in the information provided about some of the marketed financial products" in this chapter.

(93) Capital Intermediate Services, S.A.

(94) See chapter 9, section on "Proceedings monitoring and entity surveillance unit".

Table 10.7

**PUBLIC WARNINGS ABOUT UNREGISTERED FIRMS**

<b>Date</b>	<b>Firm</b>
14/02/2002	- Capital Intermediate Services, S.A.
18/02/2002	- Alpha Management - Wedgewood Acquisitions
01/03/2002	- ADV Advantage, S.A. - Global Asset Management - Hasso P.Nerlich Asset Management
05/03/2002	- Clanvale Securities, S.A. - Cranley & Associates, S.L. - Powers Booth Ltd
12/03/2002	- J.P. Turner & Company, L.L.C. - Morgan Paris & Company - Clearing Services
25/03/2002	- Royal Cambridge Securities Corp.
05/04/2002	- Via Management Group, S.A. - Financial Currency Consultants Ltd.
24/04/2002	- Rheinisch Westfälische Grundbesitz, AG - Millennium Financial Ltd.
24/05/2002	- Millennium Financial Ltd. - Premier Equities Limited - Pacific Federal, S.A. - World Trade Financial Corporation - Globeshare - Fielding Clifford - Mercantilebanc Inc. - Allied International Investment Limited - Carter James, S.L. - Stein Morgan International - West Shore Ventures Limited
12/06/2002	- Millennium Financial Ltd. - Clover International Advisors - International Consortium Growth Holdings - Lloyds and Associates Ltd
19/06/2002	- Arrow International Management Services Limited
16/07/2002	- Morgan Young - International Investments Bankers (Invesbankers)
06/08/2002	- Morgan Paris & Company - Franklin Management - Cogan Davis International - Currency Associates
14/08/2002	- Cambridge International S.R.L.
11/09/2002	- Kline Management Group - Chartwell Asset Management - Goodman Hart Associates
27/09/2002	- Chartwell Asset Management - Goodman Hart Associates - Morgan Young - Kline Management Group
30/09/2002	- Livingstone Asset Management
08/10/2002	- Morgan Paris & Company - Goodman Hart Associates - Bentley Financial Services B.V.
15/10/2002	- Livingstone Asset Management
13/12/2002	- Prime Pacific Holdings Limited

Once again, participation in international regulatory forums was one of the CNMV's main priorities. In Europe, the CNMV participated actively in the Committee of European Securities Regulators (CESR), which advises the European Commission on harmonising legislation and promotes greater uniformity in supervisory practices. Farther afield, the CNMV continued to participate in IOSCO's<sup>(95)</sup> various organisations and working groups. The CNMV also continued to foster close cooperation with its Latin American counterparts and developed various other activities, in terms of cooperation with international organisations and bilateral cooperation.

### Attendance of international organisations' meetings

The CNMV made a considerable effort to participate appropriately in significant international forums which regulate the securities markets, as shown through the number of international meetings attended by representatives of the CNMV in 2002.

In 2002, the CNMV attended 190 meetings convened by the main international organisations and forums of which it is a member (CESR, IOSCO, European Union, OECD and ANNA/ISO<sup>(96)</sup>). It also attended several meetings of the European Union during Spain's presidency in the first half of the year and various meetings of other organisations, and it took part in technical assistance missions, mainly promoted by the World Bank and the International Monetary Fund. In addition, various CNMV directors and technical staff attended specialist conferences and conventions.

#### ATTENDANCE AT INTERNATIONAL MEETINGS AND PARTICIPATION IN TECHNICAL ASSISTANCE MISSIONS

Organisation	Number of meetings
CESR	62
IOSCO	57
European Union	59
OECD	5
ANNA/ISO	6
Other forums	14
<b>Total</b>	<b>203</b>
Technical assistance missions	6

<sup>(95)</sup> ANNA: Association of National Numbering Agencies. ISO: International Organisation for Standardisation.

### Committee of European Securities Regulators (CESR)<sup>(96)</sup>

The work of the CESR is basically grouped in three large sections: Committee expert groups, European Commission mandates for technical consultation

<sup>(95)</sup> International Organisation of Securities Commissions.

<sup>(96)</sup> CESR is made up of the presidents of European national institutions which supervise the securities markets.



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on level 2 standards<sup>(97)</sup> and tasks for the permanent working groups<sup>(98)</sup>. The documents and work undertaken in 2002 by each section are detailed below.

### **Committee Expert Groups**

- *Experts Group on Standards for Investor Protection.* The aim of this group was to develop standards for investor protection by harmonising the Conduct of Business Rules applicable to investment services firms. Meetings were held with industry members, consumers and users and two documents were approved. The first (*A European Regime of Investor Protection - The Harmonisation of Conduct of Business Rules*) established the conduct of business rules applicable to investment services firms when dealing with non-professional customers, while the second (*A European Regime of Investor Protection - The Professional and the Counterparty Regimes*), approved some months later, established conduct of business rules applicable to investment services firms when dealing with professional customers. The work of this group will continue in the first half of 2003 through a working seminar promoted by the CNMV.
- *Experts group on Alternative Trading Systems.* The CESR published a document (*Standards for Alternative Trading Systems*) in order to help provide an appropriate approach to regulation concerning investment services firms which use alternative trading systems under the current Investment Services Directive (ISD). The standards cover various aspects, including information and transparency requirements, and rules on disclosure and on the prevention of market abuse.
- *Joint Experts Group on Clearing and Settlement.* The CESR and the European Central Bank continued the joint work on clearing and settlement systems that commenced in 2001. The work has two main objectives: to adapt the BIS<sup>(99)</sup> and IOSCO recommendations to the European clearing and settlement systems and to define an adequate regulatory approach for central counterparty entities. The first public consultation of this work has already been held (see box in chapter 3).
- *Expert Group on Market Transparency and Efficiency.* This group was created in response to a European Commission consultation on the Investment Services Directive, requesting an evaluation of market efficiency and transparency. To this end, the working group distributed a questionnaire on current regulations and practices in the various jurisdictions, and met with industry members with the aim of identifying potential problems and the different stances of the various competent authorities.

### **European Commission mandates for technical consultation on level 2 standards**

- *Market Abuse Directive.* The CESR published a document on the technical measures necessary to implement this Directive, which was approved in December 2002 (see box in chapter 2). In particular, the document dealt with (i) the concrete definition of the application criteria for the definitions of insider dealing and market manipulation; (ii) the disclosure obligations for securities issuers; (iii) the requirements governing research; and (iv) the

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(97) Level 2 standards are technical standards dealing with the implementation and application of basic community regulations (level 1), which include the regulatory principles in directives and regulations.

(98) The documents published by CESR can be accessed via their web site: [www.europedefesco.org](http://www.europedefesco.org), as can various other documents submitted for consultation (see box in chapter 2).

(99) Bank for International Settlements in Basel.

regime of exceptions to the application of the Directive for share repurchase and stabilization programmes. The document was submitted for public consultation at various stages.

- *Prospectuses Directive*. With regard to this important Directive, for which a political agreement has already been reached (see box in chapter 5), the technical consultation focussed on: (i) possible requirements as regards information, basic structure and principal characteristics of the different types of securities; (ii) the identification of documents that can be incorporated by reference in a prospectus; and (iii) principles to ensure the availability of prospectuses. Furthermore, the European Commission requested criteria from the CESR regarding the methods of control, inspection and approval of prospectuses which the member states must implement, as well as the deadlines for publication, once approved by the relevant competent authority.

### **Permanent Working Groups**

- *Permanent group on International Accounting Standards (CESR-Fin)*. This group has focussed on the endorsement and enforcement of International Accounting Standards (IAS) in Europe. It has also worked on various aspects regarding auditing and periodic financial disclosure requirements.
- *Permanent group on surveillance and the exchange of information (CESR-Pol)*. This group's activity focussed on: (i) research on new investigative methods in financial terrorism; (ii) improving cooperation, within the scope of the Investment Services Directive, particularly in relation to powers attributable to regulators and the surveillance of distance members, (iii) relations with non-cooperative jurisdictions, in cross-border investigations; (iv) the development of the multilateral MOU<sup>(100)</sup>, (v) relations with the supervisory authorities of countries wishing to become members of the EU; and (vi) the impact of the European Convention on Human Rights on securities regulation.

### **IOSCO<sup>(101)</sup>**

Among the new developments within this organisation in 2002, two are particularly significant. Firstly, the drafting and approval of a new multilateral agreement on cooperation and the exchange of information, supported by the Presidents' Committee at the Annual Meeting in May 2002; and secondly, the creation of a subcommittee, made up of presidents and executive representatives of the securities regulatory bodies in the various jurisdictions, to coordinate and define IOSCO's response to the problem of securities regulation in the light of the year's financial scandals (Enron, WorldCom, etc.).

The CNMV, as Spain's representative in the IOSCO Technical Committee, participated actively in all of the Standing Committees and Project Teams. A summary of the main activities of each of the five Standing Committees is given below.

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(100) Multilateral Agreement on Cooperation and the Exchange of Information. See information on the Surveillance and Exchange of Information Group in the IOSCO section in this chapter.

(101) Documents published by IOSCO can be viewed on their web site: [www.iosco.org](http://www.iosco.org).

## **Multinational offerings of securities and accounting**

This group focussed on three main areas: auditing, accounting and disclosure. In auditing, the group continued to revise the International Auditing Standards issued by the IASB<sup>(102)</sup>. With respect to accounting, the group is currently working on revising and improving international accounting standards.

As regards periodic disclosures, a generic statement on the *Management's Discussion and Analysis (MD&A)*<sup>(103)</sup> recommended the use of simple, straightforward language and the avoidance of unnecessary technical jargon. The document was completed in 2002 and published in February 2003.

The work of the presidents' subcommittee, created following the various financial scandals, can be divided into three main sections: auditing supervision, auditor independence, and disclosure and transparency. Three working documents are currently being prepared<sup>(104)</sup>.

## **Secondary markets**

The group has completed a document on the suspension of securities trading which deals with: (i) the different trading suspension systems; (ii) the entities responsible for these systems; (iii) the problems of coordinating securities traded in different countries' markets and underlying securities for derivatives; and (iv) the exchange of information between supervisory bodies as regards the suspension of trading.

Additionally, the joint group formed by IOSCO and BIS has prepared a report<sup>(105)</sup> giving a methodology for evaluating the degree of implementation of the clearing and settlement system recommendations published in 2001.

## **Intermediaries**

This group's work focussed mainly on methodologies for implementing IOSCO principles in three main areas: operating risk, managing liquidity risk and cross-border operations. The group also submitted a report on managing liquidity risks at securities firms<sup>(106)</sup> to the Technical Committee for approval.

## **Inspection and exchange of information**

The most notable work of this group in 2002 was the Multilateral Agreement on Cooperation and the Exchange of Information (Multilateral MOU). A group was subsequently created, made up of members of the Standing Committee (including the CNMV) and representatives of emerging countries, in order to draw up a questionnaire specifically aimed at those countries wishing to adopt the MOU and to review those countries' legislation concerning international cooperation and the exchange of information.

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(102) International Accounting Standards Board.

(103) This document gives supplementary information on companies' financial statements and is filed periodically with the Securities and Exchange Commission (SEC).

(104) These documents are: "Principles for Ongoing Disclosure and Material Development Reporting by Listed Entities", "Principles of Auditor Independence and the Role of Corporate Governance in Monitoring an Auditor's Independence" and "Principles of Auditor Oversight".

(105) "Assessment methodology for recommendations for Securities Settlement Systems".

(106) "Sound Practices for the Management of Liquidity Risk at Securities Firms".

## **Collective Investment Schemes (IIC)**

This group worked on several areas: (i) small investor investment in hedge funds; (ii) indexes and index funds; (iii) suspension of redemption; (iv) a Final Report on the performance of IICs; (v) evaluating risks of IIC operators; (vi) corporate governance responsibilities of IICs as company shareholders; (vii) IIC commissions; and (viii) safeguards against money laundering in asset management. Noteworthy work was completed in 2002 on evaluating risks and orders suspending redemption of IICs in the aftermath of September 11.

## **Project Teams created at the initiative of IOSCO's Technical Committee**

The following groups are particularly noteworthy::

- The Implementation Committee, of which the CNMV is an active member. This committee, whose function is to analyse and facilitate the implementation of the 30 IOSCO Objectives and Basic Principles approved in 1998 and updated in February 2002, has developed a methodology to evaluate the level of implementation of the aforementioned Principles by IOSCO member countries.
- The client identification group, which worked on two fronts: the review of the 40 recommendations issued by FATF<sup>(107)</sup> and the review of IOSCO's work in this area, with the aim of drawing up principles regarding the identification of clients and ultimate owners.
- The securities research group, which drew up a descriptive document in 2002 on the situation of the sector. Taking this document as a base, a presidents' subcommittee was formed which will begin work on analysts and rating agencies in 2003, focussing mainly on conflicts of interest.
- The Internet group, which worked jointly with the industry in 2002 to exchange viewpoints on various topics: research and sector trends, new risks, cross-border affairs, investor education as regards the Internet, etc.

## **Cooperation with Latin America**

The CNMV collaborated with Latin American regulators with the aim of facilitating improvements to the regulatory and supervisory systems via the exchange of knowledge and experience, and through mutual support. In 2002, the CNMV commenced a series of visits for officials of Latin American supervisory bodies, focussing on the CNMV's procedures, organisation and systems, and on the Spanish financial markets. Officials from 11 Latin American countries<sup>(108)</sup> were involved in this programme and there were several additional consultations with regulators and representatives from Latin American securities markets.

The first joint meeting between supervisory bodies and the Federación Iberoamericana de Bolsas de Valores (FIABV) was held in Lisbon to discuss the process of cooperation between stock exchanges in the region covered by the Federation.

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(107) Financial Action Task Force on Money Laundering.

(108) Ecuador, Costa Rica, Panama, Bolivia, Honduras, Peru, The Dominican Republic, Portugal, Brazil, Columbia and Chile.



## **Instituto Iberoamericano del Mercado de Valores (IIMV)**

The IIMV, created at the initiative of the Ministry of Economy and the CNMV in 1999 to boost the development of the securities markets, improve regulatory awareness, aid harmonisation and foster cooperation among supervisors and regulators, continued its training activities in 2002. The CNMV participated in several seminars and short courses, lending its experience on subjects such as securities clearing and settlement, financing SMEs, the technologies used in the securities markets, and investor protection. An agreement was also reached to create a new working group on accounting standards, aimed at achieving appropriate harmonisation among Latin American countries.

### **Facilitating access to in-house information among Latin American regulators**

The SUNI (Sistema Unificado de Notificación por Internet–Unified Internet Notification System) project was created within the IIMV at the proposal of the Argentinean, Brazilian and Spanish securities commissions. The agreed objective was to implement a system of selective disclosure of public information from each regulatory body within the system, by way of a common minimum infrastructure with a homogenous structure and layout. Each regulatory body is responsible for management and support. The Argentinean, Brazilian and Spanish securities commissions are currently included in the system and will shortly be joined by the Chilean and Peruvian commissions.

The system, which is aimed at the supervisory technicians of the Latin American regulatory bodies, enables users to join using self-defined profiles for each web page. The user is then immediately informed via e-mail of any information matching his/her profile that is added to the various web pages.

The available public information basically refers to listed companies and the general information contained on the supervisor's pages. In the first case, the user can select the company and type of information required (significant events, financial statements, prospectuses etc.). Recent publications, legislation, press releases, statistics etc, can all be found under the heading of general information.

## **Other international activities**

In addition to its participation in CESR and IOSCO, the CNMV maintained an active presence in other international forums, including the Joint Forum<sup>(109)</sup> and the CPSS<sup>(110)</sup>-IOSCO joint group. The CNMV is a full member of the Joint Forum, where various tasks have been undertaken through three working groups: a risk and capital management group, a disclosure group and a circumstantial risk group. In the CPSS-IOSCO joint group, the CNMV is a member of the working group made up of representatives of the CPSS and the IOSCO Technical Committee (see above).

Other significant international activities included: (i) participation in new technical assistance missions organized by the World Bank and the IMF; (ii) the CNMV visit programme, with 29 visits from its European, Asian and Latin American counterparts; (iii) response to consultations and requests for advice; and (iv) the signing in May 2002 of a bilateral MOU with the Czech Republic, which will strengthen cooperation with its securities commission.

(109) The Joint Forum was established in 1996 under the auspices of the Basel Committee on Banking Supervision (BCBS), the International Organisation of Securities Committees (IOSCO) and the International Association of Insurance Supervisors (IAIS).

(110) The Group of 10 (G-10) clearing and settlement committee at the Bank for International Settlements in Basel.

## Annex 1

### COMPOSITION OF THE CNMV BOARD

<b>President:</b>	D. Blas Calzada Terrados
<b>Vice-president:</b>	D. Juan Jesús Roldán Fernández
<b>Commissioners:</b>	Dña. Gloria Hernández García <sup>(111)</sup> D. Gonzalo Gil García <sup>(112)</sup> Dña. Soledad Plaza y Jabat <sup>(113)</sup> D. Juan Junquera González <sup>(114)</sup> D. Luis Perezagua Clamagirand <sup>(115)</sup>
<b>Secretary:</b>	D. José María Garrido García

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(111) Director General of Treasury and Finance Policy.

(112) Deputy Governor of the Bank of Spain.

(113) Re-appointed by Order of the Ministry of Economy dated 18 November 2002.

(114) Appointed by Order of the Ministry of Economy dated 18 January 2002.

(115) Appointed by Order of the Ministry of Economy dated 28 June 2002.

## Annex 2

### COMPOSITION OF THE CNMV EXECUTIVE COMMITTEE <sup>(116)</sup>

<b>President:</b>	D. Blas Calzada Terrados
<b>Vice-president:</b>	D. Juan Jesús Roldán Fernández
<b>Commissioners:</b>	Dña. Soledad Plaza y Jabat D. Juan Junquera González D. Luis Perezagua Clamagirand
<b>Secretary:</b>	D. José María Garrido García

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(116) The creation, constitution and functions of the Executive Committee are regulated by Article 18 of Law 24/1988, dated 28 July, of the Securities Market, as amended by Law 44/2002, dated 22 November, on Measures to Reform the Financial System.

## Annex 3

### COMPOSITION OF THE CNMV ADVISORY COMMITTEE

**President:** D. Juan Jesús Roldán Fernández

**Secretary:** D. José María Garrido García

### REPRESENTATIVES<sup>(117)</sup>

**Issuers:** D. Jesús López-Brea y López de Rodas  
D. Javier López Madrid  
D. Carlos Cerón Bombín<sup>(118)</sup>

**Investors:** D. Enrique Goñi Beltrán de Garizurieta  
D. Javier Tribó Boixareu

### Stock Exchange Members:

D. Sebastián Albella Amigo  
D. Gregorio Arranz Pumar  
D. Jorge Bergareche Busquet  
D. Ignacio Gómez Sancha

### Consumers and Users Council<sup>(119)</sup>:

D. Jorge Caminero Rodríguez

### Autonomous regions:

#### Valencian Government<sup>(120)</sup>:

D. José Manuel Uncio Lacasa

#### Catalan Government<sup>(121)</sup>:

D. Sadurní Anfosso i Borrell<sup>(122)</sup>

#### Basque Government<sup>(123)</sup>:

D. Juan Miguel Bilbao Garai

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(117) CNMV Board resolution on 25 March 2002.

(118) Carlos Cerón Bombín replaced Manuel Gistau Moreno, who ceased to be a member on 25 September 2002.

(119) Consumers and Users Council Standing Committee resolution on 14 February 2002.

(120) Valencian Government Decree 18/2002, dated 8 February.

(121) Ratification of the previous representative and alternative representative notified in writing by the Department of Economy and Finance of the Catalan Government on 8 February 2002.

(122) D. Sadurní Anfosso i Borrell replaces D. Josep Badía i Sánchez, who ceased to be a member on 14 May 2002 (Catalan Government Decree 136/2002).

(123) Ratification of the previous representative and alternative representative notified in writing by the Department of Finance and Public Administration of the Basque Government.

## ALTERNATIVE REPRESENTATIVES

**Issuers:** D. David Herrero García  
D. Luis Felipe Marcos García

**Investors:** D. Luis Munárriz Moreno  
D. José Palomeras Pagés

**Stock Exchange Members:**  
D. Juan Luis Muñoz Pardo  
D. José María Ramírez Núñez de Prado  
D. Jaime Aguilar Fernández-Hontoria  
D. José Antonio de Bonilla y Moreno

**Consumers and Users Council:**  
D. Manuel Pardos Vicente

**Autonomous regions:**

**Valencian Government:**  
D. Javier Gomar Parra

**Catalan Government:**  
D. Jaume Pera i Lloveras

**Basque Government:**  
D. Miguel Bengoechea Romero

## Annex 4

### STRUCTURE OF THE CNMV

<i>Directorate-General of Markets and Investors:</i>	D. Ángel Benito Benito
Primary Markets:	D. Carlos Lázaro Recacha
Secondary Markets:	D. Antonio Mas Sirvent
Investor Affairs:	Dña. Elena Brito Alonso
<i>Directorate-General of Securities Market Participants:</i>	Dña. Sol Hernández Olmo
Authorization and Registration:	D. Antonio Moreno Espejo
Supervision:	Dña. M. <sup>a</sup> José Gómez Yubero
<i>Directorate-General of Legal Affairs and Inspection and Secretary to the Board:</i>	D. José María Garrido García
Deputy Secretary to the Board:	D. Javier Rodríguez Pellitero
<i>Directorates:</i>	
Director attached to the President:	D. Rafael Sánchez de la Peña
International Relations:	D. Juan Carlos Recoder Casso
Research and External Relations:	Dña. M. <sup>a</sup> Nieves García Santos
Information Systems:	D. Javier Nozal Millán
General Secretary:	D. Salvador Meca Gómez



