Financial regulation: 2004 Q1

1. INTRODUCTION

In 2004 Q1, the number of new financial provisions was relatively limited.

With regard to the financial system as a whole, first, regulations have been published for the commissioners for the protection of financial services customers, whose function is to protect the interests and rights of financial services customers. Second, the legal arrangements for the Central Credit Register have been developed, following the propositions of the related law; in particular, the periodicity and the manner of sending reports, the characteristics of the borrowers who must be reported, and the types and characteristics of the credits to be reported are established.

In relation to credit institutions, certain technical aspects of the arrangements for the issuance and functioning of the non-voting equity units of savings banks have been developed in order to promote and spread this financial instrument as a means for these institutions to raise tier 1 capital.

In the area of the securities markets, five provisions have been enacted. First, the terms of issuance for State debt for 2004 and for January 2005 have been issued, subject to the limitation established in the 2004 State Budget Law. Second, the rules governing the annual report on corporate governance of listed public limited companies and savings banks that issue securities listed on official security markets have been established. Third, new regulations have been published on pension schemes and pension funds which update, systematise and complete the adaptation of the regulations on pension schemes and funds, which takes the developments at the European Union level as a reference. Four, certain aspects of the lending of listed securities have been regulated. Finally, the information that approved appraisal companies and services are required to furnish to the Banco de España has been determined.

In the field of taxation, the consolidated texts of the personal income tax (IRPF), the tax on the income of non-residents and the corporate income tax have been issued, with the latest published amendments incorporated into the respective basic laws.

Finally, reference should be made to the regulations for the Social Security Reserve Fund. Among other aspects, they specify the securities eligible for inclusion in the fund portfolio, its degrees of liquidity, the rules for disposing of the assets therein and other financial management activities.

2. REGULATIONS FOR COMMISSIONERS FOR THE PROTECTION OF FINANCIAL SERVICES CUSTOMERS

Law 44/2002 of 22 November 2002 (1) on reform of the financial system (the Financial Law) seeks to enhance the efficiency and competitiveness of the Spanish financial system, without reducing the protection of financial services users. The increasing complexity of markets and financial transactions and the need to improve the quality of financial services requires that the system establish certain legal and operational instruments to improve the transparency and protection of customers for financial services, which make up one of the most important sectors in the Spanish economy.

To this end, and exercising the authority granted to the government in the Financial Law, the following legislation has been enacted: *Royal Decree 303/2004 of 20 February 2004* (BOE (Official State Gazette) of 3 March 2004) which approves the Regulations for the protection of financial services customers, and subsequently *Order ECO/734/2004 of 11 March 2004* (BOE of 24 March 2004) on customer service departments and the financial institutions' ombudsman.

The Regulations have developed aspects relating to the appointment and hierarchical ranking of the commissioners, the procedure for the resolution of complaints and claims and the content of the annual report on their activities that they are required to publish.

Among other aspects, the Royal Decree has established that the purpose of the commissioner for the protection of banking services customers, the commissioner for the protection of investors and the commissioner for the protection of insureds and pension scheme participants shall be to protect the interests and rights of financial services customers, and to strengthen transparency and good financial practices and customs in their respective fields. For this purpose, and as provided for in the legal framework indicated, the commissioners are assigned basic powers relating to the resolution of the complaints and claims of financial services users (although the final report thereon is not binding) as well as to advise the latter in relation to consultations about their rights in such matters and the legal channels for exercising them.

These bodies are attached to the Banco de España, the National Securities Market Commission and the Directorate General of Insurance and Pension Funds, respectively, but they shall act independently and autonomously. The technical and administrative support functions of the claims services or equivalent administrative units existing in the institutions referred to are declared to be assigned to the respective commissioners in order that they should have the professional and operational resources necessary to ensure the effectiveness of their actions.

To ensure that the proposed objectives are effectively achieved, it is provided, first, that the appointee be of recognised standing in the economic or financial field, with the relevant and necessary professional experience and, second, that they be given complete autonomy and independence to hear and resolve the matters submitted to them.

Meanwhile, Order ECO/734/2004 of 11 March 2004 aims to regulate the requirements and procedures that customer care departments and services and the financial institutions' ombudsmen shall comply with. In this respect, such institutions shall have a specialised customer care department or service that aims to address and resolve the complaints and claims that their customers may present, as well as to promote compliance with the legislation on transparency and customer protection and good financial practices and customs.

The heads of customer care departments or services and ombudsmen shall be persons of recognised commercial and professional standing, with sufficient knowledge and experience to perform their functions. The appointment of the head of the customer care department or service and, where applicable, the ombudsman shall be notified to the commissioner or commissioners for the protection of financial services customers and to the relevant supervisory authority or authorities according to their activity.

Institutions shall make available to their customers, at each and every branch open to the public, and on their website, in the event that the contracts have been entered into at a distance by electronic means, the following information:

a) The existence of a customer care department or service and, where applicable, of an ombudsman, and their postal and e-mail addresses.

b) The institution's obligation to address and resolve complaints and claims presented by its customers within a two month period from their receipt at the customer care department or service or, as the case may be, by the ombudsman.

(1) See "Financial Regulation 2002 Q4" in *Economic bulletin,* Banco de España, January 2003, Section 2.

c) Reference to the relevant commissioner or commissioners for the protection of financial services customers, with their postal and e-mail address, and to the need for complaints or claims to be pursued first with the customer care department or service or the ombudsman before they can be submitted to the commissioner(s).

d) The operating rules and the references to legislation on transparency and protection of financial services customers.

At the same time, full details are given of the procedure for presenting, processing and resolving complaints and claims.

Finally, in the first quarter each year, customer care departments and services and, if applicable, ombudsmen shall present to the board of directors or equivalent body, or to the general branch management, as the case may be, a full report on the performance of their duties during the preceding year.

3. DEVELOPMENT OF THE LEGISLATION RELATING TO THE CENTRAL CREDIT REGISTER

In view of the importance of the Central Credit Register (CCR), both for controlling the risk assumed by credit institutions and in the performance of the Banco de España's supervision duties, the Financial Law designs an updated legal system which gives it the nature of a public service in so far as it facilitates the performance of the Banco de España's powers and makes the Spanish credit system more stable. Also, it empowers the Economy minister or, with prior authorisation from the latter, the Banco de España to determine the types of credit to be reported, the conditions that the periodic or supplementary reports shall fulfil, and the content, form and periodicity of reports on credits to natural or legal persons connected with the reporting institutions.

This power has been used to enact the *Order Eco/697/2004 of 11 March 2004* (BOE of 18 March 2004) on the Central Credit Register, which establishes the periodicity and manner of reporting, the characteristics of the borrowers who must be reported and the types of credit to be reported. Those provisions of CBE 3/1995 on the CCR that do not conflict with this Order shall continue to apply while the Banco de España is establishing those matters envisaged by the Order.

In similar terms to those of the previous legislation, the reporting institutions (credit institutions) are required to furnish the CCR with the data necessary to identify those persons to whom, directly or indirectly, they have extended credits, as well as the characteristics of such persons. These returns shall be sent to the CCR monthly and shall relate to the situation existing on the last day of the month concerned. The Banco de España shall establish the procedure, manner and period for sending the periodic returns, as well as the system for presenting supplementary returns to rectify previously reported data.

The data on borrowers shall be those required to identify them properly, such as name, address, date of birth and tax identification code or number or the like. They shall also include those needed for the economic and statistical analysis of the information, such as province, sector, economic activity and insolvency situation; the status of sole proprietor when it is acting in the pursuit of its business activity, as well as the data considered necessary for the Banco de España to properly exercise its powers of supervision and inspection on a consolidated basis, including, where applicable, the link to other reported borrowers belonging to the same economic group.

The Banco de España shall determine the types of credit to be reported, as well as the scope of the data required in relation to the characteristics and circumstances of the different types of credit. It shall be able to request such data as it may deem necessary to achieve the purposes for which the CCR exists, especially as regards the proper performance of the powers of supervision and inspection of the reporting institutions by the competent authorities.

The types of credit to be reported shall include the following: financial credit, trade credit, financial leasing transactions, transactions with fixed-income securities, credit derivatives, other collateral contracts, commitments relating to financial instruments and any other type of legal business specific to the financial activity that involves the assumption of credit risk by the reporting institution with third parties.

The Banco de España may establish subtypes of credit to enable the various credit risks to be appropriately distinguished, as well as prudential categories of credit, for the sole purpose of facilitating proper performance of the powers of supervision and inspection of the competent authorities. Also, it shall set the reporting threshold for the various types of credit, whose amounts shall be expressed in thousands of euros, and it shall determine the content, form and periodicity of the reports that the reporting institutions are entitled to obtain.

Finally, basic regulations are established, which may be developed by the Banco de España, on the content of the reports that reporting institutions are entitled to obtain. Notably, they shall omit, among other data, the name of the institutions from which the borrowers have obtained their credits. As regards the data sent by the Banco de España to the Ministry of Finance in relation to the credits of Spanish general government, in accordance with the applicable legislation, they are required to enable the different transactions to be identified, and shall include, inter alia, the borrower's identification code, the type of credit and, where applicable, depending on the kind of credit reported, the interest rate, start dates, maturity and, if applicable, default, the amount available and the amount drawn down pending repayment, and collateral and personal guarantees.

4. SAVINGS BANKS: NON-VOTING EQUITY UNITS

The regulation of non-voting equity units (*cuotas participativas*) established in Law 26/1988 of 29 July 1988 (2) on discipline and intervention of credit institutions, and in Royal Decree 664/1990 of 25 May 1990 (3), on the non-voting equity units of savings banks, has not helped to develop this instrument as a formula for savings banks to raise tier 1 capital.

The development of this sector is vital for a solid, efficient and competitive financial system. Moreover, savings banks need an instrument enabling them to reconcile their proven capacity for growth with a high degree of solvency, as well as strengthening the incentives for professional management guided by economic criteria.

The Financial Law having already established a complete regulation of the financial, prudential and commercial aspects of non-voting equity units, *Royal Decree 302/2004 of 20 February 2004* (BOE of 3 March 2004) on non-voting equity units has now been published. This develops certain technical aspects of the regime for the issuance and operation of non-voting equity units.

Among other changes, the following should be noted: first, as regards the legal regime for non-voting equity units, part of the one for shares contained in the consolidated text of the Law on Public Limited Companies, approved by Royal Legislative Decree 1564/1989 of 22 December 1989 shall be applicable to them. Moreover, their issuance is subject to the general law on marketable securities, and there is a legal obligation for them to be listed on organised secondary markets in accordance with their variable income nature.

Second, the issuance procedure is regulated, including the scope of the delegation to the board of directors and the minimum content of the issue resolution. In this respect, the provisions that regulate the calculation of the economic value of the savings bank and its connection to determination of the issuance price of the units are developed, a flexible system being established, which makes use of external reports and of the data supplied by the market so that the units are issued at a price consistent with the economic value of the savings bank.

In addition, the formula for distributing the issue premium, both in the first and in subsequent issues, between the reserve fund of the unit holders and the general reserves of the savings bank is determined, thus completing an issuance procedure based on the determination of a percentage of freely disposable surplus attributed to the unit holders as a quantitative measure of the issue.

Third, the creation and operation of the syndicate of unit holders is regulated, taking as reference the regime for the bondholders' meeting in the Law on Public Limited Companies.

Fourth, this Royal Decree also specifies the criteria for the remuneration of units, having regard to the need to reconcile prudential aspects with the attractiveness of the instrument to investors. Finally, the following aspects are developed: the disapplication of pre-emption rights; the 5% limit on unit holdings; and cases in which units are redeemed and the issuing savings bank is involved in a merger.

5. STATE DEBT: TERMS OF ISSUE FOR 2004 AND JANUARY 2005

Law 61/2003 of 30 December 2003 (4) on the 2004 State budget authorised the government, upon a proposal from the minister of Economy, to increase the State debt during 2004, so that the outstanding amount at year-end does not exceed that existing at 1 January of the same year plus €12,838 million. This limit

(2) See "Regulación financiera: tercer trimestre de 1988", *Boletín económico,* Banco de España, October 1988, pp. 56-58.

(3) See "Regulación financiera: segundo trimestre de 1990", *Boletín Económico,* Banco de España, July/August 1990, p. 79.

(4) See "Financial regulation: 2003 Q4", *Economic bulletin,* Banco de España, January 2004, Section 5.

applies as at year-end. However, it may only be exceeded during the year with the prior authorisation of the Ministry of Economy.

As has become usual at this time of year, the following legislation has been enacted: *RD 5/2004 of 9 January 2004* (BOE of 11 January 2004), which provides for the creation of State debt during 2004 and January 2005; Order *ECO/30/2004 of 14 January 2004* (BOE of 19 January 2004), which establishes the creation of State debt during 2004 and January 2005, delegating certain powers to the Director General of the Treasury and Financial Policy; and the *Resolutions of 21 and 22 January 2004*, of the Directorate General of the Treasury and Financial Policy (BOE of 27 and 29 January 2004, respectively), which provide for certain issues of Treasury bills and State bonds and publish the calendar of tenders for 2004 and January 2005.

Broadly, the instruments, criteria and procedures of issuance applied in previous years are retained, although the option to conduct tenders in terms of price or interest rate and certain minor changes to the dates thereof are incorporated. As in 2003, the Ministry of Economy may provide for debt to be created through the issuance of securities or credit transactions, in domestic or foreign currency.

As regards the procedures for the issuance of State debt, the systems of previous years are retained. In particular, the following issuance procedures are kept: tenders (with competitive and non-competitive bidding), and any technique involving equal opportunities for potential acquirers.

As in previous years, public debt shall take the form of Treasury bills and State bonds and, in all cases, shall be represented solely by book entries.

5.1. Treasury bills

It has been considered desirable to make some slight changes to promote Treasury bill issuance in 2004. In particular, there has been included the option to conduct tenders in terms of price or interest rate. New bills shall be issued at the existing maturities (i.e. three, six, twelve and eighteen months) and issues will continue to be grouped, in order to consolidate the market for Treasury bills, to guarantee its liquidity and to maintain competitiveness with other institutional issuers in the euro area. Tenders are held every four weeks, with alternate issues of three and six-month Treasury bills. That said, the original maturities may differ from those indicated by the number of days necessary to facilitate the grouping of maturities, so that the periodicity of the latter is two months, taking place in the even months and coinciding with issuance dates to facilitate reinvestment by holders.

Thus, the three and six-month issues will be fungible with those issued at twelve and eighteen months with the same maturity date, so that the volume of benchmark issues in circulation can be increased and their liquidity during their lifetime maintained. Finally, tender arrangements remain unchanged, although the possibility is envisaged that, as in the case of State bonds, there will subsequently be a second round reserved for those financial institutions with market-maker status. This second round shall be conducted in accordance with the law regulating such institutions.

Competitive and non-competitive bids can be submitted in tenders. The minimum nominal amount of competitive bids is still €1,000, and larger bids shall be integer multiples of that amount. As for non-competitive bids, the minimum nominal amount is €1,000 and larger bids shall be integer multiples of €1,000, subject to a maximum nominal amount for each bidder of €200,000.

5.2. State bonds

The features of State bond issuance are broadly the same as last year. The obligation is maintained to publish quarterly the annual calendar of ordinary tenders, agreed with market makers, in accordance with market conditions and the development of issues during the year. In any case, if market conditions or financing requirements make it advisable, the Treasury may decide, in the monthly resolution in which the following month's bond issues are arranged, not to issue a maturity or maturities that are included, for guidance only, in the quarterly timetable.

As for maturities, although they have been kept the same as in the previous year, it has been considered desirable to put back the monthly tenders of long-term State bonds to the third Thursday of the month to facilitate the State's cash management, by bringing the receipt of funds from issues into line with the dates of greatest concentration of payments, thereby reducing daily cash surpluses. The tender of short and medium-term bonds will continue to be held in the first week of the month, although the allotment date is moved to Thursday.

As in the case of Treasury bills, the minimum nominal amount of competitive bids shall be €1,000, and larger bids shall be multiples of

€1,000. As regards non-competitive bids, the minimum nominal amount shall be €1,000 and larger bids shall be integer multiples of that amount, subject to a maximum nominal amount for each bidder of €200,000.

6. SECURITIES MARKET: ANNUAL CORPORATE GOVERNANCE REPORT OF LISTED PUBLIC LIMITED COMPANIES AND OTHER ENTITIES

Recently three provisions have contributed to enhancing transparency, efficiency and competitiveness in Spanish financial markets. First, Law 44/2002 of 22 November 2002 (5) has increased the protection of customers and users in financial markets and strengthened the auditing and the accounting rules of Spanish firms. Second, Law 26/2003 of 17 July (6) (also known as the Transparency Law) has contributed to the proper functioning of firms by fostering transparency and the transmission of information to investors and to the market. Finally, the recent Law 62/2003 of 30 December 2003 (7) on fiscal, administrative and social measures requires listed corporate groups to adopt international accounting standards, extends the obligation to appoint an audit committee to all issuers of securities listed on official secondary securities markets and changes certain aspects of savings bank corporate law.

This was the background to the publication of *Ministerial Order ECO/3722/2003 of 26 December 2003* (BOE of 8 January 2003) on the annual corporate governance report and other information channels of listed public limited companies and other entities, and the issuance of its implementing Circular *CCNMV 1/2004 of 17 March 2004* (BOE of 29 March 2004) on the annual corporate governance report of listed public limited companies and other issuers of securities listed on official secondary securities markets and other information channels of listed public limited companies. Finally, in this setting *Ministerial Order ECO/354/2004 of 17 February 2004* (BOE of 18 February 2004) was published on the annual corporate governance report and other information of savings banks issuing securities listed on official securities markets.

The purpose of Ministerial Order ECO/3722/2003 is generally to develop and complete the content, structure and dissemination of the annual corporate governance report and to transmit other significant information to the market, investors and shareholders. Summarised below are the four main facets regulated by this Ministerial Order.

First, the minimum content of the annual corporate governance report of listed public limited companies is defined as the ownership structure of the firm, its administrative structure, related-party transactions and intra-group transactions, risk control systems, the workings of the annual general meeting and, finally, the degree of monitoring of recommendations on corporate governance. Also, the corporate governance report shall be published by listed public limited companies as a significant event and made available to shareholders by electronic means, via the firm's website.

Second, the Ministerial Order stipulates that the annual corporate governance report of issuers of securities listed on official markets (except for savings banks, whose report is subject to specific regulation), shall cover at least the same matters as the reports of listed firms and empowers the Spanish National Securities Market Commission (CNMV) to specify the detailed content and its structure.

Third, significant events at securities issuers shall be disseminated via the issuers' websites, although they must be notified previously to the CNMV. It is also stipulated that information on significant events shall be understandable, free, direct and easily accessible by investors.

Finally, regarding information channels, the minimum content to be included by listed firms on their websites is established. CCNMV 1/2004 of 17 March 2004 details the content and structure of the annual corporate governance report of listed public limited companies and other issuers of securities listed on official secondary markets (other than savings banks), and establishes a standard report for this purpose. This standard report requires firms to make a specific pronouncement on various matters relating to corporate governance, but does not prevent them from voluntarily adding any other information, clarification or additional details relating to corporate governance practices if they are material to understanding the report.

In addition the Circular includes various requirements as to the minimum information that must be included on the websites of listed public limited companies, as well as technical and legal specifications relating to this information channel. Specifically, the home page must have a specific, easily recognisable and directly accessible section which includes, under the

(5) See "Financial regulation: 2002 Q4", in *Economic bulletin,* Banco de España, January 2003, section 2.

(6) See «Financial regulation: 2003 Q3», in *Economic bulletin,* Banco de España, October 2003, pp. 93-94.

(7) See "Financial regulation: 2003 Q4", in *Economic bulletin,* Banco de España, January 2004, pp. 88-90.

heading "information for shareholders and investors (*información para accionistas e inversores*)", all the information required by Law 26/2003, Ministerial Order ECO/3722/2003 and this Circular, without prejudice to that which listed firms may include voluntarily. The information included must be structured and hierarchically organised under concise, self-explanatory titles, so as to enable rapid and direct access to the desired item free of charge for the user. As a minimum, the site map must include a direct reference to the following: articles of association, rules for annual general meetings, rules on the board of directors, internal code of conduct, corporate governance reports, documents relating to ordinary and extraordinary general meetings and significant events.

Finally, the purpose of Ministerial Order ECO/354/2004 is to generally develop and complete the content, structure and dissemination of the annual corporate governance report and to transmit other significant information to the market, investors and shareholders.

Accordingly, its structure and provisions reproduce, with the necessary adaptations deriving from the different legal nature of savings banks, those of the aforementioned Ministerial Order ECO/3722/2003. Therefore it need only be mentioned, first, that the minimum content of the annual corporate governance report reflects the consequences of that nature (for example, obviating reference to the capital structure of savings banks and referring, inter alia, to operations with public institutions present in their governing bodies and to the Investment Committee report) and, second, that the obligation to disseminate certain information via the website (responsibility for which lies with the general manager rather than with the Board of Directors) is limited to the report itself, and to significant events as defined in Securities Market Law 24/1998, with additional information being optional.

Additionally, under this Ministerial Order, listed portfolio investment institutions that have requested delisting are not required to publish an annual corporate governance report.

7. PENSION SCHEME AND PENSION FUND REGULATIONS

The consolidated text of the law regulating pension schemes and pension funds, enacted by Royal Legislative Decree 1/2002 of 29 November 2002 (8) ("the Pension Scheme Law"), incorporated the original Law 8/1987 of 8 June 1987 (9) regulating pension schemes and funds and its subsequent amendments. The Pension Scheme Law defined pension schemes that, along with insurance, have constituted specific supplementary welfare instruments in the framework of private systems of saving for future contingencies.

Evolving legislation and changes to the Pension Law made it necessary to publish Royal Decree 304/2004 of 20 February 2004 enacting the Pension Scheme and Fund Regulations (BOE of 25 February 2004), which update, systematise and complete the adaptation of the law governing pension schemes and funds, having regard to past experience in this area and taking as a reference the developments in the European Union.

These new Regulations incorporate and replace the original regulations enacted by Royal Decree 1307/1988 of 30 September 1988 and subsequently amended by Royal Decree 1589/1999 of 15 October 1999. The main features of these Regulations are discussed below.

The new Regulations reflect the various changes introduced by Law 24/2001 of 27 December 2001 on fiscal, administrative and social measures relating to the consideration of occupational pension schemes as employee welfare instruments co-ordinated with representation and collective bargaining processes in the work environment, affording the parties involved a degree of autonomy and freedom to negotiate that enables them to adapt more flexibly to the needs and characteristics found in the work and business environment.

In addition, further headway was made in the distinction that Law 24/2001 makes between occupational pension funds (each comprising a number of occupational pension schemes) and personal pension funds (which consist of individual and association pension schemes), given their different purposes. The former are placed in the so-called "second pillar" of supplementary welfare, which enables the implementation of firms' pension commitments to their workers, while the latter are placed in the so-called "third pillar", which channels individual and independent decisions on saving for future contingencies.

Also, these Regulations incorporate certain provisions of European Union financial regulation, particularly Directive 2003/41/EC of the Eu-

(8) See "Financial regulation: 2002 Q4", in *Economic bulletin,* Banco de España, January 2003, section 3.

(9) See "Regulación financiera: segundo trimestre de 1987", in *Boletín Económico,* Banco de España, July-August 1987, pp. 49-51.

ropean Parliament and of the Council of 3 June 2003 on the activities and supervision of institutions for occupational retirement provisions.

Finally, the regulations provide guidelines for the investments made by pension funds, establishing greater legal certainty for the parties involved in the investment process and increasing the level of transparency and information for participants. The regulation of investment is aimed at adapting it to a financial market situation that has changed since 1988, when the current regulations were enacted. Furthermore, provisions relating to the freedom to provide financial services have been included which thus give greater legal importance to the services provided in this area. This in turn leads to improved services and increased specialisation within this area of activity.

8. LENDING OF SECURITIES LISTED ON SECONDARY MARKETS

Law 37/1998 of 16 November 1988 (10) on the reform of Securities Market Law 24/1988 of 28 July 1988 (11) established, among other things, a regulatory framework for the lending of securities listed on secondary markets. What characterises this type of loan is that a person or entity holding certain securities listed on a secondary market or identical to others that will be offered publicly for sale or subscription, lends these securities to another for a certain period of time, so that the latter can dispose of them, use them for a new loan or use them as collateral in a financial transaction.

Now *Ministerial Order ECO/764/2004 of 11 March 2004* (BOE of 26 March 2004) has been published to regulate certain aspects of securities loans and, specifically, to lay down specific obligations to provide financial information on contracts for the lending of securities listed on secondary markets and to empower the CNMV to set general limits on the volume of securities loans that can be granted to institutions and on the terms applicable to these transactions, so as to prevent possible distortions in the trading of loaned securities or their possible use for purposes for which they are not fit or intended.

The provisions of this Ministerial Order shall not apply to the lending of book-entry public debt securities, which will continue to be governed by specific regulations.

The secondary market governing bodies, after notifying the CNMV, shall publish in their quotation bulletins the list of securities considered to be appropriate for securities lending, as well as subsequent updates.

Each reporting entity shall communicate to the receiving body certain information, such as the commencement and termination or maturity dates of the loan transaction; the identification and number of securities lent; and the guarantees provided, when these are delivered or provided through the registration, clearing and settlement system managed by the receiving body.

Institutions making securities loans must include in their internal code of conduct the organisational measures required to prevent improper flows of information relating to their securities lending activity and must, if the volume of such activity so warrants on the basis of the criteria laid down for this purpose by the CNMV, set up specialised units separate from those engaging in any other type of activity relating to the same securities.

Finally, the governing bodies of the markets on which the loaned securities are quoted shall, with any necessary assistance from the systems company or from the entity carrying out the functions of registration, clearing and settlement in the market in which the loaned securities are listed, make public the balances of the securities loans outstanding at any given time, the arrangement and termination of loans and any other matters that the CNMV considers to be of interest for the markets. Furthermore, these bodies and the related clearing and settlement systems shall establish, upon a previous favourable report from the CNMV, the procedures and systems for unifying, simplifying and expediting the administrative and IT processing of securities loans.

9. APPROVED APPRAISAL COMPANIES AND SERVICES: INFORMATION TO BE REPORTED TO THE BANCO DE ESPAÑA

Ministerial Order ECO/805/2003 of 27 March 2003 on rules for the appraisal of real estate and of certain rights for financial purposes, repealed the Ministerial Order of 30 November 1994 on real estate appraisal rules for certain financial institutions and enhanced the technical and formal quality of appraisals, increased their transparency, adapted the calculation of appraisal value to reflect diverse legal amendments and fostered the responsibility of appraisal companies in identifying and applying the most important technical parameters for ap-

(10) See "Financial regulation: 1998 Q4", in *Economic bulletin,* Banco de España, January 1999, pp. 90-98.

(11) See "Regulación financiera: tercer trimestre de 1988", in *Boletín económico,* Banco de España, October 1988, pp. 61-62.

praisals. It also stipulated that appraisal companies and services must communicate to the Banco de España, in such manner and with such periodicity as the Bank may establish, information on risk premia and on developer profit margins that may be used by them in the conduct of their business, and on any other technical parameter of a general nature that may be used regularly by them in their professional practice for the application of the various appraisal methods and that the Banco de España may consider important in order to ensure uniform compliance with appraisal rules.

In compliance with the aforementioned Ministerial Order, *CBE 5/2003 of 19 December 2003* (BOE of 8 January 2003) amending Circular 3/1998 of 27 January 1988 on information to be reported to the Banco de España by approved appraisal companies and services, has now been published.

Statements must be submitted to the Banco de España via electronic transmission, in accordance with such technical specifications as may be communicated for this purpose. Also, individual confirmation on a duly completed printed form may be requested of any of the statements reported via electronic transmission. Exceptionally, and only for duly justified reasons, authorisation may be granted to submit all or some statements on printed forms prepared by the Banco de España.

Once aggregated, the information received from appraisal companies shall be communicated to the Directorate General of Insurance and Pension Funds and to the CNMV, and shall be distributed among appraisal companies and services.

10. CONSOLIDATED TEXT OF CERTAIN TAX LAWS

The fourth additional provision of Law 46/2002 of 18 December 2002 (12) on the partial reform of personal income tax, of corporate income tax and of tax on the income of non-residents, in the wording given by Law 62/2003 of 30 December 2003 (13) on fiscal, administrative and social measures, established that the government had to formulate and approve within 15 months from the entry into force of this Law the consolidated texts of the laws on personal income tax, tax on the income of non-residents and corporate income tax.

In compliance with this precept, the government has published *Royal Legislative Decree 3/2004 of 5 March 2004* (BOE of 12 March 2004) enacting the consolidated text of the personal income tax law, *Royal Legislative Decree 5/2004 of 5 March 2004* (BOE of 12 March 2004) enacting the consolidated text of the law on tax on the income of non-residents and *Royal Legislative Decree 4/2004 of 5 March 2004* (BOE of 12 March 2004) enacting the consolidated text of the corporate income tax law.

The personal income tax provisions included in the basic law on this tax [Law 40/1998 of 9 December 1998 (14)] were, inter alia, as follows: exemption of income arising from the use of instruments for hedging the risk of an increase in the floating interest rate on mortgage loans; the tax treatment of certain pre-emptive rights; the inclusion in the maximum deduction base for investment in habitual dwelling of the cost of instruments for hedging the floating rate interest risk on mortgage loans; the obligation to make payments on account in the case of income arising from holdings in portfolio investment institutions; and exemption from withholdings or payments on account of returns arising from the distribution of premia on shares or other equity securities and from capital reductions.

Regarding the consolidated text of the law on the tax on the income of non-residents, the following provisions, among others, were added to Law 41/1998 of 9 December 1998 (15): the deduction of corporate income tax payments on account when the taxpayer acquires taxpayer status due to change of residence and the new wording of the method of calculating the capital gains tax base; the setting, in certain cases, of tax rates under the tax on the income of non-residents that are equal to the withholding rate in place for residents; and the technical improvements introduced by Law 46/2002 of 18 December 2002. Further, provisions were included on certain matters not expressly regulated previously, such as the definition of royalties or pensions and the regime for entities subject to income attribution.

Finally, as regards the consolidated text of the corporate income tax law, the following provisions, among others, were included in Law 43/1995 of 27 December 1995 (16): freedom of depreciation or amortisation of the tangible and

(12) See "Financial regulation: 2002 Q4", in *Economic bulletin,* Banco de España, January 2003, section 6.

(13) See "Financial regulation: 2003 Q4", in *Economic bulletin,* Banco de España, January 2004, section 6.

(14) See "Financial regulation: 1998 Q4", in *Economic bulletin,* Banco de España, January 1999, pp. 105-107.

(15) See "Financial regulation: 1998 Q4", in *Economic bulletin,* Banco de España, January 1999, pp. 107-108.

(16) See "Regulación financiera: cuarto trimestre de 1995", in *Boletín económico,* Banco de España, January 1996, pp. 91-92.

intangible fixed assets of workers' limited companies; the deductibility of accrued interest on certain participating loans; the obligation to make certain payments on account of personal income tax, tax on the income of non-residents and corporate income tax, and to make withholdings or payments on account in respect of transfers of coupon-paying financial assets; and the non-taxability of income arising as a result of surrender rights and of profit-sharing under pension-related group insurance contracts.

11. SOCIAL SECURITY RESERVE FUND

Law 28/2003 of 29 December 2003 regulating the Social Security Reserve Fund establishes the legal regime applicable to this Fund set up in the Social Security Treasury under the General Social Security Law enacted by Royal Legislative Decree 1/1994 of 20 June 1994.

Royal Decree 337/2004 of 27 February 2004 implementing Law 28/2003 of 29 December 2003 was published recently to complete certain aspects of this Law. It also sets forth, among other things, a) the criteria whereby budget surpluses are adjusted for contributory benefits and other expenses of managing them in the social security system; b) the securities to be included in the Reserve Fund portfolio, the degree of liquidity of this portfolio, the rules for disposing of the assets in it, and other actions involved in its financial management, and c) the actions of the Social Security Audit Department in this respect and the operating framework of the Management Committee, the Investment Advisory Committee and the Monitoring Committee of the Social Security Reserve Fund.

The following are worthy of mention with regard to financial regulation. Contributions to the Reserve Fund shall be agreed each year by the Council of Ministers and shall initially take the form of a financial deposit by the Social Security Treasury from an account at the Banco de España to a specific account of the Social Security Reserve Fund, also at the Banco de España.

Subsequently the Reserve Fund can invest in securities issued by Spanish and foreign public legal persons of high credit quality and significant liquidity, i.e. listed on regulated markets or organised trading systems, and in high quality securities issued by public legal persons as agreed by the Council of Ministers. For these purposes, investments shall be deemed to include the cash amounts maintained as liquid assets in the account at the Banco de España.

The acquisitions of the public financial assets in which the reserve fund invests shall be made by the Social Security Treasury through the Banco de España, which shall act as agent and depository bank of those assets.

The financial assets shall be recorded in the account held by the Social Security Treasury with Iberclear (*Sociedad de Gestión de los Sistemas de Registro, Compensación y Liquidación de Valores* - Securities Registration, Clearing and Settlement System Management Company) and in any other account that may be proposed by the Management Committee of the Social Security Reserve Fund.

The financial assets of the Social Security Reserve Fund may only be disposed of in structural situations of non-financial deficit of the Social Security system in transactions of a contributory nature and other necessary management expenses, delimited as established in this regulation on determination of the budget surplus for the purpose of setting up the Reserve Fund.

12.4.2004