Financial regulation: 2005 Q2

Introduction

In 2005 Q2, the number of new financial provisions was small relative to the preceding period.

In relation to the euro area and the single monetary policy, four provisions were enacted. First, the Banco de España amended the general clauses applicable to monetary policy operations to adapt them to the new guidelines recently published by the European Central Bank (ECB). Second, the ECB published three new guidelines in Q2. The first two in relation to the reporting requirements for money, banking and government finance statistics; and the third relating to the management of the foreign reserve assets of the ECB by the national central banks and the legal documentation for operations involving the foreign reserve assets of the ECB.

In the area of EU financial institutions, two significant provisions have been issued, which seek to adapt Spanish law to two Community directives in the financial sphere. The first is the partial transposition of the Community directive on the supervision of financial conglomerates, to which all financial institutions and other entities integrated in a financial conglomerate will have to adapt. The second concerns the Community directive on the reorganisation and winding up of credit institutions, leaving outside its scope all those actions that, with the same name, can be taken by credit institution deposit guarantee funds.

In relation to the securities market, four provisions have been enacted. The first modifies the formats for the reporting of periodic public information by securities-issuing institutions, to adapt them to the International Financial Reporting Standards, and to include information relating to transactions with related parties. The second determines the investment rules for the balances of credit accounts of an instrumental and temporary nature that securities-dealer companies and securities agents maintain with their clients. The third establishes a number of instructions to facilitate compliance by the management companies of securitisation SPVs with the requirement to send to the Directorate General of the Treasury and Financial Policy (the Treasury) the necessary information to monitor the risk assumed by the State under the guarantees granted to *FT-Pyme*. And the fourth details the content and structure of the annual report on corporate governance of savings banks that issue securities admitted to trading on official securities markets.

Banco de España: amendment of the general clauses applicable to monetary policy operations

The Law of Autonomy of the Banco de España, Law 13/1994 of 1 June 1994[1], adapted the legal status of the Banco de España to the provisions of the Treaty on European Union on monetary policy, relations with the Treasury and future links between the former and the ESCB. Later, implementing the mandate of the Law of Autonomy, the Regulation of the Banco de España was published by means of the Resolution of 14 November 1996[2] of the Governing Council of this institution (amended by the Resolution of 22 February 2000, and finally repealed by the Resolution of 28 March 2000, which is currently in force), which constitutes the basic and highest ranking provision of the rules of self-government of the institution. Subsequently, a Resolution of 11 December 1998 of the Executive Commission of the Banco de España established the general clauses applicable to monetary policy operations, constituting the general framework for such operations in accordance with the guidelines of the ECB. These clauses have recently been amended.

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1. See "Regulación financiera: segundo trimestre de 1994", *Boletín Económico,* July-August 1994, Banco de España, pp. 86–92. **2.** See "Regulación financiera: cuarto trimestre de 1996", *Boletín Económico*, January 1997, Banco de España, pp. 104-106.

In effect, the Resolution of 4 March 2005 of the Executive Commission of the Banco de España (BOE of 19 May 2005), amending the Resolution of 11 December 1998[3], as a result of adoption by the ECB of Guideline ECB/2005/2 of 3 February 2005 (OJEU of 2 May 2005), amending Guideline ECB/2000/7 of 31 August 2000 on monetary policy instruments and procedures of the Eurosystem, has been adopted owing to recent changes to the definition and implementation of monetary policy in the euro area.

The most important changes are summarised below:

Clause three, "legal rules for the establishment of collateral", revises the quick tender procedure. This procedure is basically used for fine tuning operations when it is deemed desirable to have a rapid impact on the liquidity situation in the market. With effect from this provision, quick tenders will now be executed within a time frame of 90 minutes (previously one hour) and will continue to be restricted to a limited set of counterparties.

Clause six, "collateral assets", provides, like the previous Resolution, that the Banco de España shall not accept as collateral those assets issued or secured by the counterparty or by another entity with which the former has close links. For these purposes, the Resolution defines close links[4] as existing, when the counterparty is linked to the issuer of the debt instrument provided as collateral in any of the following ways:

a) The counterparty owns 20% or more of the capital of the issuer, directly or through other undertakings; or

b) the issuer owns 20% or more of the capital of the counterparty, directly or through other undertakings; or

c) a third party owns the majority of the capital of the counterparty and the majority of the capital of the issuer, either directly or indirectly, through one or more undertakings in which that third party owns the majority of the capital.

As regards the valuation of the collateral, the section dedicated to shares has been removed, this instrument having been subsumed in the following sections. Also, the revision of the valuation of collateral is carried out periodically, without specifying the frequency (previously daily).

Finally, the annex to the Resolution contains the consolidated text of the General Clauses Applicable to the Monetary Policy Operations of the Banco de España (adopted by Resolution of its Executive Commission of 11 December 1998), with the amendments introduced by the Resolutions of such Executive Commission of 23 July 1999 (BOE of 7 August 1999), 26 October 1999 (BOE of 7 December 1999), 10 October 2000 (BOE of 20 December 2000), 19 April 2002 (BOE of 29 June 2002) and 23 December 2003 (BOE of 5 March 2004), and by this Resolution, which entered into force on 30 May 2005.

European Central Bank: reporting requirements for money, banking and government finance statistics

The Guideline ECB/2005/4 of the European Central Bank of 15 February 2005 (OJEU of 29 April 2005) amending Guideline ECB/2003/2 of 6 February 2003, concerning certain statistical requirements of the ECB and the procedures for reporting by the national central banks (NCBs) of statistical information in the field of money and banking statistics, as a consequence of the

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3. See "Financial regulation: fourth quarter 1998", *Economic bulletin,* January 1999, Banco de España, pp. 79-82. **4.** The previous Resolution defined close links in the same terms as the fifth indent of Article 1 of Directive 77/780/EEC OJ L 322 of 17 December 1977, as amended by Directive 95/26/EC OJ L 168 of 29 June 1995.

accession of the new Member States on 1 May 2004, and of the expiry of certain transitional reporting arrangements and derogations, as well as new NCB statistical reporting requirements in the field of money and banking statistics, has been published.

At the same time, the Guideline ECB/2005/5 of the European Central Bank of 17 February 2005 (OJEU of 29 April 2005) on the statistical reporting requirements of the ECB and the procedures for exchanging statistical information within the ESCB in the field of government finance statistics, facilitates the fulfilment of the ESCB's tasks. The purpose of this Guideline is the establishment of efficient procedures for the exchange of government finance statistics within the ESCB to ensure that the ESCB has timely government finance statistics meeting its needs and that there is compatibility between them and the forecasts of the same variables prepared by the NCBs or by the competent national authorities.

European Central Bank: amendment of rules for the management of foreign reserve assets

Guideline ECB/2005/6 of the European Central Bank of 11 March 2005 (OJEU of 29 April 2005) amending Guideline ECB/2000/1 on the management of foreign reserve assets of the ECB by the national central banks and the legal documentation for operations involving the foreign reserve assets of the ECB was adopted.

Besides updating Guideline ECB/2000/1, the ECB introduces the use of the Master Agreement for Financial Transactions (2004 revised edition) of the Banking Federation of the European Union for all collateralised operations involving the ECB's foreign reserve assets (comprising repurchase agreements, reverse repurchase agreements, buy/sell-back agreements and sell/buy-back agreements) where the counterparties are incorporated or organised under the laws of any of the EU-15 countries or Switzerland, and for all over-the-counter derivative operations involving the ECB's foreign reserve assets.

Supervision of financial conglomerates

Recent financial market developments have led to the setting up of financial groups offering services and products in different markets, known as *financial conglomerates.*

In Spain, Law 13/1992 of 1 June 1992[5] on own funds and supervision of financial institutions on a consolidated basis established a system of joint prudential supervision of the activities of mixed-financial groups, namely those engaging simultaneously in banking or securities services and insurance. Also, a set of special supervision rules was established applicable to unconsolidated mixed groups. The law was structured around a number of solvency requirements apart from those established in the (individual or consolidated) sectoral framework for banks, securities entities and insurance undertakings, considered individually, or groups with homogeneous financial activities.

At the Community level, the Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002[6] on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate and amending certain directives was approved. The scope of application of this Directive was the supplementary supervision of the regulated financial entities of a financial conglomerate with significant cross-sectoral financial activities. It covered all financial activities identified by sectoral financial legislation and all entities principally engaged in such activities, including asset management companies and mixed financial holding companies.

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5. See "Regulación financiera: segundo trimestre de 1992", *Boletín Económico,* July-August 1992, Banco de España, pp. 82-86. **6.** See "Financial regulation: 2003 Q1, *Economic bulletin,* April 2003, Banco de España, pp. 92-95.

To incorporate part of this Directive into Spanish law, Law *5/2005 of 22 April 2005* has been published (BOE of 23 April 2005) on the supervision of financial conglomerates, amending other laws of the financial sector and aiming to establish a prudential regime specifically applicable to financial conglomerates, and to advance towards greater consistency between the different sectoral legislation applicable to homogeneous groups, and between such legislation and that specific to financial conglomerates.

DEFINITIONS AND SCOPE OF APPLICATION

The Law designs a new supervision system, to be applied to credit institutions, investment firms and insurance and reinsurance undertakings, as well as the management companies of collective investment institutions and pension funds (referred to generically both by the Directive and the Law as *regulated entities*) forming part of a financial conglomerate.

Also, the Law considers a group[7] to be a financial conglomerate when the following circumstances arise simultaneously: a) the controlling entity of the group is a regulated entity or the activities of the group are primarily in the financial sector b) at least one of the group entities belongs to the insurance sector and another to the banking sector or investment services sector and c) the consolidated or aggregated activities of the group entities included in the insurance sector, and those of the group entities included in the banking and investment services sectors are significant[8].

The Law is applicable to those financial conglomerates in which:

a) The controlling entity is a Spanish regulated entity.

b) The controlling entity is a mixed financial holding company[9] with registered office in Spain, and at least one of the controlled entities is a Spanish regulated entity.

c) The controlling entity being a mixed financial holding company, all the controlled entities are Spanish regulated entities, or the controlled regulated entity with the highest balance sheet total in the most important financial sector is Spanish.

d) In other cases, the regulated entity with the highest balance sheet total in the most important financial sector is Spanish.

Likewise subject to this Law and its implementing provisions are: Spanish entities that form part of a financial conglomerate subject to supplementary supervision by the competent authorities of other European Union Member States, and regulated entities of former mixed groups that do not fulfil the condition of having significant activity in both types of business and, therefore, cannot be classified as financial conglomerates, according to the provisions implementing the Law.

SUPPLEMENTARY SUPERVISION

The Law establishes a set of measures to facilitate the exercise of supplementary supervision. Thus, without prejudice to the prudential requirements applicable to them individually or on a

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7. Entities shall be considered to belong to the same group when they constitute a decision-making unit among themselves, or they have an equity interest, that is to say a right over the capital of other companies that, creating a durable link with them, is intended to contribute to the activity of the company and, in any case, the ownership, direct or indirect, of at least 20% of the capital or voting rights. **8.** Activities in a financial sector shall be considered significant when the smallest sector exceeds a relative limit (the average of the ratio of the balance sheet total of that sector to the balance sheet total of the financial sector entities in the group and the ratio of the solvency requirements of the same sector to the total solvency requirements of the financial sector entities in the group is greater than 10%) or an absolute limit (balance sheet total of €6 billion). **9.** A controlling entity, other than a regulated entity, which together with its subsidiaries, at least one of which is a regulated entity, and other entities, constitutes a financial conglomerate shall be considered a mixed financial holding company.

consolidated basis in accordance with sectoral legislation, the regulated entities of financial conglomerates shall maintain, at all times, at the level of the financial conglomerate, a sufficient volume of own funds or solvency margin in relation to the investments made or risks assumed, whose criteria shall be established in regulations. Also, they shall respect the quantitative limits on risks and intra-group operations and other requirements that may be determined in regulations.

At the same time, a co-ordinator shall be appointed for each financial conglomerate, this being the competent authority that shall be responsible for exercising and co-ordinating supplementary supervision, within a framework in which a large number of authorities may be involved, if the financial conglomerate is sectorally and geographically highly diversified.

The tasks of the co-ordinator, with regard to supplementary supervision of the regulated entities of a financial conglomerate, are the following:

a) The co-ordination of the gathering and dissemination of the relevant or essential information, including the dissemination of information which is of importance for a competent authority's supervisory task under sectoral rules.

b) Supervisory overview and assessment of the financial situation of a financial conglomerate.

c) Assessment of compliance with the obligations contained in the Law and in its implementing provisions.

d) Assessment of the financial conglomerate's structure, organisation and internal control systems.

e) Planning and co-ordination of supervisory activities, when necessary to fulfil the objectives of supplementary supervision and, in all cases, in critical situations.

f) Such other tasks as may be assigned thereto by the implementing provisions of this Law.

CO-OPERATION BETWEEN COMPETENT AUTHORITIES

The Law lays down a number of obligations for co-operation and consultation between all the competent authorities involved in the supervision of a single financial conglomerate. In this respect, the competent Spanish authorities (whenever they are responsible for performing the tasks of co-ordinator or are responsible for supervision on a consolidated basis of a group of financial entities integrated in financial conglomerates) shall establish co-ordination agreements with the other competent authorities of the same financial conglomerate. They shall also enter into such agreements when, being competent authorities, they are requested to do so by the authorities of other EU Member States performing the tasks of co-ordinator. This information-exchange regime may be extended to central banks, the ESCB and the ECB.

GROUPS OF THIRD STATES

The problem of financial conglomerates of third States whose regulated entities operate in Spain has been addressed, the principle of reciprocity being the underlying rationale for the rules applicable to this type of entity. In this respect, when the competent Spanish authorities are responsible for performing the tasks of co-ordinator, they shall confirm whether regulated entities whose controlling entity is a regulated entity or a mixed financial holding company with registered office outside the European Union are subject to supervision by an authority of a third country equivalent to that provided for in this Law and in its implementing provisions,

since if they are not, then the supervision regime provided for therein shall be applicable to them.

AMENDMENT OF THE SECTORAL RULES FOR FINANCIAL ENTITIES

Finally, it should be noted that the Law amends certain sectoral rules for credit institutions (Law 13/1985 or 25 May 1985 on investment ratios, own funds and reporting obligations for financial intermediaries, and Law 26/1988 of 29 July 1988 on the discipline and intervention of credit institutions), for securities-dealer companies, securities agencies and investment firms (Law 24/1988 of 28 July 1988 on the securities market) and for insurance undertakings (consolidated text of the law for the regulation and supervision of private insurance, approved by Legislative Royal Decree 6/2004 of 29 October 2004), to adjust them to its content, as well as to the provisions of Directive 2002/87/EC.

Prominent amongst these rules is that which establishes, as a new deduction from the own funds (computed for the purposes of their minimum solvency requirements) of credit institutions, securities institutions and insurance undertakings, the cross-holdings between them, which were previously treated less strictly.

Reorganisation and winding up of credit institutions

The globalisation of economic activity and technological innovation have given rise, among other aspects, to the need to co-ordinate the regulation and supervision of financial services. The European Union has been especially affected by these factors and has adopted a number of harmonisation and co-ordination measures in this area, leading to Directive 2001/24/EC of the European Parliament and of the Council of 4 April 2001[10] on the reorganisation and winding up of credit institutions, which regulates the rules for and treatment of the adoption of reorganisation measures and winding-up proceedings affecting Community credit institutions with cross-border activity. This directive, on the basis of the principle of unity and universality, tries to solve and facilitate the adoption of measures and the opening of proceedings in the European Union. For this purpose it departs from basic principles, such as the mutual recognition of decisions and co-ordination between the various authorities involved in such proceedings.

Recently Law 6/2005 of 22 April 2005 (BOE of 23 April 2005) on the reorganisation and winding-up of credit institutions has been published. This Law incorporates into Spanish law the provisions of Directive 2001/24/EEC, as well as various aspects of the treatment of credit institutions in difficulty relating to insolvency proceedings in the terms envisaged in Law 22/2003 of 9 July 2003 on insolvency.

The reorganisation measures referred to by this Law do not include those actions that, with the same name, can be adopted by deposit guarantee funds in relation to credit institutions in accordance with Royal Decree 2606/1996 of 20 December 1996.

DEFINITIONS AND SCOPE OF APPLICATION

For the purposes of the Law, reorganisation measures are understood to be those adopted by the administrative or judicial authorities of an EU member state that are intended to preserve or restore the financial situation of a credit institution and that could affect the pre-existing rights of third parties unrelated to the institution. Winding-up proceedings are those opened and monitored by the administrative or judicial authorities of an EU Member State with the aim of realising assets and settling liabilities under the supervision of such authorities, including where the proceedings are terminated by a composition or other, similar measure.

This Law shall be applicable to: credit institutions authorised in Spain which have at least one branch or provide services without a permanent establishment in another Member State; to

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10. See "Financial regulation: 2001 Q2", *Economic bulletin,* July 2001, Banco de España, pp. 85-86.

credit institutions authorised in another Member State which also have at least one branch or provide services without a permanent establishment in Spain; and to the branches in Spain of foreign credit institutions not authorised in an EU Member State, when such credit institutions have at least one branch in another Member State.

Following the scheme of Directive 2001/24/EC, the Law is based on the principles of "competition" and "law" of the Member State in which the credit institution has been authorised, with certain exceptions. Accordingly, Spanish law shall be applicable to the insolvency of credit institutions authorised in Spain which have branches in other EU Member States and its effects shall be recognised automatically in such States. These principles are consistent with European law on the taking up and pursuit of the business of credit institutions, which conceives of the credit institution and its branches from a unitary perspective as subject to the supervision of the competent authorities of the State in which the authorisation has been issued, which is valid throughout the European Union.

REORGANISATION MEASURES AND WINDING-UP PROCEEDINGS FOR CREDIT INSTITUTIONS AUTHORISED IN SPAIN THAT HAVE BRANCHES OR PROVIDE SERVICES WITHOUT A PERMANENT ESTABLISHMENT IN EU MEMBER STATES

The Spanish judicial authorities shall be solely responsible for determining the application to a credit institution authorised in Spain, including its branches in other Member States of the European Union, of a reorganisation measure[11] or a winding-up proceeding[12]. Such authorities shall, without delay, advise the competent supervisory authorities of the various host Member States, through the Banco de España, of their decision to adopt a reorganisation measure or to open a winding-up proceeding and its repercussions.

If such authorities consider it necessary for some reorganisation measure to be applied to the branches of credit institutions authorised in another Member State, they shall be obliged to advise the competent supervisory authorities of the home Member State of that fact.

Both the adoption of reorganisation measures and the opening of winding-up proceedings shall be announced in the "Official Journal of the European Union" and in at least two national newspapers in each of the host Member States.

REORGANISATION MEASURES AND WINDING-UP PROCEEDINGS FOR CREDIT INSTITUTIONS NOT AUTHORISED IN AN EU MEMBER STATE

The Spanish judicial authorities shall advise the competent supervisory authorities of the various host Member States, without delay and by all possible means, of their decision to adopt a reorganisation measure or to open winding up proceedings and their repercussions, in respect of the branches of foreign credit institutions not authorised in an EU Member State. The Spanish judicial authorities shall coordinate their actions with the administrative or judicial authorities of the various host States. The liquidators, if any, shall also endeavour to co-ordinate their activities.

REORGANISATION MEASURES ADOPTED AND WINDING UP PROCEEDINGS OPENED IN OTHER EUROPEAN UNION MEMBER STATES

When a reorganisation measure has been adopted or winding up proceedings have been opened in respect of a credit institution authorised in an EU Member State, which has a least one branch or which provides services in Spain, such measure or proceeding shall be fully effective in Spain as soon as it is fully effective in the Member State in which such measure has been adopted or such proceedings have been opened. Having received the relevant notification from the competent supervisory authority, the Banco de España shall, through the BOE, announce the decision to adopt the reorganisation measure or to open the winding up proceedings.

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11. The opening of insolvency proceedings in the terms provided for in Law 22/2003 of 9 July 2003 on insolvency shall be deemed to be a reorganisation measure in Spain. **12.** The opening of the winding-up phase of insolvency proceedings in accordance with the provisions of Law 22/2003 of 9 July 2003 on insolvency shall be deemed to be a winding-up proceeding in Spain.

OTHER PROVISIONS

As a result of the transposition of Directive 2001/24/EC, the Law incorporates a number of amendments to the Banking Law of 31 December 1946 and to Law 26/1988 of 29 July 1988 on the discipline and intervention of credit institutions with regard, respectively, to the legal rules governing the withdrawal of authorisation and the winding up of credit institutions.

Finally, the law shall only be applicable to those reorganisation measures adopted and those winding up procedings opened after its entry into force. The reorganisation measures adopted and the winding-up proceedings opened prior to such date shall be regulated by the laws applicable when they were adopted or opened.

Modification of the formats for the reporting of periodic public information by entities issuing securities and information on transactions with related parties

A Ministerial Order of 18 January 1991[13] established the content of the formats for the reporting of periodic public information by entities that issue securities admitted to trading on stock exchanges and authorised the National Securities Market Commission (CNMV) to modify such formats.

Subsequently, Regulation 1606/2002 of the European Parliament and of the Council of 19 July 2002 provided that entities shall prepare their consolidated accounts for each financial year starting on or after 1 January 2005 in conformity with the International Financial Reporting Standards (IFRS) if, at their balance sheet date, their securities are admitted to trading on a regulated market.

As regards transactions with related parties[14], Law 24/1988 of 28 July 1988, as amended by Law 44/2002 of 22 November 2002[15] on measures to reform the financial system, provided that companies that issue securities admitted to trading on some official secondary market shall necessarily include in the half-yearly information required by law, quantified information on all the transactions carried out by the company with related parties. Recently, Order EHA/3050/2004 of 15 September 2004 specifically authorised the CNMV to determine the form and degree of detail of the information that has to be supplied.

Against this background, it became necessary to modify the reporting formats to enable financial information to be sent in accordance with IFRS and information on transactions with related parties to be included. As a result, *CCNMV 1/2005 of 1 April 2005* (BOE of 6 April 2005) has now been published, which amends the formats contained in the CCNMV 2/2002 of 27 November 2002 for the reporting of periodic public information by entities that issue securities admitted to trading on stock exchanges and requires the recognition and measurement policies of the adopted IFRS to be applied in their preparation.

Four transitional provisions were included in the Circular to explain the process of transition from the accounting policies currently in force to the use of the recognition and measurement policies of the adopted IFRS.

The first provides that those companies, other than credit institutions, required to prepare consolidated annual accounts that, as at year end, have only issued fixed-income securities admitted to trading on a stock exchange, shall apply the adopted IFRS from 1 January 2007, when they have not applied them previously.

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13. See "Regulación financiera: primer trimestre de 1991", *Boletín Económico,* Banco de España, April 1991, p. 52. **14.** For the purposes of the Law, a party is considered related to another when one of them, or a group acting in concert, exercises or has the ability to exercise directly or indirectly, by virtue of the pacts or agreements between shareholders, control over the other or a significant influence over the taking of the financial and operating decisions of the other. **15.** See "Financial regulation: 2002 Q4, *Boletín Económico,* January 2003, Banco de España, pp. 101-113.

According to the second provision, the comparative information to be included in the column for the previous year in the periodic public information that has to be submitted in the first year in which the consolidated annual accounts are presented in conformity with the adopted IFRS, shall be prepared in accordance with the recognition and measurement policies that the entity must apply to prepare its first consolidated annual accounts in accordance with the adopted IFRS, unless some international financial reporting standard permits an exception to be made.

The third transitional provision establishes the manner of presentation of the half-yearly periodic public information when the first year in conformity with the adopted IFRS commences in 2005.

Finally, the fourth provision covers the case of entities that adopt the IFRS for the first time before 1 January 2006, and decide of their own volition to report specifically on the effect, in the opening balance sheet of the year that commences in 2004, of the transition from the accounting policies generally accepted in Spain to the adopted IFRS.

As regards transactions with related parties, the Circular introduces a new section in the formats for reporting half-yearly periodic public information in which transactions with related parties must be detailed. This obligation shall apply for the first time to the half-yearly information to be reported as from 30 June 2005 The information on transactions with related parties shall be broken down by related party, with quantified information on each party that can be aggregated in the case of items with a similar content. However, information will have to be provided on the individual nature of those transactions with related parties that are significant in amount or relevant to a proper understanding of the periodic public information.

In addition, in accordance with Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of the transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market, it has been considered necessary to standardise and complete the information supplied to the securities markets in the formats for reporting half-yearly periodic public information on issues of debt securities.

Currently, such information has to be broken down in the formats for reporting periodic public information under the heading of *issuance, repayment and redemption of debt securities*, in the significant events section. This reporting requirement means that every issuer of debt securities admitted to trading on a regulated market must make public without delay any new loan issues, and in particular any associated guarantee or security, that may have a relevant effect on the consolidated financial statements of the entity reporting the periodic public information. In this respect, a new section is introduced into the format for reporting half-yearly periodic public information, which incorporates two types of breakdown. The first refers to the various information that has to be provided on the main features of the debt securities issued by entities required to report half-yearly periodic public information or by a company included in the consolidated accounts of such an entity. The second breakdown, which complements the first one, refers to the issuance of debt securities, when an entity included in the consolidated accounts of the entity reporting the information has given some type of guarantee.

Finally, it is established that the Circular, which came into force on 7 April, will apply to quarterly and half-yearly periodic public information reported as from 31 March 2005 and 30 June 2005, respectively. In consequence, those institutions that present their consolidated

annual accounts for the year commencing in 2005, in accordance with the adopted IFRS, shall prepare the periodic public information for that year in accordance with the recognition and measurement policies of the adopted IFRS, including the periodic public information for 2005 Q1.

Securities-dealer companies and securities agencies: rules for investment of the credit balances of the accounts of an instrumental and temporary nature that they maintain for their clients

According to Royal Decree 867/2001 of 20 July 2001[16] on the legal regime for investment firms, securities-dealer companies and securities agencies may maintain accounts of a temporary and instrumental nature to hold funds for customers for the execution of transactions on their behalf. The maintenance of these accounts is an exception to the rule prohibiting securities-dealer companies and securities agencies from receiving funds from the public in the form of deposits or similar instruments.

Given the exceptional nature of these balances, their maintenance is subject to compliance with certain specific conditions, one of which requires that the balances on accounts of an instrumental and temporary nature that these entities open for their customers in order to hold funds for the execution of transactions on their behalf, must be invested in such categories of low-risk liquid assets as the Ministry of Economy may determine.

Pursuant to the powers granted in the Royal Decree, *Order EHA/848/2005 of 18 March 2005* (BOE of 6 April 2005) has been published, which determines the rules for investment of the balances of accounts of an instrumental and temporary nature that securities-dealer companies and securities agencies maintain for their clients.

The Order establishes the categories of low-risk, liquid assets in which the balances of these accounts should be invested, and also indicates certain situations in which the investment by securities-dealer companies and securities agencies in such assets is subject to tighter CNMV-established restrictions.

The low-risk, liquid assets specified by the Order (for the purposes of investment of the balances of client accounts of an instrumental and temporary nature) are the following: sight deposits with credit institutions that are subject to prudential supervision and have their registered office in an EU or OECD Member State; and reverse repos, with a residual maturity of two days or less and a zero weighting for credit-risk purposes.

When securities-dealer companies or securities agencies are in a situation of risk arising in connection with their solvency, results, viability, liquidity or organisational deficiencies, the CNMV may take one or both of the following precautionary measures:1) to require such balances to be invested exclusively in sight deposits, and 2) to require the balances to be invested individually in the name of each of the clients to which they belong, so that in no event may title to such balances correspond to the securities-dealer company or securities agency, or be assigned to another customer.

Finally, the Order includes a single additional provision, applicable exclusively to certain collective investment companies. Specifically, those collective investment companies that passed a resolution in 2004 to exclude their shares from official stock exchange trading, and those that pass such a resolution during 2005, provided that they apply for the relevant delisting before 30 June 2006, are exempted from certain reporting obligations of listed companies.

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16. See "Financial regulation: 2001 Q3", Economic Bulletin, Banco de España, October 2001, pp. 98-101.

Securitisation SPV Management Companies: reporting obligations

Law 49/1998 of 30 December 1998 on the 1999 State Budget[17], gave powers to the Ministry of Economy to guarantee fixed-income securities issued by securitisation SPVs, set up in accordance with agreements entered into by the Ministry with their management companies and, at the same time, to establish the rules and requirements to which such agreements should be subject.

Subsequently, the Ministerial Order of 28 May 1999[18] regulated the status and content of the promotion agreements that the Ministry of the Economy could enter into (through the Treasury) with securitisation SPV management companies to promote the setting up of securitisation SPVs which, under the trade name *FTPyme*, may benefit from a State guarantee for the fixed-income securities they issue in order to support business financing. Subsequently, the successive State budget laws have authorised the State to guarantee fixed-income securities issued by securitisation SPVs set up in accordance with agreements between the State and securitisation SPV management companies registered at the CNMV, in order to improve the financing of productive business activity.

Recently, Law 2/2004 of 27 December 2004 on the 2005 State Budget required Management Companies to report to the Treasury the necessary information to monitor the risk assumed by the State under the guarantees, in particular that relating to the total volume of the principal pending repayment on the fixed-income securities issued by securitisation SPVs and to the non-payment or default rate of the assets in the securitised portfolio.

To facilitate the performance of this obligation, the Treasury has published a *Resolution of 23 June 2005* (BOE of 30 June 2005), which establishes instructions for the performance of their reporting obligations by Securitisation SPV Management Companies to support business financing.

In this respect, Management Companies must report to the Treasury, after the date of each payment to the holders of the securities issued by the SPV, as specified in the annex to this Resolution, the following information:

— The identifying particulars of the SPV, specifying the date of generation of the data, as well as the name of the SPV and of the Management Company

— In relation to the portfolio of securitised assets, the amount of claims not yet due and the early repayment rates in annualised terms for the last month, quarter and year shall be specified, as at the payment date.

— With regard to the doubtful assets of the securitised portfolio of assets, the number of outstanding claims, the amount not yet due and the amount of past-due principal and interest since the date the SPV was set up, taking into account any recoveries made.

— In relation to the liabilities of the SPV, details shall be given for each class, series and tranche of fixed-income securities issued by the SPV of the balance thereof as at the date of its setting up and after each payment date.

— For each class, series and tranche of securities issued, details shall be given of the interest rate paid at the payment date, their estimated average life in years and the next date of payment to their holders.

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17. See "Financial regulation: fourth quarter 1998", Economic Bulletin, Banco de España, January 1999, p. 109. **18.** See "Financial regulation: second quarter of 1999, Economic Bulletin, July 1999, Banco de España, p. 66-67.

— Finally, the balance of the reserve fund shall be reported, where applicable, on each payment date, stating the initial amount at the date the SPV was set up, the minimum amount required and the balance after the payment date.

As regards the reporting period, the information shall be sent within ten business days following the payment date of the securities issued by the SPV.

Annual report on corporate governance and other information of savings banks that issue securities admitted to trading on official securities markets

The Order ECO/354/2004 of 17 February 2004[19] on the Annual report on corporate governance and other information of savings banks that issue securities admitted to trading on official securities markets, gave powers to the CNMV to specify the content and structure of the annual report on corporate governance, and to determine the technical and legal specifications of the information that savings banks that issue such securities may publish, where applicable, on their website on similar issues.

Pursuant to such powers, the CNMV has published *CCNMV 2/2005 of 21 April 2005* (BOE of 29 April 2005) on the annual report on corporate governance and other information of savings banks that issue securities admitted to trading on official securities markets.

The Circular stresses that all the information included by the institutions subject to it in their annual report on corporate governance and on their websites, whether its publication is mandatory or voluntary, shall be clear, complete, correct and accurate, and no information may be included that owing to its bias, the shortness of the period it covers, its incomparability, the failure to include the appropriate warnings or for any other reason, may mislead or confuse or not enable the investor to form a well-founded opinion of the institution.

ANNUAL REPORT ON CORPORATE GOVERNANCE

The Circular contains a detailed outline of the structure and content of the report, some of whose points should only be completed if the savings bank has issued non-voting equity units, which shall include a summary of the report prepared annually by the investment committee.

The preparation and content of the annual report on corporate governance of a savings bank shall be the responsibility of its board of directors, which shall give due notification thereof to the CNMV as a significant event. Also, it shall be made available to investors at the institution's website, as well as by other means. Publication of the annual report on corporate governance as a significant event may be carried out no later than the day on which the first announcement is made to call the ordinary general assembly to approve the institution's annual accounts for the same year as such report.

In the event that the Control Commission has pronounced unfavourably on some section of the annual report on corporate governance or has proposed suspending the resolution, the savings bank shall notify the CNMV immediately of a significant event indicating this circumstance, and send additional information with the actions arising from the pronouncement of the Control Commission.

Meanwhile, institutions that have issued securities listed on Spanish official secondary markets and that are fully controlled, whether directly or indirectly, by a savings bank may send the annual report on corporate governance of the controlling savings bank. in that case, the controlled savings bank shall send annually to the CNMV a copy of the report prepared by its control-

19. See "Financial regulation: 2004 Q1", Economic Bulletin, Banco de España, April 2004, pp. 96-97. 90-92.-{}-

ling savings bank, together with a letter indicating that it is in the situation referred to and identifying the controlling savings bank.

The first annual report on corporate governance shall be approved during the first half of 2005. It shall only be distributed to the ordinary General Assembly called to approve the annual accounts of the institution for the year 2004, if approved by the Board of Directors before the adoption of the resolution to call such Assembly.

INFORMATION THAT MUST BE INCLUDED ON SAVINGS BANKS' WEBSITES

Savings banks that issue securities admitted to trading on official securities markets shall have a website with a registered Internet domain name. Each institution shall assign the necessary resources to ensure that its website may be easily located on the Internet with the most frequently used search engines.

The content shall be presented in a structured and hierarchised fashion with succinct and explanatory titles, so that it can all be accessed rapidly and directly, without charge to the user. In the site map or any other list of contents on the website, specific reference shall be made to, at least, the latest published annual report on corporate governance and the significant events. The technical structure of the website and the files supporting its content shall enable users to navigate and access the site with IT products commonly used in the Internet environment, and with a response time that does not make consultations unfeasible. In the event of any significant discrepancy between the information contained on the website of the savings bank and the information contained in the public registers of the CNMV, the institution shall be obliged to eliminate such discrepancy as soon as possible.

The general manager shall be responsible for keeping the information on the website, required by order ECO/354/2004 or supplied voluntarily, up-to-date and for co-ordinating its content with the documents filed and entered in the relevant public registers.

Finally, the annexes to the Circular set out what information savings banks have to include on their websites.