

Financial regulation: 2008 Q1

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Introduction

In 2008 Q1 the amount of new financial legislation was relatively large in comparison with the same period of the previous year.

In the area of payment systems, the general clauses applicable to the Interbank Deposit Settlement Service (SLDI), which will take on the functions of the Banco de España Settlement Service (SLBE) in TARGET2-BE, were approved. Likewise, as a result of this new platform coming into operation, the clearing system for participant institutions in cases of TARGET2 malfunction was updated.

The legal system for the accounting and financial reporting of the European System of Central Banks (ESCB) was modified in order to regulate the accounting for synthetic indicators.

As for financial institutions, the list of multilateral development banks was updated for the purposes of the application of rules on the determination and control of the minimum capital of credit institutions. Also, rules on the equity of financial institutions were modified in order to make progress with the transposition of EU directives aimed at strengthening the solvency of credit institutions and investment firms. The implementing regulations on investment firms were amended to include, among other things, the new internal organisation requirements and rules of conduct applicable to them. Also, the legal system for electronic money institutions was published, which completes the process of including EU rules on these institutions in Spanish law.

Within the securities markets, the terms of issue of public debt for 2008 and January 2009 were published, the periodic reporting forms for issuers of securities admitted to trading were prepared, liquidity contracts were regulated as market practice in order to promote the liquidity of transactions and the regular trading of the issuer's shares, and the forms for notifying significant holdings of directors and executives were approved as were forms for the issuer's transactions in treasury shares. The format for the annual corporate governance report of listed public limited companies was updated, and rules on pension schemes and funds covering financial and actuarial matters, the investment system and registration procedures were prepared, in view of the amendments introduced in the regulations governing these institutions.

As for collective investment institutions (CIIs), the rules on the determination of their assets and liabilities, on the calculation of risk diversification ratios and on certain aspects of these institutions were updated. Also, the form, content and deadlines for notifying salient events regarding CIIs to the National Securities Market Commission (CNMV) were regulated.

At EU level several directives were published which attribute certain powers to the European Commission for preparing technical adaptations, extending or completing provisions and guaranteeing the uniform application of such directives within the European Union. The most important directives in the financial sphere are highlighted in this article.

Lastly, other rules of interest discussed in the article are the obligations of notaries public in the sphere of the prevention of money laundering and the regulations on competition and the

statutes of the National Competition Commission (Comisión Nacional de la Competencia – “CNC” by its Spanish acronym).

Interbank Deposit Settlement Service

The TARGET2 system which came into operation on 18 February is legally structured as a multiplicity of payment systems which operate on the basis of a single technical platform through which the same services are provided in uniform conditions to all institutions. Although TARGET2 offers wide-ranging and advanced payment services, it does not include some of the functions which were traditionally offered by the SLBE. For this reason, these functions have been maintained as additional services separate from those offered within TARGET2. To do so, the SLDI was created and will take on these functions in the new platform.

Accordingly, the *Resolution of 25 January 2008* (BOE of 13 February 2008), of the Banco de España Governing Council was published, whereby the general clauses applicable to the SLDI were approved.

The SLDI will be responsible for the recording and settlement of interbank market transactions involving deposits between credit institutions in accordance with the clauses and the technical applications implementing them. The cash positions resulting from deposit transactions recorded through the SLDI will be settled through the TARGET2 system.

The clauses include, among other matters, the methods for gaining access to the SLDI, and the procedures for the communication, matching and recording of orders and their subsequent settlement process, which are similar to those established in the SLBE.

The credit institutions which are direct or indirect participants in the TARGET2 system and which, in the Banco de España's opinion, have sufficient solvency and legal and technical capacity may be accepted as members of the SLDI. Member institutions will assume on their own account (and by themselves) credit, interest rate and settlement risks and any other risk which they might incur in the trading, clearing and settlement of the deposit transactions recorded by this Service.

Should any unusual external event or other occurrence affect the operation of the SLDI, the contingency and business continuity procedures established in the related technical applications issued by the Banco de España shall apply at any given time.

Update of TARGET2 regulations

In accordance with the provisions of the Guideline of the European Central Bank (ECB/2007/2) of 26 April 2007 (TARGET2 Guideline), on the Trans-European Automated Real-time Gross settlement Express Transfer system (TARGET2), *Banco de España Circular 1/2008 of 25 January 2008* (BOE of 13 February 2008) on the clearing system in cases of TARGET system malfunction was published and the circulars regulating the SLBE were repealed.

The Circular partially amends Banco de España Circular 2/2003 of 24 June 2003 on the clearing system in case of malfunctioning of the TARGET system, in order to adapt its wording to the amendments of Guideline ECB/2005/16 of 30 December 2005 on TARGET, implemented in Article 15.8 and 15.9 of the TARGET2 Guideline.

In particular, the cases of malfunctioning of TARGET were extended to include those in which, prior to the migration to TARGET2, the malfunctioning occurs in TARGET2's technical infrastructure. Similarly, the deadline for submitting complaints increased from two to four weeks from the date on which the malfunctioning occurred and the deadline for the Governing Council of the ECB to assess the complaints and decide whether to make a compensation offer increased from twelve to fourteen weeks from the date on which the system malfunctioned.

Banco de España Circular 1/2008 repeals, effective from 18 February 2008 (date of the demise of the SLBE and the entry into force of TARGET2-BE), the Banco de España circulars regulating the operation of the SLBE.

The legal framework for accounting and financial reporting in the European System of Central Banks

Guideline ECB/2007/20 of 17 December 2007 (OJEU of 16 February 2007) amending *Guideline ECB/2006/16* on the legal framework for accounting and financial reporting in the ESCB was published in order to regulate the accounting for synthetic instruments which are increasingly used in the financial markets and, in particular, to develop generic accounting rules for such instruments and provide a clear framework for the Eurosystem external auditors. Also, references made to TARGET were replaced by TARGET2 and the corresponding definitions were updated in *Guideline ECB/2006/16*.

The Guideline explains the nature of these instruments in detail and establishes an alternative treatment for valuing them and a series of requirements which must be met before it can be applied.

Amendment of the rules on the capital of financial institutions

The 2004 Basel II Capital Accord issued by the Basel Committee on Banking Supervision on 26 June 2004 (known as Basel II) established a set of structured measures based on three mutually reinforcing pillars: the adoption of uniform rules to determine minimum capital requirements on the basis of the risks assumed (Pillar 1); supervisory review to foster improved internal risk management by institutions (Pillar 2); and market disclosure of the key features of their business profile, risk exposure and risk management practices (Pillar 3). These measures must be taken into account simultaneously so that the level of own funds held by institutions is in keeping with their overall risk profile.

Subsequently, in the EU this Accord took the form of two directives: Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions (recast) and Directive 2006/49/EC of the European Parliament and of the Council of 14 June 2006 on the capital adequacy of investment firms and credit institutions (recast). These two directives were partially included in Spanish law through two different laws: Law 36/2007 of 16 November 2007 amending Law 13/1985 of 25 May 1985 on the investment ratios, own funds and reporting obligations of financial intermediaries and other financial system rules, in the area of credit institutions and Law 47/2007 of 19 December 2007 amending Law 24/1988, of 28 July 1988, on the securities market, in the area of investment firms.

In this setting, *Royal Decree 216/2008 of 15 February 2008* (BOE of 16 February 2008) on the own funds of financial institutions was published, to provide for the partial transposition of the above-mentioned directives. Upon its entry into force on 17 February 2008, except for certain final provisions, Royal Decree 1343/1992 of 6 November 1992 implementing Law 13/1992 of 1 June 1992 on own funds and supervision of financial institutions on a consolidated basis was repealed, among other stipulations.

PROVISIONS ON THE OWN FUNDS OF CREDIT INSTITUTIONS

Within the scope of application of these provisions, the obligations which credit institutions must fulfil are established and, in particular, the level at which the various obligations and requirements are applied is specified, be it individual, consolidated or sub-consolidated.

The items which make up credit institutions' own funds are established; the items which are deducted from the calculation of these own funds are detailed; certain conditions for the eligibility of specific items are included; and, lastly, the items which are tier 1 capital, tier 2 capital and ancillary capital and their limits are determined.

Turning to the treatment of risks for capital requirement purposes, firstly credit risk is addressed, specifying in quantitative terms the capital requirement for this risk and, secondly, institutions are given the option to choose the calculation method most suited to their size or the level of sophistication of the standardised approach in comparison with the internal ratings-based approach. The purpose of the two approaches is to obtain the denominator of the solvency ratio applicable due to the credit risk of the transactions of the financial institution in question. This denominator is the sum of the value of each of the exposures weighted by the risk.

In the standardised approach, the risk weightings of the various exposures will be calculated – provided that there are credit ratings performed by eligible external rating agencies, or, in certain cases, by export credit agencies – based on the credit quality level determined by the Banco de España. The internal ratings-based approach, which will be subject to the prior authorisation of the Banco de España, means that, for the purpose of determining their minimum capital requirements, the institutions use credit ratings of their exposures that they themselves have calculated in-house with internal risk models based on data of their past experience with each type of exposure. Also, the rule addresses the credit risk mitigation techniques that are acceptable for minimising the requirements for the various risk exposures, calculated in accordance with the two above-mentioned approaches.

The treatment of counterparty risk incurred by credit institutions is broached, for the purposes of calculating exposures weighted by credit risk, be they calculated using the standardised approach or in accordance with the internal ratings-based approach, both of which are described above.

Other types of risk considered by the Royal Decree are: those which credit institutions incur due to possible unfavourable changes in interest rates, the price of gold and commodities prices; the risk arising from their positions in the financial instruments which make up their trading book; and, finally, the risk of loss due to events which might occur in an institution's internal processes (operational risk).

As for limits on large exposures, the ceiling for credit institutions on this type of exposure is set at 25% of their capital and it is stipulated that the aggregate total of large exposures must not exceed 800% of the credit institution's capital under any circumstances.

A series of organisational requirements were established for institutions in order to guarantee fulfilment of the regulatory obligations established in the Royal Decree. These requirements include a suitable organisational structure, internal audit functions and an internal capital adequacy assessment process. Also specified are the requirements which credit institutions must fulfil in order to use internal models to calculate capital requirements for position, exchange rate or commodity risk and to be able to apply the treatment to the trading book. Further, the basic regime governing the delegation of the provision of services or the exercise of functions of those institutions is included.

Another important section refers to the disclosure of information to the market by credit institutions and, in this way, the third pillar of the Basel II Accord is included. In this connection, credit institutions, as provided by Law 36/2007, have to publish a document entitled "information of prudential significance" at least once a year and as soon as it is feasible to do so. Where information is omitted because it is confidential, this must be indicated and justified. Additionally, credit institutions shall assess the need to publish some or all information more frequently according to the nature and characteristics of their activities.

Finally, the measures are established which groups of credit institutions or credit institutions individually must take, as appropriate, should they fail to meet the capital requirements in the Royal Decree or should they exceed the large exposure limits set thereby, along with the obligations arising from such situations. Thus an institution will immediately inform the Banco de España of this and submit, within one month, a programme specifying its plans for returning to compliance, unless the situation was corrected within that period. This programme must be approved by the Banco de España, which may include the changes or additional measures it deems necessary to ensure that the institution returns to compliance with minimum capital requirements.

Table 1 compares the system applicable to credit institutions under Royal Decree 216/2008 with the previous regulations.

PROVISIONS ON THE CAPITAL OF INVESTMENT FIRMS

The Royal Decree sets out the obligations which investment firms (IFs) must comply with and whether this must be done at individual or consolidated level. As with credit institutions, the way to calculate capital under the general definition of IFs is established and the items of the consolidated balance sheet which must be added to calculate the capital of a consolidable group are specified. Also included are the alternative definition of own funds and the limits on eligibility, which apply to IFs and groups of IFs that must meet the capital requirements for risks linked to the trading book.

It is established that the capital requirements of IFs must be equal to or higher than the largest of the following four items: the sum of capital requirements linked to various risks (trading-book, exchange-rate, credit and operational risks); a quarter of the overheads of the previous year; two-thirds of the minimum capital required to set up the type of IF in question or 5% of the volume of the portfolios managed.

A series of organisational requirements and risk assessment techniques are established which are necessary so that the risks to which the IFs are, or might be, exposed do not increase unduly, and the obligation for them to have an internal capital adequacy assessment mechanism is included. Likewise, under the Royal Decree all these policies and procedures must be summarised in a yearly internal capital adequacy assessment report which must be submitted to the CNMV.

As for the information which must be disclosed to the market, IFs will prepare a document called "information on solvency" and establish how frequently it must be published and the possibility that the CNMV may require certain data or information to be disclosed more frequently.

The Royal Decree includes the measures which IFs must take individually or on a consolidated basis, should they fail to meet the regulatory capital requirements or should they exceed the limits on large exposures established by the Royal Decree. It also contains the obligations arising from such situations.

Table 2 compares the system applicable to IFs under Royal Decree 216/2008 with the previous regulations.

AMENDMENT OF REGULATIONS ON MUTUAL GUARANTEE COMPANIES AND REGUARANTEE COMPANIES

The first and second final provisions of the Royal Decree amend Royal Decree 2345/1996 of 8 November 1996 on administrative authorisation rules and solvency requirements for mutual guarantee companies and Royal Decree 1644/1997 of 31 October 1997 on administrative authorisation rules and solvency requirements for reguarantee companies. Both of them establish a specific own funds and risk diversification regime for these types of companies, which were previously subject to the same regime as credit institutions, albeit with certain excep-

Royal Decree of 1343/1992 of 6 November 1992	Royal Decree 216/2008 of 15 February 2008
Definition of capital	
The most significant items of Tier 1 capital are: share capital, disclosed reserves, provisions for general banking risks, preference shares and non-voting shares which do not carry cumulative rights to receive dividends.	No significant changes.
The most significant items of Tier 2 capital are: regularisation reserves, the book value of the general loan loss provisions, the savings banks' welfare funds, subordinated debt and financing with undefined maturity which establishes the use of debt and interest to absorb losses.	No significant changes.
Not envisaged.	Ancillary capital: subordinated debt with an original maturity of at least two years in which neither the principal nor the interest can be paid if there is a capital shortfall.
Deductions from own funds: losses, own shares, financing to third parties for the purchase of shares, a certain volume of holdings in financial institutions and insurance companies, the shortfall in provisions or specific allowances, etc.	No significant changes.
Solvency ratio	
Credit risk: minimum capital requirements will be 8% of the sum of the weightings of the various risk items.	Credit risk: the minimum capital requirements will be 8% of the institution's total risk-weighted exposures calculated using the standardised approach or, if so authorised by the Banco de España, using the internal ratings-based approach.
Counterparty risk: risk of counterparty default in derivatives transactions.	No significant changes.
Risks linked to the securities trading portfolio: in order to calculate capital requirements, the credit risk and market risk of the aforementioned trading portfolios will be taken into account. The positions risk relating to the securities trading portfolio will comprise a general risk, arising from a change in the price of the institution's own positions due to general market fluctuations, and a specific risk, arising from a change in the price of an institution's own position for reasons related to the issuer of the security or the issuer of its underlying, in the case of derivatives.	Risks linked to the trading portfolio: capital requirements will be determined as the sum of the requirements of certain items. These include the price risk of fixed-income positions, price risk on positions in shares and other equity, price risk of commodities positions, clearing and delivery risk, counterparty credit risk linked to the trading portfolio and exchange rate and gold position risks. The Banco de España shall determine the calculation methods of the above-mentioned requirements. Some special features will be established for certain exposures.
Exchange rate risk and gold positions must be covered by supplementary own funds. They will not be less than the sum of 8% of the net overall currency position and 8% of the net gold position. However, the Banco de España may set a ratio of less than 8% for positions in closely related currencies which are of opposite sign and for positions of opposite sign in currencies subject to legally binding intergovernmental agreements.	Exchange and gold position risks: must be covered, at any given time, by supplementary own funds calculated in accordance with the standardised approach established in the Royal Decree, although the Banco de España may authorise institutions to use their own internal risk management models alone or together with the standardised approach.
Not envisaged.	Operational risk is the risk of loss resulting from inadequate or failed internal processes, people and systems or from external events including legal risk. The approaches used to calculate capital requirements for operational risk are the basic indicator approach, the standardised approach and its variant known as the alternative standardised approach, and the advanced approaches based on the internal measurement systems of each institution.
Limits on large exposures: the value of all the exposures of a credit institution to one individual, institution or external economic group shall not exceed 25% of its own funds. The total large exposures shall not exceed 800% of the credit institution's own funds.	No significant changes.
Adoption of measures to return to compliance with solvency regulations: if the credit institution or group has a capital shortfall, it shall notify the Banco de España immediately and shall submit a programme setting out the plans for it to return to compliance.	It is specified that this programme shall be submitted within one month. Also, it is envisaged that the Banco de España can compel a credit institution or a group or subgroup to hold own funds in addition to the required minimum. In this case, a programme will be submitted within one month which specifies the plans for compliance with the additional requirement.
Profit appropriation due to non-compliance with solvency regulations: if the capital shortfall is more than 20% of the minimum capital required, or Tier 1 capital falls below 50%, the credit institution must allocate its net profit or surplus in full to reserves. If the shortfall is 20% or less, the distribution of net profit or surplus will be subject to prior authorisation by the Banco de España. In both cases, these provisions shall apply unless an alternative measure is authorised in view of the programme for returning to compliance submitted by the institution.	No significant changes.

SOURCES: BOE and Banco de España.

Royal Decree of 1343/1992 of 6 November 1992	Royal Decree 216/2008 of 15 February 2008
	Governance procedures, organisational structure, risk management and internal control
Not envisaged.	Organisational structure. They must have the following: an organisational structure suited to the nature of their activities, with well defined, transparent and consistent lines of responsibility; an internal audit function which oversees the proper functioning of information and internal control systems; a unit which undertakes the regulatory compliance function; and suitable internal control mechanisms including appropriate administrative and accounting procedures.
Not envisaged.	Risk management policy: they must have strategies and policies for assuming, managing, controlling and mitigating the risks to which the credit institution is or may be exposed.
Not envisaged.	Internal capital adequacy assessment process: they will specifically have sound, effective and exhaustive strategies and procedures to assess and maintain at all times the amounts, types and allocation of internal capital and of own funds which they consider suitable to cover the nature and level of the risks to which they are or may be exposed.
	Disclosures
Not envisaged.	Credit institutions must publish a document entitled "information of prudential significance" at least once a year and as soon as it is feasible to do so.
Not envisaged.	Additionally, they shall assess the need to publish some or all information more frequently according to the nature and characteristics of their activities.

SOURCES: BOE and Banco de España.

tions. In particular, it is recognised that reguarantees, if they meet certain conditions, are an instrument that reduces credit risk and should therefore carry the consequent reduction of capital requirements for the commitments backed by general reguarantee contracts.

Minimum own funds requirements of credit institutions: amendment of the list of multilateral development banks

Directive 2007/18/EC of the Commission of 27 March 2007 amended Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions (recast) as regards the definition of multilateral development banks, including for the first time within the list of these banks the International Finance Facility for Immunisation and the Islamic Development Bank.

For this same purpose, the Banco de España published *CBE 2/2008 of 25 January 2008* (BOE of 7 February 2008) changing the list of multilateral development banks contained in Circular 5/1993 of 26 March 1993 on determination and control of minimum own funds of credit institutions. It also took the opportunity to update the list of multilateral development banks in order to make it the same as that included in Directive 2006/48/EC when it was recast. In short, this update entails, along with other minor adjustments to the name of some organisations, the exclusion of the Inter-American Investment Corporation and the inclusion of the European Investment Bank, the International Finance Facility for Immunisation and the Islamic Development Bank.

Changes to the legal regime of investment firms and of other entities providing investment services

Law 47/2007 of 19 December 2007 amending Law 24/1988 of 28 July 1988 on the securities market incorporated into Spanish law, inter alia, Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments. This Directive has been fleshed out in certain respects by two other pieces of EU legislation: Commission Directive 2006/73/EC of 10 August 2006 implementing Directive 2004/39/EC of the European Parliament and of the Council as regards organisational requirements and operating conditions for

Royal Decree 1343/1992 of 6 November 1992	Royal Decree 216/2008 of 15 February 2008
Scope of application	
The provisions apply to securities-dealer companies and securities agencies and their groups.	The provisions apply to IFs (securities-dealer companies, securities agencies and portfolio management companies). They do not apply to financial advice firms.
Definition of own funds	
Share capital, disclosed reserves, regularisation reserves, provisions for general IF risks, non-voting shares which do not carry cumulative rights to receive dividends, subordinated debt and debt with undefined maturity which establishes the use of debt and interest to absorb losses.	No significant changes.
Deductions from own funds: losses, own shares, financing to third parties for the purchase of shares, a certain volume of holdings in financial institutions and insurance companies, the shortfall in provisions or specific allowances, etc.	No significant changes.
Alternative definition of own funds: securities-dealer companies and securities agencies and their groups which must cover the risks linked to the securities trading portfolio may use the alternative definition of own funds, established in the Royal Decree.	No significant changes but applied to IFs.
Solvency ratio	
The own funds of securities-dealer companies and securities agencies may not at any given time be lower than the highest of the following amounts: two thirds of the minimum share capital set in Royal Decree 276/1989 of 22 March 1989 (€4.5 million for dealers and €0.9 million for agencies); the sum of the amounts recorded to cover credit, exchange rate and gold position risks, in accordance with the amounts calculated under their risk management models and, if appropriate, the risks linked to their trading portfolio and the limits on large exposures; the amount resulting from the capital requirement due to level of activity (not less than 25% of the previous year's overheads).	The own funds of IFs will at all times be equal to or exceed the largest of the following items: the sum of capital requirements linked to various risks (securities portfolio risk, exchange rate risk, credit risk and operational risk); one quarter of the previous year's overheads; two thirds of the minimum capital required to form the type of IF in question or 5% of the volume of the portfolios managed.
Credit risk: minimum capital requirements will be 8% of the sum of the weightings of the various risk items. Only assets and commitments which are not part of the securities trading portfolio or have not been deducted from own funds will be included.	Credit risk: capital requirements for this type of risks will be calculated in a similar way as for credit institutions (see Table 1).
Risks linked to the securities trading portfolio: the calculation of capital requirements to cover these risks is similar to that for credit institutions (see Table 1).	Risk linked to the securities portfolio: capital requirements for this type of risks will be calculated in a similar way as for credit institutions (see Table 1).
Exchange rate risk and gold positions: the calculation of capital requirements to cover these risks is similar to that for credit institutions (see Table 1).	Exchange rate risk and gold positions: the calculation of capital requirements to cover these risks is similar to that for credit institutions (see Table 1).
Commodities position risk and financial instruments based on commodities: securities-dealer companies and securities agencies and their groups must cover this type of risks with additional capital which will be set by the Ministry of Economy or, with the latter's specific authorisation, by the CNMV. The capital requirements of the entity or group for commodities position risk and the financial instruments based on commodities will be calculated as the sum of the requirements for each commodity.	Capital requirements for commodities risk: IFs will calculate the capital requirements for commodities positions and financial instruments arranged on them in accordance with the methods determined by the CNMV.
Not envisaged.	Operational risk similar to that established for credit institutions (see Table 1).
Governance procedures, organisational structure, risk management and internal control	
Not envisaged.	Organisational requirements: the establishment of effective risk assessment techniques and compulsory measures to ensure that services are provided continuously and regularly. Risk management policy: the strategies and policies for assuming, managing, supervising and mitigating the risks which IFs are or may be exposed to will be reviewed regularly.
Not envisaged.	Internal capital adequacy assessment process of IFs: they will specifically have sound, effective and exhaustive strategies and procedures to assess and maintain at all times the amounts, types and allocation of internal capital which they consider suitable to cover the nature and level of the risks to which they are or may be exposed.

SOURCES: BOE and Banco de España.

Royal Decree 1343/1992 of 6 November 1992	Royal Decree 216/2008 of 15 February 2008
	Disclosures
Not envisaged.	IFs must publish a document entitled "information of prudential significance", at least once a year. Additionally, they shall assess the need to publish some or all information more frequently than once a year taking into account the characteristics of their business activities, such as scope and type of activities, etc.

SOURCES: BOE and Banco de España.

investment firms and Commission Regulation (EC) No 1287/2006 of 10 August 2006 implementing Directive 2004/39/EC of the European Parliament and of the Council as regards record-keeping obligations for investment firms, transaction reporting, market transparency and admission of financial instruments to trading.

To transpose Directive 2006/73/EC into Spanish law and set in place the related implementing regulations, *Royal Decree 217/2008 of 15 February 2008* (BOE of 16 February 2008) on the legal regime of IFs and of other investment services entities was published.

The Royal Decree partially amends the regulations implementing Law 35/2003 of 4 November 2003 on CII approved by Royal Decree 1309/2005 of 4 November 2005 and, in addition, consolidates two previous royal decrees (Royal Decree 867/2001 of 20 July 2001 on the legal regime of investment firms and Royal Decree 629/1993 of 3 May 1993 on securities market rules and regulations and compulsory records) in a single legal text. This brought together all parts of the legal regime applicable to investment firms and to entities providing investment services (credit institutions and CII management companies), referred to hereafter as "investment and similar firms", in a single overarching piece of legislation.

Within its scope of application, a distinction is made between, on the one hand, investment firms to which the entire Royal Decree is applicable, and on the other, credit institutions providing investment services and other financial institutions (particularly CII management companies), to which are applicable those articles relevant to the provision of investment services (mainly certain internal organisation rules and rules of conduct).

Regarding the general regime for investment firms, the Royal Decree includes the new developments introduced by Law 47/2007 and certain precepts of Directive 2006/73/EC. Specifically, investment firms are deemed to include the foregoing (securities-dealer companies and securities agencies, and portfolio management companies), to which are added financial advice firms (whose services are specifically defined), and a special authorisation regime is established.

The section on investment services specifies the concept of investment advice, distinguishing it from other kinds of recommendations that remain beyond its scope, and the management of multilateral trading facilities (MTFs). It also distinguishes certain ancillary services (previously defined as supplementary activities) that can be carried out by certain investment firms under their specific legal regime. Among them may be highlighted the preparation of investment reports and other recommendations of a general nature on financial instruments.

The authorisation regime and requirements for performing the activity of IFs are similar to those established in RD 867/2001, with some exceptions. The new development is the special au-

thorisation regime for financial advice firms, given the special features and nature of the functions they perform. These firms are required to have initial capital of €50,000 or professional indemnity cover, bond or other comparable guarantee, representing at least €1,000,000 applying to each claim and in aggregate €1,500,000 per year for all claims, or a combination of both in a form resulting in an equivalent level of coverage.

In accordance with European regulations, the existence of a special type of securities agency with lower capital requirements is recognised. In comparison with the initial capital of €500,000 required for a full-fledged securities agency, this amount is reduced to €300,000 if the agency does not intend to acquire the status of secondary market member or to join the clearing and settlement systems and its programme of activities does not include the custodianship of financial instruments or the receipt of funds from the public. Capital is reduced to €120,000 for securities agencies which are only authorised to receive and transfer orders without holding funds or financial instruments which belong to their clients. In this type of securities agencies, capital can be replaced by liability insurance representing at least €2.5 million to each claim and in aggregate €3.5 million for all claims or a combination of both.

One of the most important new features of the regulation is that it specifies a broad range of organisational requirements which must be fulfilled by IFs and, to a large extent, by credit institutions which provide investment services, in order to include many of the articles of Directive 2006/73/EC. Although some of these requirements had already been included in Spanish law, the Royal Decree regulates them in great detail. Thus, it comprises, among others, general organisational requirements, procedures for handling the risk of non-compliance with the law, risk management and internal audit procedures and policies and the keeping of all records, including those of clients and transaction orders.

Another matter addressed in this section is the policy on managing conflicts of interest according to the size and organisation of the firm and the nature, scale and complexity of its activity. Also, firms are required to keep and regularly update a register of the types of investment and ancillary services provided by them or on their behalf in which conflicts of interest have arisen or, in the case of current services, in which they could arise. Finally, additional organisational requirements are set out for institutions which provide investment services and disseminate investment reports.

The financial regime of IFs, the regime governing their cross-border activities and the capacity of IFs other than securities-dealer companies to act for their own account is changed in certain respects to complete the modifications required under Law 24/1988 of 28 July 1988 on the securities market, although, in short, the regime in force under current regulations is maintained.

The most numerous group of new developments refers to rules of conduct applicable to institutions providing investment services and, therefore includes the bulk of the articles of Directive 2006/73/EC. Accordingly, a full set of rules which must be followed in the provision of investment services is established and the conditions are listed for information to be impartial, clear and not misleading; this information refers to the classification of clients (retail, professional and eligible counterparties). Similarly, the information which IFs must provide to retail clients is established with regard to: contractual conditions, financial instruments, associated costs and expenses, the execution of orders not related to the portfolio management service, statements of financial instruments or customer funds, and the regime of fees and expenses charged for their activities.

In this section, reference is made to the suitability and/or appropriateness assessment which institutions must make of clients based on their profile (retail or professional), prior to the provision of services. It may be assumed that their professional clients will have the experience and knowledge required to understand the risks inherent to these investment services and specific products or to the types of services and transactions for which they are classified as professional clients.

It is worth noting that the requirement for a report by the CNMV's Consultative Committee has been eliminated in IF authorisation procedures to make them more flexible.

Lastly, among other aspects, the rules for reporting the identity of clients to the CNMV are specified in the additional and transitional provisions of the Royal Decree, as regards the reporting of transactions established in Law 24/1988 on the securities market, and certain amendments are made to the regulations implementing Law 35/2003 of 4 November 2003 on CII to clarify the regime on rules of conduct applicable in this area.

Table 3 compares the regime applicable to IFs in Royal Decree 217/2008 with the previous regulations.

**Legal regime governing
electronic money
institutions**

Directive 2000/46/EC of the European Parliament and of the Council of 18 September 2000 on the taking up, pursuit of and prudential supervision of the business of electronic money institutions (ELMIs), was partially incorporated into Spanish law by Law 44/2002 of 22 November 2002 on financial system reform measures. This Law accorded them the nature of credit institutions whose principal activity consists of issuing means of payment in the form of electronic money and the same sanctioning regime as that envisaged in Law 26/1988 of 29 of July 1988 on the discipline and intervention of credit institutions.

Royal Decree 322/2008 of 29 February 2008 on the legal regime of ELMIs, which completes the incorporation into Spanish law of Directive 2000/46/EC, was published recently (BOE of 3 March 2008).

Following the model envisaged in the Directive, the regime for creating ELMIs is of the same type as for other credit institutions: name restrictions, activities, requirements for the incorporation of the entity and documents to be included in the incorporation applications, especially all those referring to the suitability and repute of the managers and mechanisms for sound internal management and the prevention of money laundering.

The activity of ELMIs, like other credit institutions, is subject to supervision and monitoring by the Banco de España. Accordingly, ELMIs must report to the Banco de España their capital structure and, especially, share ownership by other financial institutions and shareholders holding more than 2.5% of their share capital.

However, the Royal Decree also takes into account the special characteristics of ELMIs, making allowance for them in the regime. On the one hand, different requirements are established with regard to prudential supervision and ELMIs are not subject to certain provisions of banking regulations, while, on the other hand, the activities which these institutions can pursue are restricted and a regime of compulsory investment in certain assets is imposed. These institutions are required to have initial capital of at least €1,000,000 and to hold at all times own funds which are equal to or above 2% of the current amount or the average of the preceding six months' total amount of their financial liabilities related to outstanding e-money. If the electronic money is to a named payee or if the receipt of the funds exchanged for electronic

RD 867/2001 of 20 July 2001 and RD 629/1993 of 3 of May 1993	Royal Decree 217/2008 of 15 February 2008
Characteristics and Services of IFs	
Securities-dealer companies, securities agencies and portfolio management companies are considered IFs.	Financial advice firms, which have a special authorisation regime, are added to the above-mentioned firms. Mention is made of the other entities which provide investment services (credit institutions and CII management companies), to which certain rules on internal organisation and conduct apply.
Investment services and ancillary services mean, inter alia, the following: the reception, transmission and execution of orders on behalf of third parties; dealing for own account; management of investment portfolios; mediation, directly or indirectly on behalf of the issuer, in the placement and underwriting of new issues and public offers of securities; safekeeping and administration of financial instruments; rental of safe-deposit boxes; granting credits or loans to investors to allow them to carry out a transaction in financial instruments provided this transaction involves the firm granting the credits or loans; advice to undertakings on capital structure and advisory and other services relating to mergers and the purchase of undertakings; and acting as registered dealers to carry out foreign exchange transactions where these are connected with the provision of investment services.	Essentially, investment advice is added meaning the provision of recommendations tailored to a client at the latter's request or on the initiative of the IF with respect to one or more transactions relating to financial instruments, the management of multilateral trading facilities (MTFs) and the performance of certain ancillary services for specific IFs in accordance with their specific legal regime.
General regime	
The Minister of Finance, on a proposal by the CNMV, will be responsible for authorising the creation of investment firms or the conversion of a firm in that category.	Unchanged.
The Board of Directors shall be composed of at least five members (securities-dealer companies) and at least three members (securities agencies and portfolio management companies) who will be individuals of recognised commercial and professional standing.	The Board of Directors shall be composed of at least three members, who will be individuals of recognised commercial and professional standing.
IFs shall have a good administrative and accounting structure, adequate technical and human resources to implement their programme of operations and internal control and security procedures in the IT area which ensure the healthy and prudent management of the entity. In particular, the Board of Directors shall establish operating rules and suitable procedures to make it easier for all its members to comply with their obligations and assume their related responsibilities at any given time.	No significant changes.
Securities-dealer companies and securities agencies shall join an investment guarantee fund in the conditions set forth in its specific rules and portfolio management companies shall take out liability insurance with a legally authorised financial institution.	Join the Investment Guarantee Fund in the terms established by its specific regulation. This requirement shall not apply to financial advice firms.
IFs must keep with the CNMV a current programme of operations which specifies their investment and ancillary services and supplementary activities, also detailing which instruments they refer to and the organisation and resources at their disposal.	No significant changes.
Initial share capital and own funds	
Securities-dealer companies: €2,000,000. Securities agencies, if they intend to become members of secondary markets or of securities clearing and settlement systems, or if they include securities custody in their programme of operations and may keep special temporary credit-balance accounts: €500,000. Otherwise, if their programme of operations does not include securities custody or reception of funds from the public: €300,000. Portfolio management companies: €100,000. If the IF provides a discretionary portfolio management service, its own funds may not fall below 5‰ of the volume of the portfolio managed under any circumstances.	Securities-dealer companies: unchanged. Securities agencies: unchanged. As a new feature, if they are only authorised for the reception and transmission of orders without holding funds or financial instruments belonging to their clients: €120,000; or a professional indemnity cover, bond or other comparable guarantee representing at least €2.5 million applying to each claim and in aggregate €3.5 million per year for all claims; or a combination of both. Portfolio management companies: unchanged. Financial advice companies: €50,000; or a professional indemnity cover, bond or other comparable guarantee representing at least €1 million applying to each claim and in aggregate €1.5 million per year for all claims; or a combination of both.
Liquidity ratio	
IFs, other than portfolio management companies, shall ensure at all times that the percentage of investments in highly liquid low-risk assets to total current liabilities with residual maturity of less than one year (excluding credit-balance accounts) is at least 10%.	It remains the same, however, financial advice firms and securities agencies only authorised to receive and transmit orders without holding funds or financial instruments belonging to their clients are excluded.

SOURCES: BOE and Banco de España.

RD 867/2001 of 20 July 2001 and RD 629/1993 of 3 of May 1993	Royal Decree 217/2008 of 15 February 2008
Cross-border activity of IFs	
The establishment of branches in Spain by foreign IFs of non-EU Member States will require the authorisation of the Minister of Finance, on a proposal by the CNMV. IFs of EU Member States will not require authorisation, only notification to the CNMV from the supervisory authority.	Unchanged.
The establishment of branches abroad by Spanish IFs in non-EU Member States will require authorisation from the CNMV. For EU Member States, the CNMV will notify the competent authority of said State.	Unchanged.
Organisational and risk management requirements	
Not envisaged.	General organisational requirements: employ staff with the qualifications, knowledge and experience required; keep orderly and suitable records of its activity and internal organisation; ensure that individuals perform their tasks in an appropriate, honest and professional manner, and be equipped with systems and procedures to safeguard the security, integrity and confidentiality of information.
Not envisaged.	Risk management: risk management policies which make it possible to determine the risks arising from its activities, processes and systems and, if appropriate, establish the level of risk tolerated by the entity; effective processes and mechanisms for managing risks related to activities, processes and systems of the entity based on its risk tolerance level; check that the risk management policies and procedures are suitable and effective.
Not envisaged.	Compulsory records: keeping registers, register of customers' orders on financial instruments and register of transactions, protection of customers' assets, policy for managing conflicts of interests, etc.
Rules of conduct applicable to investment service providers	
Not envisaged.	IFs must notify their existing and new clients about client classification as retail, professional and eligible counterparty clients. They must also notify their clients of their right, if they should so desire, to demand to be classified under a different category, and the potential limitations of this new classification as regards client protection must be pointed out.
Not envisaged.	The general requirements for information on IFs and their services to retail clients, including potential retail clients, are established. Also, information requirements on financial instruments and their risks are established, taking especially into account the client classification of retail or professional and information on associated costs and expenses.
Not envisaged.	Charges: IFs have the freedom to establish their maximum commissions and out-of-pocket expenses. The rates must be included in a brochure whose contents will be determined by the Minister of Finance. The formats for these brochures will be prepared by the CNMV and the Banco de España. The latter relates to the public debt book-entry market and must be written clearly and precisely and be easy for clients to understand.

SOURCES: BOE and Banco de España.

money is linked to an account representing a deposit set up by their owner, they would have to be covered by a deposit guarantee system.

As for investment restrictions, ELMIs must make a series of compulsory investments in certain assets. They must invest an amount of no less than their financial liabilities related to e-money in circulation, in assets with a credit risk weighting of 0% and which are sufficiently liquid, either sight deposits of credit institutions of certain countries, provided that said countries do not reschedule their external public debt (i.e. they do not establish new payment schedules), or certain debt instruments which comply with the requirements established in the Royal Decree. The latter two groups of investment may not exceed 20 times the volume of the institution's own funds and are subject to the same restrictions as those of other credit institutions. The regime governing the use of derivatives to hedge market risk is also laid down.

The waiver regime is included in another section of the Royal Decree. It should be pointed out that of the three waivers included in Directive 2000/46, both Law 44/2002 and this Royal De-

can only include one. Thus, those institutions which issue e-money that is accepted as a means of payment only by any subsidiaries of the institution which perform operational or other ancillary functions related to e-money issued or distributed by the institution, any parent undertaking of the institution or any other subsidiaries of that parent undertaking, may be exempted from certain of their provisions. This will be reflected in the Banco de España's Special Register of Electronic Money Institutions, and only excludes institutions exempt from the restrictions on activity envisaged in the Royal Decree, from the initial minimum capital requirements, from the level of own funds and from the investment limitations.

Lastly, the sanctioning regime of these institutions is established by reference to that of other credit institutions. It envisages the possibility of an EMLI becoming a bank through the procedure already envisaged for credit co-operatives and specialised credit institutions.

**State debt: terms
of issuance for 2008
and January 2009**

Law 51/2007 of 26 December 2007 on the State Budget for 2008 authorised the Minister of Economy and Finance to increase State debt in 2008, with the limitation that the outstanding balance thereof at 31 December 2008 should not exceed the related balance as at 1 January 2008 by more than €7,694.4 million.

As usual at this time of year, *Order EHA/15/2008 of 10 January 2008* (BOE of 17 January 2008), providing for the creation of State debt during 2008 and January 2009, and two *Resolutions of 21 January 2008* of the Directorate-General of the Treasury and Financial Policy (BOE of 28 January 2008), providing for specific issues of Treasury bills and of medium- and long-term government bonds and announcing the schedule of tenders for 2008 and for January 2009, have been published.

Broadly, the issuance instruments and techniques of previous years have been maintained. As in 2007, the Ministry of Economy may provide for the creation of debt through issues of securities or credit operations, in euro or in other currencies.

The main new development in the Order refers to the cash management operations which can be performed by the Treasury. This time, these operations were limited to the transfer of the Treasury's balance at the Banco de España to credit institutions through "liquidity tenders" and lending to other European Union Member States or to institutions with the latter's specific guarantee. In particular, the range of repo transactions has been extended provided that the underlying securities have a high credit rating and are traded on regulated markets. These transactions will be with the market makers of Treasury bills that made the successful bids in the tenders.

The arrangements for State debt issuance of previous years have been retained, namely through tenders (competitive and non-competitive bids), and any technique whatsoever which is considered suitable for the type of transaction in question. In particular, a portion or the full amount of an issue could be transferred at an agreed price to one or several financial institutions which can underwrite its placement. Similarly, outright sales or the sale under repos of newly issued securities or expanded existing issues that the Treasury might have in its securities account may be performed.

As in previous years, public debt will be in the form of Treasury bills and medium- and long-term debt, in all cases exclusively in book-entry form.

TREASURY BILLS

The issuance criteria and procedures are basically maintained for 2008, as is the obligation to prepare an annual schedule of tenders which is included in the Resolution. Twelve-month issues are retained. A new development is that three-month bills will once again be issued from

October to compensate for the seasonal fluctuations in the State treasury. The latter, which were discontinued in 2005, replace the six-month bills used in 2007. However, for reasons of demand or due to issuance policies, the Treasury could not undertake more tenders than those called.

The tenders shall take place on the third Wednesday of each month (the periodicity with which three-month and twelve-month bills are auctioned) and the maturity periods may differ from those announced by the number of days necessary to facilitate the grouping of maturity dates, which are also monthly, coinciding with the issuance dates to facilitate reinvestment by holders. In this way, the grouping together of Treasury bill issues is maintained, so as to guarantee the liquidity of this instrument and to consolidate its market.

The manner of submitting bids at tenders remains the same, i.e. in terms of interest rate and is the same as that by which bills are quoted on the secondary markets, so that this makes submission easier. The procedures, minimum amounts and conditions are the same as in previous years.

Finally, as in previous years, tenders will be followed by a second round reserved for those financial institutions that have acquired market-maker status in respect of Treasury bills. This will unfold in accordance with the rules regulating market-makers.

MEDIUM AND LONG-TERM GOVERNMENT BONDS

The issuance criteria and procedures established for medium- and long-term government bonds are essentially those prevailing in 2007, and the annual schedule of tenders is included in the Resolution, specifying the term of the bonds that will be auctioned quarterly, depending on market conditions and on issuance developments during the year. However, if market conditions or financing requirements make it advisable, the Treasury may, in the monthly resolution providing for issues of bonds for the following month, decide not to issue at any of the terms which, for information purposes, were set in the aforementioned quarterly schedule.

The maturities for both types of bond will be unchanged, i.e. 3 and 5 years for medium-term bonds, and 10 and 30 years for long-term bonds, although without ruling out the option of resuming the 15-year issue and it will also still be possible to offer issues that are extensions of other previous issues, in order to ensure their liquidity on the secondary markets and to meet investor demand.

Tender arrangements remain as at present. Competitive and non-competitive bids may be submitted, with the same characteristics as in the previous section. As in the case of bills, there will be a second round reserved for those financial institutions that have acquired market maker status in respect of medium and long-term government bonds.

Issuers with securities admitted to trading on regulated markets: periodic reporting

CNMV Circular 1/2008 of 30 January 2008 (BOE of 15 February 2008) on periodic reporting by issuers with securities admitted to trading on regulated markets ("the issuers"), in the form of six-monthly financial reports, interim management statements and, if appropriate, quarterly financial reports, was published.

The Circular sets out the periodic reporting formats for six-monthly abridged, individual and consolidated annual accounts and interim management statements and, if appropriate, the content of quarterly financial reports.

Issuers of listed shares or debt securities must send the following to the CNMV: a six-monthly financial report on the first six months of the financial year and, in the case of issuers of listed

shares, a second six-monthly report on the twelve months of the financial year. This second obligation will not be applicable if the annual financial report has been made public in the two months following the end of the financial year to which it refers. Additionally, issuers of listed shares must submit certain quarterly information.

Given the different nature of the issuers and of the applicable accounting regulations, there are three reporting formats: the general format, the format for credit institutions and the format for insurance companies, respectively.

The deadline for publication and dissemination of the six-monthly financial reports will be two months after the end of the period to which they refer. These reports will comprise the abridged individual annual accounts and, if appropriate, the consolidated accounts, and the interim management report and, as a new feature, the statements of responsibility for their content. This responsibility must be assumed by the issuer's directors, whose names and posts will be clearly indicated in the specific section of the six-monthly formats. If the issuer must file abridged consolidated annual accounts, it will not be necessary to prepare abridged individual annual accounts, and for these purposes it will be sufficient to fill in certain statistical information.

The issuer will also publish two interim statements (formerly quarterly reports), within 45 days from the end of the first and third quarters of the financial year, which will contain information for the period from the beginning of the financial year to the end of each quarter. The interim statements will include, at least, an explanation of the salient events and transactions in the corresponding period and their effect on the financial position of the issuer and of the firms it controls and a general description of the financial position and results of the issuer and the firms it controls during the related period. These statements will not be required if the issuer voluntarily publishes, within the same deadline, quarterly financial reports for the period from the beginning of the financial year to the date of the end of the first and third quarters.

Similarly, the content of the abridged individual and, if appropriate, consolidated annual accounts is specified. A distinction is drawn in the former between issuers domiciled in Spain and those from other European Union Member States, although in both cases the compulsory financial statements must be adapted to the abridged format established in Royal Decree 1362/2007.

The information shall be submitted through the CIFRADO/CNMV system of the Electronic Register of the CNMV or on any other similar system which might replace it and shall conform to such format and technical requirements established for these purposes at any given time.

Lastly, the Circular, which came into force on 6 March 2008, will be applicable to six-monthly financial reports and interim statements referring to periods commencing from 1 January 2008.

Regulation of securities market liquidity contracts

Recently, *CNMV Circular 3/2007 of 19 December 2007* (BOE of 12 January 2008) has been published, regulating the conditions to be met by liquidity contracts for the purposes of their recognition as an accepted market practice.

The purpose of these contracts shall be the provision of liquidity by an investment firm or a credit institution (hereafter, a financial intermediary) which, acting on behalf of the issuer, buys and sells the issuer's shares on the official secondary market, with the sole purpose of promoting the liquidity of and regular trading in the share. These transactions shall be conducted,

within the limits established in the authorisation granted by the issuer's shareholders' meeting, for the acquisition of own shares.

Under the provisions of the Circular, the contracts shall meet certain requirements, including most notably that of independence of action of the financial intermediary (of which there shall be only one for each class of share), continuity, use of funds and availability.

Regarding its activity under the liquidity contract, the financial intermediary shall operate on the official Spanish secondary markets, through the orders market, in accordance with trading rules and within the habitual trading hours for these markets. Further, it shall abstain from buying or selling shares through block trades where the counterparty is unwinding a previously established position by means of trades on the orders market, offering it at the average weighted price of such transactions.

Moreover, it shall not occupy a dominant position in the trading of the issuer's shares, whereby it shall not account for more than 25% of the average daily trades in the orders market in the official secondary market in the previous 30 sessions. During auction periods, and particularly during the closing auction, the financial intermediary shall take every precaution to prevent its actions from decisively influencing the share price. In any event, its transactions shall not give rise artificially to share price shifts with respect to the market trend, hamper normal market workings or mislead third parties. To this end, the price of buy orders shall not exceed the higher of that of the last trade or the highest bid in the market order book. Sell orders may not be made at a price lower than that of the last trade, or lower than the lowest price in the sale market order book, if the latter were lower.

The issuer shall not directly or indirectly enter into any additional transaction involving its own shares during the time a liquidity contract is in force, with the exception of those it may make under the cases envisaged in the Circular where the contract is suspended. Nor may it use the securities account for the purchase of shares with the aim of increasing its stock of own shares.

The Circular further lays down minimum information requirements between the issuer and intermediary, and in particular the rules on privileged information established in the Spanish Securities Market Law shall be observed. Regarding public information, the issuer shall notify the CNMV of the signing of the liquidity contract, as relevant information, identifying the financial intermediary, the securities, the market in which the trades are to be transacted and the term of the contract, along with the number of shares and the cash intended for the securities account and the cash account, respectively. When the liquidity contract is terminated, the issuer shall report on the trades with its own shares transacted under the contract, and on the outstanding balance of the securities account and the cash account, as at the date of the reporting period and at the signing of the contract in question.

Finally, without prejudice to the foregoing, it should be clarified that transactions carried out under a liquidity contract that does not meet the conditions laid down in the Circular shall not per se be considered as constituting market abuse.

**Forms for notifying
the CNMV of significant
holdings**

CNMV Circular 2/2007 of 19 December 2007 (BOE dated 10 January 2008) has been published, approving the forms for notification of significant holdings of directors and managers and for notification of issuers' trades in own shares, and other forms.

The aim of the Circular is to establish the notification forms that are to be used for sending to the CNMV the information relating to issuers whose shares are traded on a regulated market.

These forms have been devised specifically for the subject persons obliged to provide notification, namely: significant shareholders who are not directors, directors, managers, the issuers themselves who have to disclose trades in own shares, and market makers that wish to avail themselves of the exemption from notifying significant holdings. Forms have likewise been adapted to the various instruments about which notifications have to be made. These include shares with attributed voting rights, voting rights and equity-linked financial instruments. Along with the notification forms, subject persons shall send supplementary information which, though it will not be public, will provide the CNMV with various pieces of data identifying the subject person and the reporting party, data that are vital for the agency's supervisory function.

Finally, the Circular stipulates how notification is to be made and the maximum terms that shall be observed for transmission thereof to the CNMV.

Amendment of the standard annual corporate governance report of listed public limited companies

Both Law 26/2003 of 17 July 2003 amending Law 24/1988 of 28 July 1988 on the Securities Market and the consolidated text of the Spanish Companies Law, and Ministerial Order ECO/3722/2003 of 26 December 2003 on the annual corporate governance report and other informative instruments of listed public limited companies and other entities, empowered the CNMV, inter alia, to detail the content and structure of listed companies' annual corporate governance reports (ACGR). This detail was introduced by CNMV Circular 1/2004 of 17 March 2004 on the ACGR of listed public limited companies and other entities that issue securities traded on official secondary securities markets, and other informative instruments of listed public limited companies.

Subsequently, the Council of the CNMV approved the Unified Corporate Governance Code (prepared by an ad hoc Working Group created by the Council of Ministers), which contains the corporate governance principles to be followed by all listed companies. Since these principles must be taken as a reference when the ACGR for 2007 and subsequent years is submitted, it was necessary to introduce some amendments and new sections in the existing format of the report.

To this end *CNMV Circular 4/2007 of 27 December 2007* (BOE of 14 January 2008) was published. It modifies the ACGR format for listed public limited companies and includes the recommendations of the Unified Corporate Governance Code in the Annex to the Circular.

Under the basic principles of the Unified Code, which include most notably the voluntary nature of compliance with the recommendations, companies are free to comply with these recommendations fully, partially or not at all, with the sole condition that they offer the appropriate explanations. Consequently, companies are not compelled to fill in all the new sections included in the report, although if they do not, they must complete the section for providing the related explanations. In any event, the ACGR must be disseminated as a significant event.

Amendment of pension fund and pension scheme legislation on financial and actuarial matters. Calculation of returns on pension schemes.

Order EHA/407/2008, of 7 February 2008 (BOE of 21 February 2008) was published. It implements the legislation on pension schemes and funds in the financial and actuarial areas, on the investment regime and on registration procedures, in response to the amendments to Royal Decree 304/2004, of 20 February 2004 approving the pension scheme and fund regulations. This Order also includes specific implementations of regulations on administrative procedures for authorisation and registration, and on the inclusion of occupational schemes in pension funds in the arena of cross-border activity.

Firstly, the legislation on the professional activity of actuaries regarding pension schemes is updated and the functions of actuaries in this respect are delimited.

Secondly, in the definition of general criteria governing the demographic, financial and economic assumptions, technically proven procedures and methods are accepted, with the prudence required by long-term calculations and the many items of risk which can affect defined-benefit and mixed schemes.

The sector's experience in recent years and the interest rates more in keeping with the returns actually obtained are taken into account in formulating the economic and financial assumptions. As for demographic assumptions, the requirements which must be met by the mortality, survival and disability tables which will apply to the pension schemes were defined in order to avoid any lag due to using demographic tables based on past experience dating from some time ago.

Certain aspects relating to the quantification and definition of actuarial aggregates are clarified by differentiating between ordinary contributions and extraordinary contributions, by establishing the general rules applicable to the calculation of mathematical provisions and other actuarial aggregates or by specifically regulating certain aspects of guaranteed pension schemes.

The Order delimits the applicable methods by standardising and limiting the content of the technical basis as against the diverse array of terminology and concepts, given the importance of using one actuarial valuation method or another to determine the annual cost of the scheme. The applicable actuarial valuation methods are based on allocating either profit or costs.

The requirements and measures which must be adopted in the allocation of a surplus or the treatment of a deficit in a pension scheme are made more systematic and as a new feature the requirements which must be met by the deficit reduction plan are set out. Lastly, certain aspects of the quantification and mobility of vested rights of members in relation to the general non-penalisation criterion and exceptions thereto are clarified.

Another important section of the Order refers to the legal regime governing pension fund investments. It defines the meaning of financial agents for regulatory purposes; implements the regime applicable to derivatives and determines the requirements applicable to them, according to whether or not they are tradable on regulated markets within the OECD; and sets out the concept of structured financial asset, the types, the conditions they must meet and the applicable credit rating criteria.

The Order implements certain aspects of the administrative procedures of authorisation and registration which are necessary for taking up the business of pension funds and their management companies and custodians, for certain modifications of pension funds and for the merger and spin-off of their management companies. It also lays down rules on how to comply with the obligation to notify changes to the information contained in the special registers of pension funds, management companies and custodians.

Lastly, it details some aspects of the administrative procedures for incorporating occupational pension schemes in occupational pension funds in the area of cross-border activity and of keeping a register of occupational pension funds of other Member States which operate in Spain and it sets out the questionnaires which must be filled in by senior officers and by shareholders with a significant holding in management companies.

Noteworthy is the recent *Resolution of 26 February 2008* (BOE of 1 March 2008) of the Directorate General of Insurance and Pension Funds, on the method for calculating returns on pension schemes, as empowered for this purpose by Royal Decree 304/2004. The return as de-

Rules on accounting for collective investment institutions

fined in this Resolution will be included in the advertising offering pension schemes or disseminating information about them, whatever medium or support may be used to this end, including circulars, calls and personalised letters forming part of a marketing campaign.

Royal Decree 1309/2005 of 4 November 2005 implemented Collective Investment Institutions Law 35/2003 of 4 November 2003 and, among other aspects, empowered the Minister of the Economy and Finance and the CNMV to develop certain aspects of the legal regime of these institutions.

By virtue of this empowerment, *Order EHA/35/2008 of 14 January 2008* (BOE of January 22 2008) was published. It implements certain aspects on: accounting for CII and determination of their total assets; the calculation of risk diversification ratios; the CII whose investment policy consists of reproducing, replicating or taking as a reference a stock market or fixed-income index; and the requirements of the internal control and risk management and control systems of CII management companies.

As for specific accounting rules, the Order empowers the CNMV to issue the necessary provisions on aspects such as valuation methods, annual accounts, determination of results, determination of supplementary confidential returns to be submitted by CII, and the detail of and frequency with which the data must be supplied to the CNMV. For this purpose, the specific nature of CII will be taken into account and their form as open-ended financial institutions, which requires adapting the accounting rules and asset valuation and classification methods to these circumstances. In any event, establishing or modifying accounting forms and the development of specific rules relating to them (especially altering valuation methods), will require a prior favourable report from the Accounting and Audit Institute.

For the purposes of calculating the risk diversification ratios and determining CII's total assets, the rule is restricted to defining the effective value of these institutions' total assets and the estimated realisable value of the assets and financial instruments which make up their portfolios. Also, the CNMV is empowered to establish the necessary provisions for determining CII's total assets and to monitor compliance with the risk diversification ratios established in the regulations. In the case of CII which are divided into compartments, the diversification ratios considered will be measured at compartment level.

The Order defines CII whose investment policy consists of replicating or reproducing a specific stock market or fixed-income index as those whose returns do not deviate significantly from the benchmark index. To this end, the CNMV will establish the maximum deviation permitted in the returns of CII with respect to the benchmark index and how to calculate them.

For CII whose investment policy consists of taking a stock market or fixed-income index as a reference, the limit on risk diversification in certain assets is extended from 10% to 20% of total assets, in order to give them the same capacity to invest in cash as CII which replicate an index.

Lastly, the Order lists the requirements of internal control and risk management and control systems of CII management companies and indicates, among other aspects, that those companies must have the appropriate administrative and accounting organisation as well as technical and human resources and control procedures and mechanisms in keeping with the investment objectives of the CII that they manage; once again the CNMV is empowered to extend this list.

Significant events of collective investment institutions

The regulations implementing Collective Investment Institutions Law 35/2003 of 4 November 2003, approved by Royal Decree 1309/2005, of 4 November 2005, empowered the CNMV to determine the form, content and deadlines of notifications of these institutions' significant events and to require from foreign CIIIs marketed in Spain any information necessary to fulfil its supervisory obligations.

In the exercise of this empowerment, *CNMV Circular 5/2007 of 27 December 2007* (BOE of 17 January 2008) on significant events of CIIIs was published with the intention of compiling the significant events which CIIIs domiciled in Spain must report, of expediting their dissemination and of specifying the information which must be submitted by foreign CIIIs marketed in Spain.

For these purposes, the Circular establishes several significant events which the CNMV, once the related administrative proceedings have been processed, will publish ex officio on its website without the need for notification from the institution affected. These significant events are as follows: a) the replacement of the management company or custodian of mutual funds, and changes in control of the management company; b) those decisions which give rise to the compulsory update of essential items in the information brochure; c) authorisation of a merger in which a mutual fund takes part; and d) any amendment to a mutual fund's rules which requires prior authorisation from the CNMV. The significant events arising from a decision of the CNMV will also be published ex officio.

Notification of the other significant events established in the Circular and, where applicable, of the significant events above will be by electronic means to the CNMV, once they have occurred.

Foreign CIIIs authorised to operate in other EU Member States which are marketed in Spain must also report to the CNMV electronically, in the same conditions and within the same deadlines established in the legislation of their home country, all the information identified in said legislation additional to that which must be obligatorily provided to Spanish investors.

EU directives: powers assigned to the European Commission in the financial arena

In order to make the application of EU legislation more efficient, several European directives were published. These directives confer certain powers on the European Commission to make technical adjustments and to extend or complete provisions. This action must take into account, among other things, the technological developments in financial markets and ensure the uniform application of said directives within the European Union.

Noteworthy in the financial arena is the publication of the following directives:

Directive 2008/24/EC of the European Parliament and of the Council of 11 March 2008 (OJEU of 20 March 2008) amending Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions. The Directive empowers the Commission to adopt certain technical adjustments and implementing measures relating to the determination of own funds and to the organisation, calculation and evaluation of risks and exposures.

Directive 2008/25/EC of the European Parliament and of the Council of 11 March 2008 (OJEU of 20 March 2008) amending Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate. The Directive grants powers to the Commission to clarify the technical aspects of some of the definitions provided for

in that Directive in order to take into account developments in financial markets and prudential supervision techniques.

Directive 2008/26/EC of the European Parliament and of the Council of 11 March 2008 (OJEU of 20 March 2008) amending Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003, on insider dealing and market manipulation (market abuse). The Directive empowers the Commission to adopt the measures necessary for the implementation of Directive 2003/6/EC, especially, to elaborate upon or supplement the provisions of that Directive by technical modalities for disclosure of inside information, insider lists, reporting of managerial and suspicious transactions to competent authorities, and present the investigations.

Directive 2008/23/EC of the European Parliament and of the Council of 11 March 2008 (OJEU of 19 March 2008) amending Directive 2006/49/EC of the European Parliament and of the Council of 14 June 2006 on the capital adequacy of investment firms and credit institutions. The Directive empowers the Commission so that, among other things, it adjusts the provisions of Directive 2006/49/EC related to the determination of own funds, the organisation, calculation and evaluation of risks and exposures, and to the categories of investment firms which are subject to that Directive.

Directive 2008/22/EC of the European Parliament and of the Council of 11 March 2008 (OJEU of 19 March 2008) amending Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market, as regards the powers granted to the Commission. In particular, in order to clarify the technical aspects of some of the definitions provided under Directive 2004/109/EC, notably the maximum length of the usual short settlement cycle, the calendar of trading days, the circumstances under which a person should have learnt of the acquisition or disposal of voting rights, the conditions of independence to be respected by market makers and management companies; the nature of the auditor's review, the minimum content of the condensed set of solo financial statements; the procedures for the notification and disclosure of major holdings as well as the procedures for filing regulated information with the competent authority of the issuer's home Member State; and defining minimum standards for the setting up of storage mechanisms.

Directive 2008/20/EC, of the European Parliament and of the Council of 11 March 2008 (OJEU of 19 March 2008) amending Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2006 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing. The Directive confers powers on the Commission so that it clarifies the technical aspects of some of the definitions provided for under Directive 2005/60/EC, establishes technical criteria for assessing whether situations present a low or high risk of money laundering or terrorist financing, whether or not it is justified to apply that Directive to persons carrying out a financial activity on an occasional or very limited basis, and adapts the amounts provided for in that Directive, taking account of economic developments and changes in international standards.

Directive 2008/18/EC of the European Parliament and of the Council of 11 March 2008 (OJEU of 19 March 2008) amending Directive 85/611/EEC of the Council of the European Communities of 20 December 1985 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS). Its purpose is to grant powers to the Commission so that it adopts the measures necessary for

the implementation of Directive 85/611/EEC by aligning terminology and framing definitions in accordance with subsequent acts on UCITS and related matters, as regards the implementing powers conferred on the Commission.

Directive 2008/11/EC of the European Parliament and of the Council of 11 March 2008 (OJEU of 19 March 2008) amending Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading, as regards the implementing powers conferred on the Commission so that it adapts definitions and elaborates upon or supplements the provisions of Directive 2003/71/EC by detailed specification of the form and contents of a prospectus.

Before 31 December 2010 and, subsequently, at least every three years, the Commission will review the provisions on its implementing powers conferred by the above-mentioned directives and will submit a report to the European Parliament and Council about the use of these powers.

**Public notaries’
obligations in the
prevention of money
laundering**

Law 19/1993 of 28 December 1993 on certain measures to prevent money laundering, amended by Law 19/2003 of 4 July 2003 and implemented by Royal Decree 925/1995 of 9 June 1995, includes the basic regulations on the prevention of money laundering. Subsequently, Order EHA/2963/2005 of 20 September 2005, which regulates the Centralised Body for the Prevention of Money Laundering in the General Council of Public Notaries, included measures aimed at preventing the use of public authenticating officials in money laundering processes.

Along these same lines, *Order EHA/114/2008, of 29 January 2008* (BOE of 31 January 2008), which regulates compliance of public notaries with certain obligations in the area of prevention of money laundering, was published.

In the Order certain obligations are established for public notaries as regards the identification of their clients (both individuals and legal entities), keeping the documents used to identify clients (for a period of six years), and internal control and communication procedures aimed at preventing money laundering.

It should be noted that public notaries must request that they be shown, for inclusion in the protocol, the declaration of movements of means of payment if the transaction which they are authorising is or was performed in cash, banknotes or bank bearer cheques denominated in national or any other currency, or any physical — including electronic — means conceived as a means of payment, for an amount equal to or higher than €100,000, in accordance with the provisions of Order EHA/1439/2006 of 3 May 2006 regulating the declaration of movements of means of payment within the context of the prevention of money laundering. They must also notify the Executive Service of the Commission for the Prevention of Money Laundering and Monetary Offences (a body regulated in Law 19/1993) of the transactions in which they were not shown the declaration of movements of means of payment. The Executive Service of the Commission will be notified of transactions electronically and the requirements of this body will be met by the same means, without prejudice to the use of other media where required. In any event, the notification system used must ensure full confidentiality and integrity of the information sent.

**Competition regulations
and National Competition
Commission Statutes**

Competition Law 15/2007 of 3 July 2007, which repealed the previous law in this area, aims to reinforce the mechanisms already in place, equipping them with certain instruments and an institutional structure to protect effective competition in the markets, taking into account the new EU legal system and the powers of the regional governments in this area.

Royal Decree 261/2008 of 22 February 2008 (BOE of 27 February 2008) has recently been published. Pursuant to the authority granted by Law 15/2007 this Royal Decree approves the Competition Regulations implementing said law in relation to procedures, the treatment of conduct of minor importance and the system of clemency or exemption and reduction in fines for firms that collaborate in combating cartels. *Royal Decree 331/2008 of 29 February 2008* (BOE of 3 March 2008) has also been published. This approves the Statutes of the National Competition Commission (CNC), provided for in the above-mentioned law, in which matters relating to the workings and operating regime of the CNC are dealt with.

The Regulations have two titles: the first, "Competition Protection", implements substantive aspects of the Law, specifically those relating to conduct of minor importance, economic concentrations, government aid and competition promotion. The second, "Competition Protection Procedures" implements various procedures regulated in the above-mentioned Law.

The provisions on conduct of minor importance set out the criteria for defining such conduct. With respect to economic concentrations, the provisions implementing Law 15/2007 in regard to notification thresholds, the calculation of market share and turnover and the valuation of economic efficiencies arising from concentration operations are laid down.

As regards government aid, provision is made for information and communication mechanisms, taking into account EU law in this respect. For this purpose, an electronic information centre has been created for national government aid.

As for competition protection procedures, the various procedures regulated in Law 15/2007 are developed. Together with the calculation of deadlines and requirements relating to notifications, the Regulations set out inspection powers and provide for collaboration with the competent agencies regarding powers of investigation, on the one hand, with regional governments and, on the other hand, with the European Commission and other national competition authorities in other Member States.

Another important section deals with the disciplinary procedure for prohibited conduct, which develops in this area the instruments included in Law 15/2007, maintaining a balance between the principles of legal certainty and administrative effectiveness.

As for the Statutes of the CNC, matters regarding its nature and legal regime are implemented. The CNC is considered to be an institution under public law with its own legal personality and full public and private legal capacity which is attached to the Ministry of Finance. Its special organic and functional autonomy is acknowledged in the pursuit of its activity and the accomplishment of its aims, as well as full independence from general government; it is subject to Law 15/2007 and the rest of the legal system.

11.4.2008.