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Acronyms

ACGR	Annual Corporate Governance Reports
AIAF	Asociación de Intermediarios de Activos Financieros / Spanish brokers' association
ASCRI	Asociación Española de Entidades de Capital-riesgo / Spanish association of venture capital firms
BME	Bolsas y Mercados Españoles
CEBS	Committee of European Banking Supervisors
CESR	Committee of European Securities Regulators
CNMV	Comisión Nacional del Mercado de Valores
DAC	Directiva de adecuación de capital / Directive on Capital Requirements
DSI	Directiva de servicios de inversión / Directive on Investment Services
EBITDA	Earnings Before Interests, Tax, Depreciation and Amortization
EC	European Commission
EFAMA	European Fund and Asset Management Association
ESI	Investment Services Company
ETF	Exchange Traded Funds
EU	European Union
EVCA	European Private Equity & Venture Capital Association
FIM	Fondo de inversión mobiliaria / Securities investment fund
FRA	Forward Rate Agreement
GDP	Gross Domestic Product
IGBM	Índice general de la bolsa de Madrid / Madrid Stock Exchange General Index
IIC	Institución de inversión colectiva / Collective Investment Scheme
IOSCO	International Organization of Securities Commissions
IPO	Initial Public Offerings
LMV	Ley del mercado de valores / Securities Markets Act
MAB	Mercado alternativo bursátil / Alternative Stock Market
MEFF	Mercado español de futuros y opciones financieros / Spanish market in financial futures and options
MFAO	Mercado de futuros del aceite de oliva / Olive oil futures market
MiFID	Markets in Financial Instruments Directive
OECD	Organization for Economic Co-operation and Development
PER	Price Earnings Ratio
RD	Royal Decree
RDL	Royal Decree Law
ROE	Return On Equity
SENAF	Sistema electrónico de negociación de activos financieros / An electronic trading platform for Spanish public debt
SGIIC	Sociedad gestora de instituciones de inversión colectiva / Collective investment scheme management company
SIBE	Sistema de interconexión bursátil español / Spanish electronic market
SICAV	Sociedad de inversión de capital variable / Open-end investment company
UCITS	Undertakings for Collective Investment in Transferable Securities

I Market Survey (*)

* This article has been prepared by staff of the CNMV Research, Statistics and Publications Department.

1 Overview

The macro climate took a sharp turn for the worse over the first six months of 2009. However, approval of a new batch of rescue measures for the U.S. and UK financial systems and the perception that the downturn might be bottoming out in the world's top economies served to settle agents' nerves and restore markets to some sort of calm. Equity markets rallied strongly over the second quarter of 2009[1], with almost all main venues registering gains of between 15% and 25% accompanied by a decline in volatility and with the financial sector strongly to the fore.

Short-term fixed-income markets continued moving to the tune of the expansive monetary policies pursued in most economies. The run-down in rates was especially intense in the euro area (around two points depending on the term) due to the successive cuts implemented in the first-half period. In the United States, meantime, short rates (from three to twelve months) dropped by close to a percentage point. Long government yields performed divergently in Europe vs. the U.S. at three- and five-year tenors, with declines in Europe contrasting with increases across the water. Ten-year yields in both areas were pushed higher, especially in the U.S., by the heavier debt issuance of many governments, the mildly improved outlook for the economy and the receding spectre of deflation. In the corporate bond market, risk premiums have come down substantially in tune with the lesser uncertainty abroad in financial markets.

Currency markets continued under the sway of volatility, with dollar/euro exchange rates in particular following a see-saw course for most of this year. In the last few weeks, the dollar has depreciated vs. the European currency on perceptions of the dent caused in the U.S.'s public finances by the recent set of measures to combat the crisis and strengthen the financial system.

In Spain, the economy has continued to contract sharply (with two consecutive quarters of negative GDP growth). Some indicators, however, suggest the rate of decline may be levelling off; a change at least partly attributable to the government's anti-crisis package. Support measures for the financial sector are likewise starting to bear fruit, to judge by the recent increase in some varieties of fixed-income borrowing. Financial institutions, particularly, have issued some 32 billion euros in government-backed bonds this year to date, accounting for 26.5% of long-term corporate issues registered with the CNMV (and 81% of all bond issues). And they have also stepped up issuance of asset-backed securities in order to enter the auctions of the Financial Asset Acquisition Fund and to provide collateral for Eurosystem loans. Finally, many banks opted for preference share issues as a means to bolster their capital positions.

This shift in agents' risk perceptions also made itself felt in national financial markets. Equity prices rallied strongly (lifting the Ibex 35 by 22%), accompanied by

1 The closing date for this report is 15 June.

moderately falling volatility and a tentative second-quarter revival in market turnover (in average daily volume terms). Financial sector and construction shares were the most to benefit from the more bullish mood. In fixed-income markets, short-term interest rates inched lower while long government yields climbed by over 4%, causing a curve steepening movement echoing that of other European countries and the United States. Risk premiums (CDS) eased significantly for both financial and non financial issuers. And country risk too was less of a factor, with both the credit risk premium of the Spanish bond and its spread vs. the Bund descending notably in the second quarter.

Summary of financial indicators

TABLE 1

	Q3 08	Q4 08	Q1 09	Q2 09*
Short-term interest rates (%) [1]				
Official interest rate	4.25	2.50	1.50	1.00
Euribor 3 month	5.02	3.27	1.64	1.27
Euribor 12 month	5.38	3.43	1.91	1.65
Exchange rates [2]				
Dollar/euro	1.43	1.39	1.33	1.39
Yen/euro	150.47	126.14	131.17	136.08
Medium and long government bond yields [3]				
Euro area				
3 year	3.87	2.61	2.25	1.80
5 year	3.87	2.65	2.41	2.60
10 year	4.18	3.12	3.14	3.71
United States				
3 year	2.35	1.06	1.33	1.76
5 year	2.87	1.50	1.83	2.75
10 year	3.68	2.41	2.83	3.79
Credit risk premiums: BBB-AAA spread (basis points)[3]				
Euro area				
3 year	139	280	253	151
5 year	183	297	267	172
10 year	191	305	260	205
U.S.				
3 year	227	306	271	166
5 year	265	369	269	200
10 year	283	444	517	209
Equity markets				
Performance of main world stock indices (%) [4]				
Euro Stoxx 50	-9.4	-19.4	-15.4	17.4
Dow Jones	-4.4	-19.1	-13.3	13.2
Nikkei	-16.5	-21.3	-8.5	23.8
Other indices (%)				
Merval (Argentina)	-24.2	-32.4	4.3	46.9
Bovespa (Brazil)	-23.8	-24.2	9.0	27.1
Shanghai Comp (China)	-16.2	-20.6	30.3	17.5
BSE (India)	-4.8	-25.5	-0.9	57.2
Spanish stock market				
Ibex 35 (%)	-8.8	-16.3	-15.0	21.8
P/E of Ibex 35 [5]	9.57	8.69	8.24	10.35
Volatility of Ibex 35 (%) [6]	31.26	60.59	41.91	31.28
SIBE trading volumes [7]	4,334.29	4,052.93	2,910.58	3,466.26

Source: CNMV, Thomson Datastream, Bloomberg, Reuters, Banco de España, Bolsa de Madrid, MEFF and AIAF.

* Latest available data at the time of preparing this report.

1 Monthly average of daily data. The official interest rate corresponds to the marginal rate at weekly auctions at the period close. Data for the second quarter correspond to the average from 1 to 15 June.

2 Data at period end. Data for the second quarter of 2009 correspond to 15 June.

3 Monthly average of daily data. Data for the second quarter 2009 run from 1 to 15 June, except euro-area government yields, from 1 to 12 June.

4 Cumulative quarterly change in each period; up to 15 June in the case of the second quarter.

5 Price-earnings ratio. Data for the second quarter 2009 correspond to 15 June.

6 Implied at-the-money (ATM) volatility on nearest expiry at period end. Data for the second quarter 2009 correspond to 1 April to 15 June.

7 Daily average in million euros. Data for the second quarter 2009 correspond to the period to 15 June.

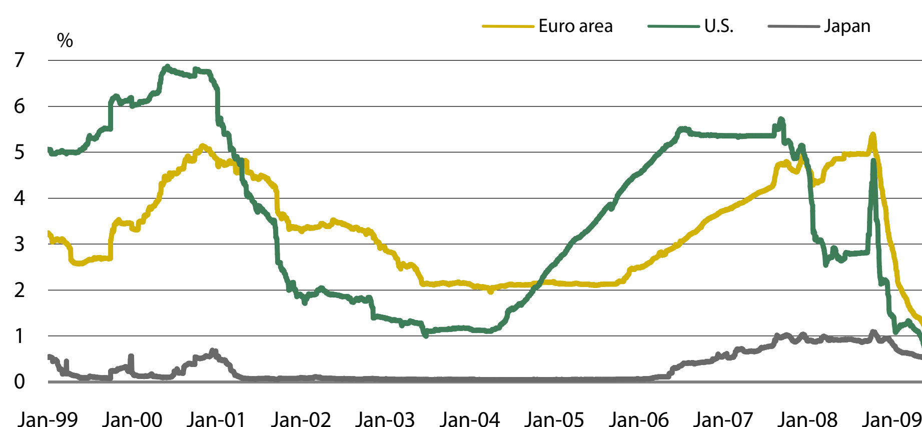
2 International financial background

2.1 Short-term interest rates

Money markets remained in the grip of uncertainty over the first half of 2009 as doubts persisted about the functioning of the international financial system and the scale and duration of the economic downturn. However tensions showed some signs of easing, above all in interbank markets, as a result of new financial-sector rescue measures in the United States and the United Kingdom.

Central banks differed somewhat in their response to the crisis. After joining in late with the easing cycle, the ECB has cut its main refinancing rate on four occasions since our last report in mid-December 2008 as far as the 1.0% of mid-May 2009, while other central banks (in the U.S., UK and Japan) have put their faith in non conventional monetary policy measures. These basically involved letting central banks buy determined financial assets on the primary or secondary markets (public debt, private debt, asst-backed securities, etc.), as a means to stabilise or stimulate markets in these instruments and, at the same time, encourage the banks to restart the credit cycle. The ECB did not stand aloof and agreed a series of one-year loans plus the purchase of covered bonds summing 60 billion euros.

Three-month interest rates [1] FIGURE 1



Source: Thomson Datastream.

1 Data to 15 June.

Short-term interest rates came down more sharply in the euro area thanks to easing moves by the ECB, with reductions on the scale of almost two percentage points (to 1.3%, 1.5% and 1.7% at three, six and twelve months respectively) vs. around one point in the United States (as far as 0.6%, 1.2% and 1.7% in the same three terms). Rates in Japan also moved down though to a smaller extent given their low baseline levels (under 1.0% at all maturities). The result was a degree of convergence, especially in six- and twelve-month instruments, between the euro area and the United States. In the three-month term, the transatlantic spread held in the neighbourhood of 60 basis points.

Short-term interest rates[1]

TABLE 2

%	Dec 05	Dec 06	Dec 07	Dec 08	Sep 08	Dec 08	Mar 09	Jun 09[2]
Euro area								
Official[3]	2.25	3.50	4.00	2.50	4.25	2.50	1.50	1.00
3 month	2.47	3.69	4.84	3.27	5.02	3.27	1.64	1.27
6 month	2.60	3.79	4.81	3.34	5.22	3.34	1.77	1.47
12 month	2.79	3.93	4.79	3.43	5.38	3.43	1.91	1.65
U.S.								
Official[4]	4.25	5.25	4.25	0.25	2.00	0.25	0.25	0.25
3 month	4.49	5.36	4.97	1.80	3.11	1.80	1.27	0.64
6 month	4.67	5.35	4.82	2.15	3.33	2.15	1.83	1.22
12 month	4.84	5.24	4.42	2.36	3.36	2.36	2.12	1.69
Japan								
Official[5]	0.15	0.25	0.50	0.10	0.50	0.10	0.10	0.10
3 month	0.07	0.56	0.98	0.91	0.92	0.91	0.62	0.50
6 month	0.08	0.63	1.03	1.01	1.00	1.01	0.79	0.71
12 month	0.12	0.74	1.10	1.12	1.18	1.12	0.95	0.89

Source: Thomson Datastream.

1 Average daily data except official rates, which correspond to the last day of the period.

2 Average data from 1 to 15 June.

3 Marginal rate at weekly auctions.

4 Federal funds rate.

5 Monetary policy rate.

Three-month FRAs are signalling stable rates in the euro area over the next few months and an increase of around 50 basis points over the space of a year. In the United States, meantime, forward rates point to a steeper rise in the three-month term, summing 50 basis points approximately in the next six months and just over 100 basis points from here to one year.

Three-month forward rates (FRAs)[1]

TABLE 3

%	Dec 05	Dec 06	Dec 07	Dec 08	Jun 08	Sep 08	Dec 08	Mar 09	Jun 09[2]
Euro area									
Spot	2.49	3.73	4.68	2.89	4.95	5.28	2.89	1.51	1.26
FRA 3x6	2.74	3.94	4.52	2.17	5.17	4.84	2.17	1.32	1.24
FRA 6x9	2.91	4.07	4.42	1.97	5.21	4.38	1.97	1.39	1.37
FRA 9x12	3.00	4.13	4.33	2.13	5.26	4.13	2.13	1.41	1.55
FRA 12x15	3.07	4.13	4.30	2.22	5.23	3.99	2.22	1.54	1.82
U.S.									
Spot	4.54	5.36	4.70	1.43	2.78	4.05	1.43	1.19	0.61
FRA 3x6	4.81	5.31	4.15	1.07	2.96	3.30	1.07	1.10	0.74
FRA 6x9	4.84	5.21	3.69	1.16	3.19	2.91	1.16	1.19	1.07
FRA 9x12	4.81	5.06	3.45	1.29	3.34	2.94	1.29	1.17	1.38
FRA 12x15	4.76	4.94	3.36	1.45	3.56	3.03	1.45	1.32	1.74

Source: Thomson Datastream.

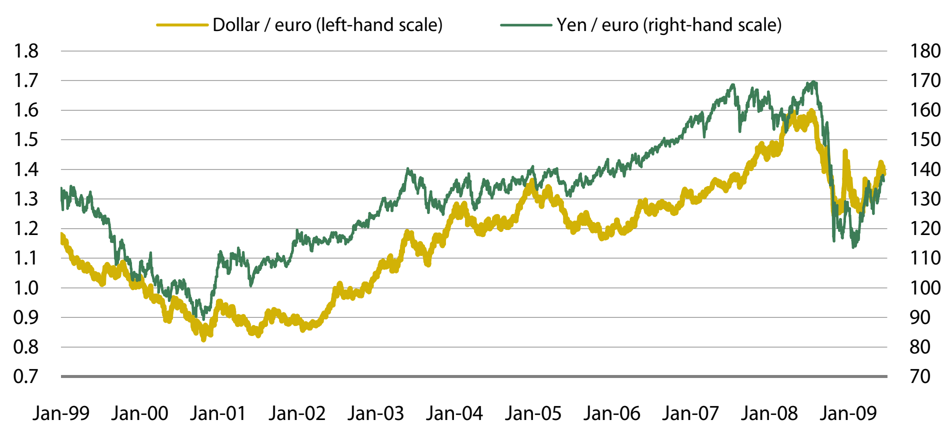
1 Data at period end.

2 Data corresponding to 15 June.

2.2 Exchange rates

Foreign exchange markets remained notably volatile, with dollar/euro exchange rates in particular following a see-saw course for most of this year. Periods of dollar appreciation against the euro have coincided as a rule with ECB rate cuts, while episodes of dollar depreciation, more frequent in the last few weeks, seem to have more to do with the deteriorating state of U.S. public finances in the wake of the measures taken to combat recession and ensure the sustainability of the financial system. Finally, dollar/euro rates closed the second quarter near to the levels of end-2008, i.e. approximately 1.40 dollars per euro, after moving consistently below this level in the first-half period (including an early March low of 1.26 dollars).

Euro/dollar and euro/yen exchange rates[1] FIGURE 2



Source: Thomson Datastream.

1 Data to 15 June.

After its surge against the European currency in the latter half of 2008, helped by the close-out of carry trade[2] positions, the yen has performed less erratically this year to date (see figure 2) within a depreciation trend which has carried it from around 120 to 135 yens per euro.

2.3 Long-term interest rates

Long government bond yields traced a divergent first-half course in main world zones. In the euro area, three-year yields continued the downtrend begun in late 2008, while five-year yields held relatively stable and ten-year yields pulled slightly higher. In the United States, yields headed upwards across the range of maturities, especially in longer-dated instruments, reflecting both the renewed prospects for inflation and the upswing in issuance of competitively priced U.S. public sector debt.

In the euro area, the average yields of three- , five- and ten-year government bonds closed the second quarter of 2009 at 1.8%, 2.6% and 3.7% , equating to an 0.8 point decline vs. December 2008 against no change and +0.6 points respectively. In the United States, three-, five- and ten-year yields closed at 1.8%, 2.8% and 3.8% respectively; 0.7, 1.3 and 1.4 points higher than the corresponding averages for December last year. As in money markets, the gap separating euro area and U.S. long yields narrowed sizeably in the year's first half to the extent of spreads turning negative in the ten-year maturity (i.e. with euro area rates dropping below their U.S. equivalents).

2 When investors simultaneously borrow in a low-yielding currency to fund the acquisition of assets denominated in other, high-yielding currencies.

Medium and long government bond yields[1]

TABLE 4

%	Dec 06	Dec 07	Dec 07	Dec 08	Sep 08	Dec 08	Mar 09	Jun 09[2]
Euro area								
3 year	3.74	3.85	3.85	2.61	3.87	2.61	2.25	1.80
5 year	3.74	3.92	3.92	2.65	3.87	2.65	2.41	2.60
10 year	3.80	4.28	4.28	3.12	4.18	3.12	3.14	3.71
U.S.								
3 year	4.57	3.11	3.11	1.06	2.35	1.06	1.33	1.76
5 year	4.51	3.51	3.51	1.50	2.87	1.50	1.83	2.75
10 year	4.57	4.19	4.19	2.41	3.68	2.41	2.83	3.79
Japan								
3 year	0.94	0.82	0.82	0.64	0.86	0.64	0.54	0.52
5 year	1.21	1.07	1.07	0.83	1.08	0.83	0.77	0.86
10 year	1.65	1.54	1.54	1.32	1.47	1.32	1.35	1.53

Source: Bloomberg.

1 Monthly average of daily data.

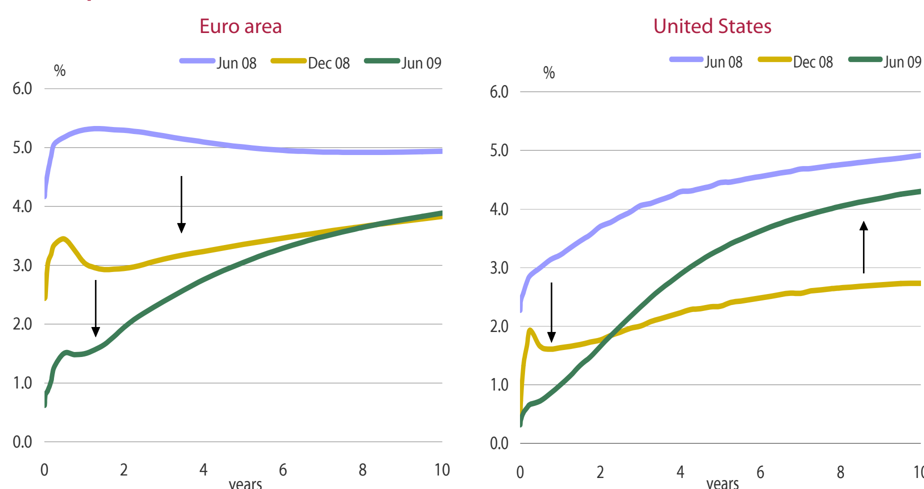
2 Average data from 1 to 15 June, except euro area to 12 June.

Japanese government bond yields fell in the three-year maturity (from 0.6% to 0.5%), held stable in the mid curve segment (at around 0.8%) and edged slowly higher at the longest end (from 1.3% to 1.5%).

The easing of short-term rates and higher heading long rates prompted a steepening of the yield curve that was more intense in the United States. Figure 3 below depicts the zero coupon curve for the euro area and U.S. at three points in time, namely June 2009, December 2008 and June 2008. From its relatively flat slope of one year ago (especially in the euro area), the curve shifted sharply downward in the six months to December as the economic situation worsened, with the aggravant of mounting uncertainties over the future of the financial sector. In first-half 2009, the dominant note has been a steepening movement on both curves, driven in the euro area by falling short rates and in the U.S. by the rise in long-dated bond yields.

Zero coupon curve

FIGURE 3



Source: Reuters.

The more settled mood of market agents as they welcomed a new round of financial sector support measures in the U.S. and United Kingdom sent risk premiums heading lower, especially in the United States (see table 5). The credit risk spreads of AAA over BBB issuers recouped the levels of mid-2008 (across 3, 5 and 10-year maturities).

This is a strong improvement certainly, though premiums are still well above the averages of the last three and a half years.

Leading credit risk indices (CDX and Itraxx) painted a similar picture, with readings falling fast from the start of March onwards among both European and American corporates, regardless of their credit rating. Both indices are now back to the levels recorded in Q3 2008 (see figure 4).

Credit risk premiums: BBB-AAA spread [1] TABLE 5

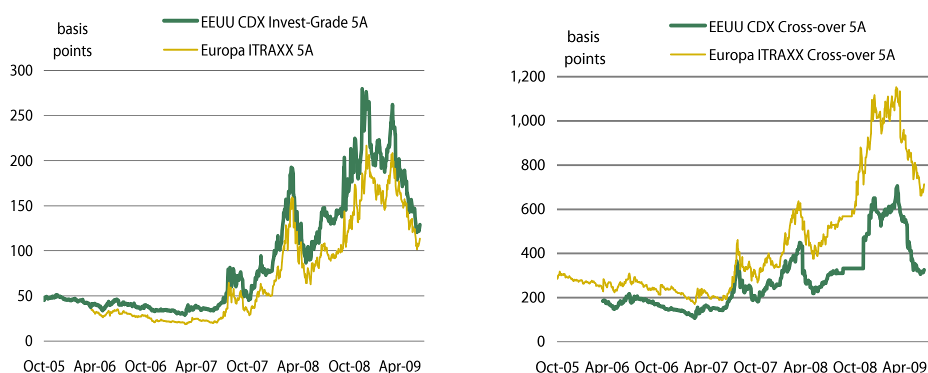
basis points	Dec 06	Dec 07	Dec 08	Jun 08	Sep 08	Dec 08	Mar 09	Jun 09[2]
Euro area								
3 year	37	76	280	109	139	280	253	151
5 year	53	108	297	143	183	297	267	172
10 year	84	127	305	175	191	305	260	205
U.S.								
3 year	54	135	306	191	227	306	271	166
5 year	68	183	369	234	265	369	269	200
10 year	96	219	444	228	283	444	517	209

Source: Reuters.

1 Monthly average of daily data.

2 Average data from 1 to 15 June.

Credit risk indices[1] FIGURE 4



Source: Thomson Datastream.

1 Data to 15 June.

- *Investment grade*. An issuer or a given issue is termed *investment grade* when its credit *rating* is above a preset threshold, currently BBB- or higher in the case of S&P and Baa3 or higher in the case of Moody's.

- *Cross-over*. An issuer or a given issue is termed *crossover* when the *rating* one agency assigns it is on the lowest rung within *investment grade* and the *rating* assigned it by a second agency is outside the *investment grade* range.

2.4 International stock markets

While the first-quarter story on international equity markets was one of hefty losses across the board, due to the deepening recession in main world zones and doubts over the performance of the financial sector, the second quarter[3] closed with share price gains ranging from 10% (quarterly change) to 24% and a notable reduction in index volatility. Factors at work were, firstly, the approval of new financial system

3 Data to June 15.

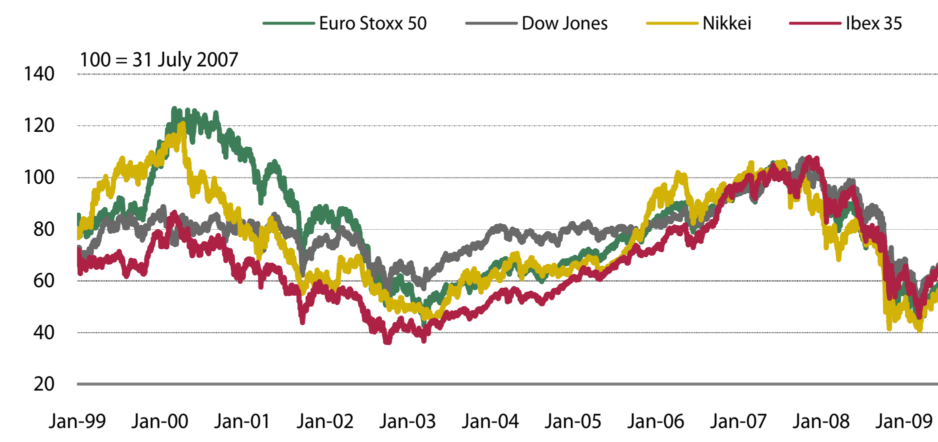
support schemes in the United States and the United Kingdom and, secondly, the message conveyed by some macro indicators that the downturn might be bottoming out. The result was to quell the uncertainties of economic agents and stoke buying pressures on world equity markets.

As table 6 shows, the second-quarter rally recouped the ground lost in the first three months on almost all major indices, producing modest gains that ranged from the 0.1% of the Cac 40 to the 15.2% of the Nasdaq composite. Only the UK's FT 100, the Dow Jones and the Euro Stoxx 50 remained in red numbers year to date (of 2.4%, 1.9% and 0.7% respectively). And the year-on-year fall in main stock indices eased from 40% and higher to 30%-35%, depending on the zone.

In the United States, quarterly gains ranged from the 13% of the Dow Jones to the 19% of the Nasdaq. In Japan, prices rose by between 22% and 24%, giving year-to-date gains (13.3% for the Nikkei 225 and 10.2% for the Topix) ahead of all other leading indices (except the Nasdaq). In Europe, quarterly growth ranged from the 17% of the Cac 40 to the 22% of the Mib 30; not enough to lift the year-to-date increase above modest levels (the best performer being Spain's Ibex 35 with +3.5%).

Since the crisis broke[4], index losses have ranged from the 44% of the Euro Stoxx 50 to the 35% of the North American Dow Jones. In the same period, the Ibex 35 has ceded 36%.

Performance of main stock indices [1] FIGURE 5



Source: Thomson Datastream.

1 Data to 15 June.

4 Taking 31 July, 2007 as reference date.

Performance of main stock indices

TABLE 6

	2004	2005	2006	2007	2008	Q1 09	Q2 09 (to 15 June) % Q	Q2 09 (to 15 June) %/Dec	Q2 09 (to 15 June) % y/y[1]
World									
MSCI World	**12.8**	**7.6**	**18.0**	**7.1**	**-42.1**	-12.5	20.3	5.2	-33.7
Euro area									
Euro Stoxx 50	6.9	21.3	15.1	6.8	-44.4	-15.4	17.4	-0.7	-31.8
Euronext 100	8.0	23.2	18.8	3.4	-45.2	-12.2	15.2	1.1	-34.1
Dax 30	7.3	27.1	22.0	22.3	-40.4	-15.1	19.7	1.7	-27.7
Cac 40	7.4	23.4	17.5	1.3	-42.7	-12.8	14.7	0.1	-31.2
Mib 30[2]	16.9	13.3	17.5	-6.5	-48.4	-16.2	22.4	2.5	-39.2
Ibex 35	*17.4*	*18.2*	*31.8*	*7.3*	-39.4	-15.0	21.8	3.5	-26.8
United Kingdom									
FT 100	7.5	16.7	10.7	3.8	-31.3	-11.5	10.2	-2.4	-25.4
United States									
Dow Jones	3.1	-0.6	16.3	6.4	-33.8	-13.3	13.2	-1.9	-30.0
S&P 500	9.0	3.0	13.6	3.5	-38.5	-11.7	15.8	2.3	-32.1
Nasdaq-Cpte	8.6	1.4	9.5	9.8	-40.5	-3.1	18.8	15.2	-26.0
Japan									
Nikkei 225	7.6	40.2	6.9	-11.1	-42.1	-8.5	23.8	13.3	-28.2
Topix	10.2	43.5	1.9	-12.2	-41.8	-10.0	22.4	10.2	-31.0

Source: Datastream.

1 Year-on-year change to reference date.

2 Second-quarter change based on data to 29 May

The historical volatility of main stock indices eased once more in the second quarter on top of the sharp decline of the opening months, prolonging a downward trend that carried average readings from the 63%-70% of December 2008 to 30%-35% in the first quarter, then 27%-31% in the second (see table 7 and figure 6). The deepest corrections were in those markets where the earlier run-up had been strongest.

Historical volatility of main stock indices[1]

TABLE 7

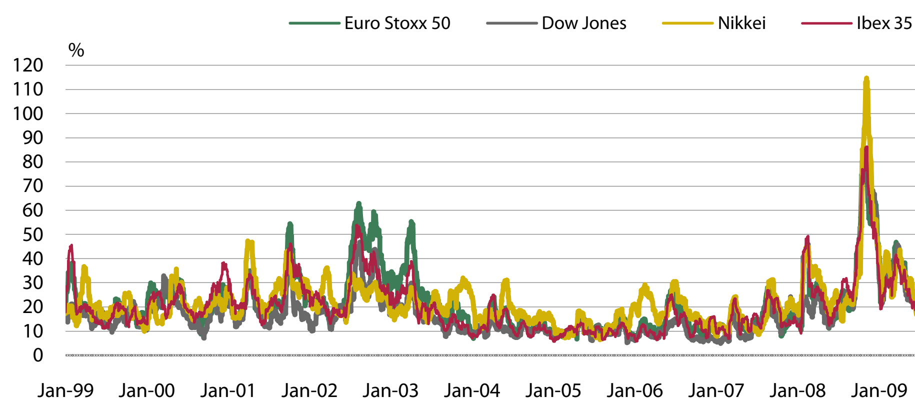
%	1999-2003	2004-2007	2006	2007	2008	Q3 08	Q4 08	Q1 09	Q2 09[2]
Euro Stoxx 50	25.08	13.17	13.63	14.94	33.72	25.41	62.94	34.91	29.79
Dow Jones	18.83	10.75	9.41	13.11	31.60	24.59	63.53	33.16	27.83
Nikkei	22.95	16.29	19.08	16.65	38.16	23.32	70.83	34.64	30.61
Ibex 35	23.09	12.44	12.45	15.32	34.97	29.92	60.41	30.71	26.72

Source: Thomson Datastream.

1 Average daily data.

2 The latest available data corresponds to 15 June.

Historical volatility of main stock indices [1] FIGURE 6



Source: Thomson Datastream.

1 Data to 15 June.

Emerging country equity markets served up a divergent performance by region, but fared better overall than their more developed counterparts (see table 8). After a somewhat irregular opening quarter (with price gains in Latin America, losses in Eastern Europe and mixed fortunes on Asian bourses), emerging country markets staged a second-quarter rally that took their year-to-date gains to over 30% in almost every case (and in some cases much higher). Among the causes at work were the improved risk perception of market agents and rising commodity prices.

The best relative performance year to date fell to Latin American stock markets, almost all of which managed price rises in both the first and the second quarter of 2009. Year-to-date gains oscillated widely, from the 11.3% of Mexico's IPC index to the 91.4% of Peru's IGRA. And two of the region's markets even scraped a small advance in annual terms.

Asian markets performed the most unevenly of the emerging country group. Around half recorded losses in the opening quarter, though on a smaller scale than those of the developed economies, while in other cases (the Chinese exchange being the prime example) gains reached spectacular heights. All the region's markets experienced a run-up in prices in the second quarter, though again to varying extents (from the 17% of China to the 57% of India's BSE). And all reported a notable advance (between 25% and 56%) year to date, though not so in year-on-year terms. The improved prospects coming through for world trade should help boost stock indices in this zone.

Eastern European economies fared the worst of the emerging group as the financial crisis progressively eroded investment inflows to the region. The result was that prices tumbled in the opening quarter (the exception being Russia after the harsh correction suffered at end-2008), then rallied strongly in the months to June. Year-to-date gains ranged from the 2% of Bulgaria's Sofix to the 70% of the main Russian index. Year-on-year losses, meantime, ran from 27% in Poland to the 69% of the Bulgarian exchange.

Performance of other international stock indices

TABLE 8

	Index	2007	2008	Q4 08[2]	Q1 09[2]	2009 – Jun[1]		
						% Q	%/ Dec 08	% annual
Latin America								
Argentina	Merval	2.9	-49.8	-32.4	4.3	46.9	53.2	-19.9
Brazil	Bovespa	43.7	-41.2	-24.2	9.0	27.1	38.6	-22.6
Chile	IGPA	13.8	-19.6	-12.7	4.7	29.6	35.8	5.4
Mexico	IPC	11.7	-24.2	-10.1	-12.3	26.9	11.3	-18.1
Peru	IGRA	36.0	-59.8	-37.3	31.1	46.0	91.4	-18.2
Venezuela	IBC	-27.4	-7.4	-7.6	24.5	-0.7	23.6	17.6
Asia								
China	Shanghai Comp	96.7	-65.4	-20.6	30.3	17.5	53.2	-2.8
India	BSE	59.7	-55.3	-25.5	-0.9	57.2	55.8	-3.1
South Korea	Korea Cmp Ex	32.3	-40.7	-22.3	7.3	17.1	25.6	-19.2
Philippines	Manila Comp	21.4	-48.3	-27.1	6.1	31.5	39.5	2.3
Hong Kong	Hang Seng	39.3	-48.3	-20.1	-5.6	36.3	28.6	-18.1
Indonesia	Yakarta Comp	52.1	-50.6	-26.0	5.8	44.3	52.7	-13.7
Malaysia	Kuala Lumpur Comp	31.8	-39.3	-13.9	-0.5	25.1	24.5	-11.2
Singapore	SES All-S'Pore	18.7	-49.2	-25.3	-3.5	36.3	31.5	-22.3
Thailand	Bangkok SET	26.2	-47.6	-24.6	-4.1	41.8	36.0	-21.8
Taiwan	Taiwan Weighted Pr.	8.7	-46.0	-19.7	13.5	19.5	35.6	-23.2
Eastern Europe								
Russia	Russian RTS Index	19.2	-72.4	-47.9	9.1	56.2	70.5	-54.3
Poland	Warsaw G. Index	10.4	-51.1	-27.1	-11.7	32.8	17.2	-26.8
Rumania	Romania BET	22.1	-70.5	-31.9	-18.4	48.9	21.5	-52.2
Bulgaria	Sofix	44.4	-79.7	-54.7	-22.4	31.6	2.1	-69.3
Hungary	BUX	5.6	-53.3	-35.1	-9.6	43.5	29.8	-27.2
Croatia	CROBEX	63.2	-67.1	-42.4	-15.7	34.8	13.6	-48.2

Source: Thomson Datastream.

1 Data to 15 June.

2 Quarterly change vs. the last day of the previous quarter.

Additional yield via dividends fell away sharply compared to end-2008 in all markets except for Spain's. The decline was steepest in Europe albeit to levels still ahead of Japan and the United States. Specifically, dividend yield in European markets in the second-quarter period ranged from the 4.2% of the Mib-30 to the 6.3% of the Ibex, compared to the S&P 500 and Topix with 2.7% and 1.8% respectively.

Dividend yield of main stock indices

TABLE 9

%	2006	2007	2008	Mar 08	Jun 08	Sep 08	Dec 08	Mar 09	Jun 09[1]
S&P 500	1.91	2.20	3.51	2.42	2.48	2.67	3.51	3.26	2.69
Topix	1.11	1.46	2.70	1.79	1.73	2.03	2.70	2.50	1.77
Euro Stoxx 50	3.52	3.73	7.48	4.68	5.05	5.56	7.48	6.25	5.21
Euronext 100	3.32	3.81	7.90	4.75	4.86	5.50	7.90	6.61	5.26
FTSE 100	3.77	3.88	5.79	4.58	4.85	5.26	5.79	6.04	5.03
Dax 30	2.29	2.52	5.40	3.64	3.73	4.09	5.40	4.81	4.29
Cac 40	3.79	4.34	8.06	5.22	5.42	5.93	8.06	7.06	5.69
Mib 30	3.67	3.81	8.61	4.76	5.58	6.21	8.61	5.79	4.23
Ibex 35	3.02	3.08	6.19	3.75	4.25	4.76	6.19	8.73	6.34

Source: Thomson Datastream.

1 Data to 15 June.

The recovery of equity prices year to date has pushed up the earnings multiples (P/E) of main world indices. The biggest increase was reserved for Japan's Topix, whose P/E closed the second quarter at 29.4x, almost doubling its level of end-2008 (see table 10). Ratios traced a similar progression (between 3 and 4 points) in North American and European markets, the exception being Spain which trailed the field with an increase of 1.7. North American P/Es (S&P 500, 14.1x) remained substantially above the levels of Europe, which ran from the 10.4x of the Ibex 35 to the 12.5x of the FTSE 100.

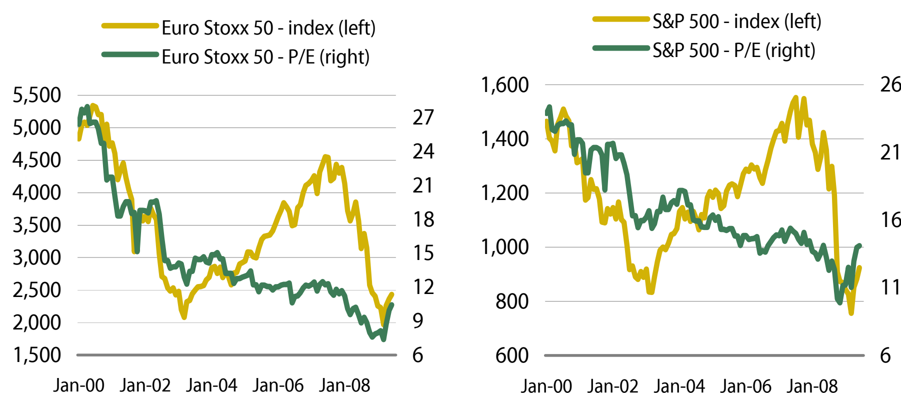
P/E of main stock indices TABLE 10

	2006	2007	2008	Mar 08	Jun 08	Sep 08	Dec 08	Mar 09	Jun 09[1]
S&P 500	15.07	14.67	11.26	13.49	13.25	12.06	11.26	12.74	14.10
Topix	17.80	15.06	15.64	12.92	15.24	13.58	15.64	26.75	29.38
Euro Stoxx 50	12.15	11.56	7.80	9.68	9.15	8.64	7.80	8.60	10.44
Euronext 100	12.93	12.30	8.34	10.47	10.00	9.15	8.34	9.62	11.65
FTSE 100	12.41	12.07	8.25	10.62	9.93	8.59	8.25	9.92	12.53
Dax 30	12.78	12.33	8.83	10.22	10.06	9.44	8.83	9.78	11.98
Cac 40	12.68	11.80	8.03	10.06	9.49	8.68	8.03	9.42	11.31
Mib 30	13.07	11.50	7.58	9.52	9.15	8.24	7.58	8.69	12.10
Ibex 35	14.29	13.00	8.69	11.55	10.35	9.57	8.69	8.24	10.35

Source: Thomson Datastream.

1 Data to 15 June.

Stock indices and P/E: Euro Stoxx 50 vs. S&P 500 FIGURE 7



Source: Thomson Datastream. Data to 15 June.

Turnover figures for North American and European bourses traced a divergent course in 2008 with increases in the former contrasting with slacker activity among the latter group. But a more unified picture has emerged this year with all world centres experiencing a decline (quarterly and year-on-year, see table 11). In year-on-year terms, the first-quarter contraction ranged from 22% for the set of North American exchanges to 64% on Euronext. For the second quarter (incomplete at the time of writing) more falls are expected albeit on a rather smaller scale. What we have then is a strong international rally accompanied by thin trading, with the risk that price growth may cede if here is insufficient volume in support.

Turnover on main international stock markets

TABLE 11

Billion euros

Exchange	2006	2007	2008	Q1 08	Q2 08	Q3 08	Q4 08	Q1 09	Q2 09[3]
United States[1]	27,044	32,758	48,488	11,986	10,810	13,428	12,264	9,359	5,934
New York	17,222	21,177	23,042	5,893	5,208	6,502	5,438	3,720	2,315
Tokyo	4,617	4,713	3,816	1,042	951	890	933	692	487
London	5,991	7,545	4,374	1,255	1,323	1,054	742	559	552
Euronext	3,006	4,102	3,028	918	777	732	600	332	228
Deutsche Börse	2,165	3,144	3,211	896	927	694	694	472	357
Borsa Italiana	1,258	1,681	1,029	311	322	246	150	121	134
BME[2]	1,154	1,667	1,243	383	319	288	253	185	178

Source: World Federation of Exchanges and CNMV.

1 As of 2009, the sum of the New York Stock Exchange (NYSE), Euronext and Nasdaq; previously the New York Stock Exchange, Nasdaq and the American Stock Exchange.

2 Bolsas y Mercados Españoles. Not including Latibex.

3 Data for April and May except BME, which includes April, May and the first fortnight in June.

The run-down in share prices since the crisis broke nearly two years ago has lowered the weight of equity markets in the national economies of all leading exchanges. The decline has been greatest precisely where these markets dominated most, in the United Kingdom and the United States, though they continue to occupy a key place in their respective economies. In effect, the capitalisation of U.S. stock markets was around 72% of GDP in the first quarter of 2009, compared to 144% in 2007, while that of UK markets sank in parallel from 138% to 82% (see table 12). In Spain, stock market capitalisation dropped from 76% of GDP in 2007 to 38% in first-quarter 2009. The markets with least relative weight are Italy's (20% of GDP) and Germany's (28%).

Capitalisation of main international stock markets

TABLE 12

% GDP

Bolsa	2006	2007	2008	Q1 08	Q2 08	Q3 08	Q4 08	Q1 09[1]
United States[2]	145.1	144.3	82.3	128.4	129.3	114.7	82.3	71.6
New York	114.3	113.3	64.6	101.8	102.2	91.7	64.6	55.8
Tokyo	107.3	93.8	55.8	76.8	83.4	68.9	55.8	51.4
London	151.7	138.2	89.2	120.2	115.8	100.1	89.2	81.6
Euronext[3]	102.0	97.7	49.4	81.9	73.6	64.1	49.4	46.5
Deutsche Börse	53.9	59.3	32.0	49.3	46.5	39.4	32.0	27.6
Borsa Italiana	53.2	47.5	23.8	38.8	35.1	30.5	23.8	20.1
BME[4]	83.4	75.9	45.7	65.5	59.5	52.6	45.7	37.7

Source: World Federation of Exchanges, Thomson Datastream and CNMV.

1 Based on capitalisation figures for the month of March.

2 As of 2009, the numerator is the sum of the New York Stock Exchange (NYSE), Euronext and Nasdaq; previously the New York Stock Exchange, Nasdaq and the American Stock Exchange.

3 The denominator is the sum of the GDP of France, the Netherlands, Belgium and Portugal.

4 Bolsas y Mercados Españoles. Not including Latibex.

3 Fixed-income markets in Spain

ECB rate cuts ushered in a renewed decline in the short-term interest rates of both public and private debt, albeit more intensely in the latter case. The average June yields of Letras del Tesoro (T-bills) dipped below 1% across all maturities, with the steepest fall corresponding to the 12-month tenor (18 basis points down on the average for March). Commercial paper rates moved lower across all maturities to a June average of under 1.9% (see table 13), with differences versus March bordering on 30 basis points.

Short-term interest rates [1] TABLE 13

%	Dec 06	Dec 07	Dec 08	Jun 08	Sep 08	Dec 08	Mar 09	Jun 09
Commercial paper [2]								
3 month	3.78	4.97	3.45	5.16	5.24	3.45	1.70	1.33
6 month	3.91	4.91	3.54	5.31	5.45	3.54	1.86	1.56
12 month	4.00	4.85	3.68	5.59	5.63	3.68	2.10	1.84

Source: AIAF.

1 Average daily data. June data correspond to the average from 1 to 15 June.

2 Traded on private fixed-income market AIAF.

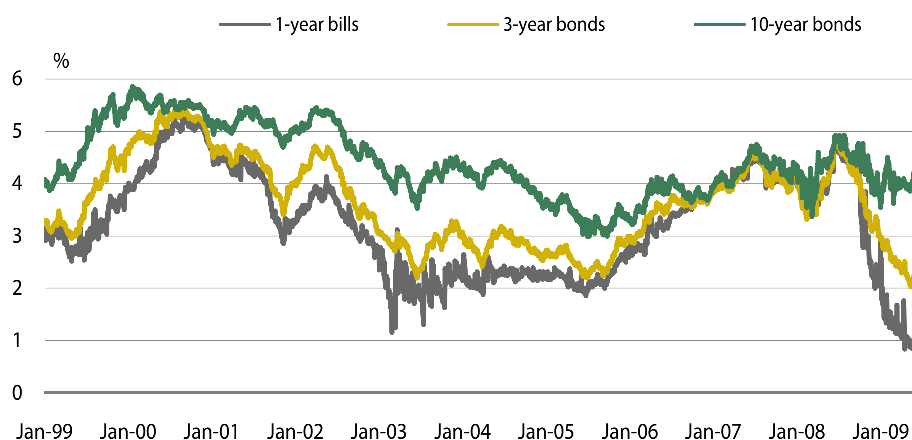
In longer-dated instruments, the main development was the June upturn in ten-year government yields. Long-term corporate bond rates also headed higher in the second-quarter period, most markedly at the longest maturities, in a break with the downtrend initiated in the third quarter of 2008.

The result was that average sovereign yields in the three and five-year tenors held practically at their March levels (2.4% and 3.2% respectively). Ten-year yields held stable till May then gained almost 30 basis points in the closing month to 4.3% (see figure 8), causing a notable steepening of the ten- to three-year curve slope. This second-quarter performance, mirroring that of the euro area and United States, owes basically to swelling public debt and deficit ratios and doubts about how long they can be sustained. The signs of a mild improvement on the macroeconomic plane seem to have played only a minor role.

The perceived sovereign risk of the Spanish economy reduced appreciably in the year's second quarter. The spreads between Spanish and German 10-year yields narrowed by 12 basis points in consequence, though remained high in historical terms, in the region of 70 bp. Likewise, the five-year CDS on the Spanish bond was trading below 100 basis points in mid June vs. an average of around 130 points in the opening quarter of 2009 and 50 points in 2008 (see figure 9).

Spanish government yields [1]

FIGURE 8

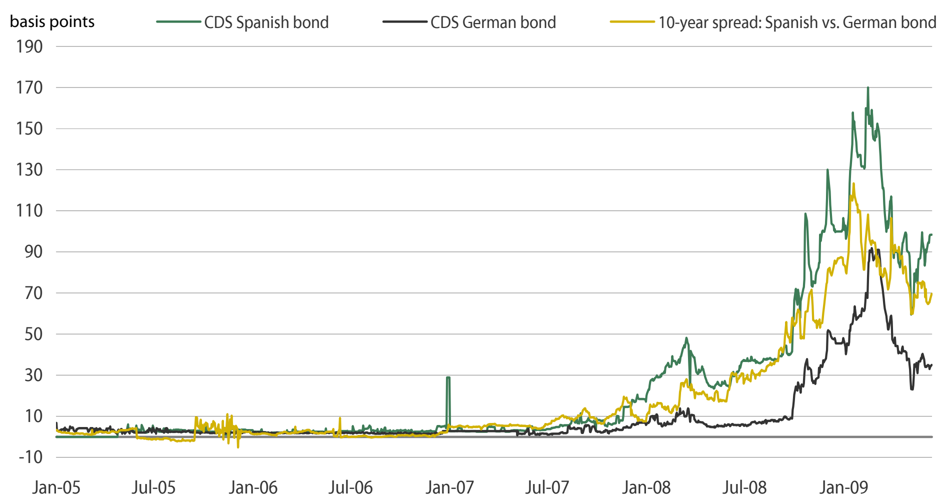


Source: Thomson Datastream.

1 Data to 15 June.

Risk premium of Spanish government bonds[1]

FIGURE 9



Source: Thomson Datastream.

1 Data to 15 June.

The run-up in corporate bond rates was at its steepest (near to 60 basis points) in the five- and ten-year terms, which registered June averages of 4.5% and 5.3% respectively. Meantime, credit risk premiums drew back slowly from their March highs, or rather more speedily in the case of financials (see figure 10), to recoup the levels of November 2008, giving hope that financial tensions could be easing at last.

Medium and long-term corporate bond rates[1]

TABLE 14

%	Dec 06	Dec 07	Dec 08	Jun 08	Sep 08	Dec 08	Mar 09	Jun 09
Private fixed income[2]								
3 year	4.04	4.59	3.79	5.79	5.39	3.79	3.24	3.45
5 year	4.14	4.65	4.17	5.97	5.48	4.17	4.00	4.54
10 year	4.26	4.94	4.73	5.94	5.65	4.73	4.76	5.33

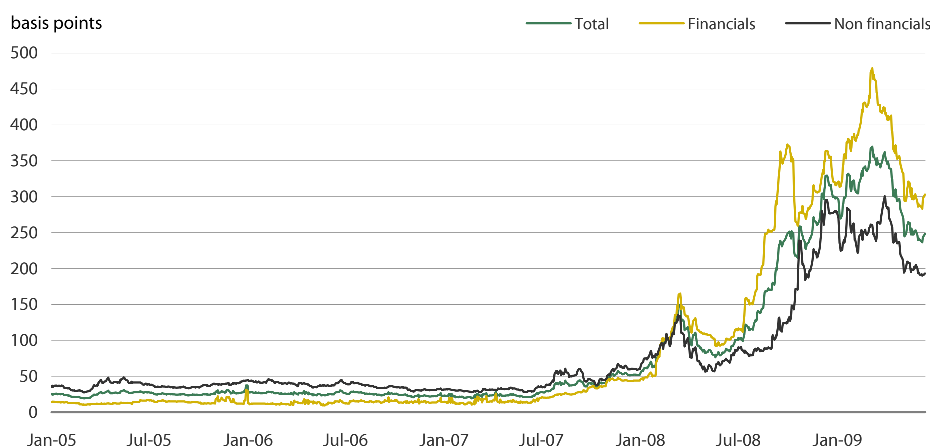
Source: AIAF.

1 Average daily data. December data correspond to the average between 1/12 and 15/12.

2 Bonds and debentures in outright trades on the AIAF market.

Aggregate risk premium[1] based on the five-year CDS of Spanish issuers

FIGURE 10



Source: Thomson Datastream and CNMV. Data to 15 June.

1 Simple average.

In the first half of 2009 (with data to 15 June) fixed-income issues filed with the CNMV came to 222.41 billion euros, just topping the 222.09 billion registered in the same period last year (see table 15). Although volumes barely varied in annual terms, the issuance mix was radically different as a consequence of the financial system support measures passed by the Government in late 2008.

- Commercial paper issues were sharply down vs. the year-ago period, and accounted for just 38.3% of total issuance in the second quarter of 2009 compared to 65.5% in full-year 2008.
- Conversely, sales of non convertible bonds and debentures, summing over 39.20 billion in the first-half period, were almost four times higher than the total for 2008 (10.49 billion euros). As much as 81% of this amount (32 billion euros) corresponded to government-backed bonds, reflecting the wide take-up of this financing option among financial institutions, especially the savings banks.
- Mortgage bonds were another popular instrument, with issuance volumes already ahead of the total for 2008. Asset-backed securities, while not matching their scale of growth, remained a key source of finance for the financial sector (23.3% of the total issued in the second quarter). Banks have presumably fast tracked issuance of this kind of instrument in order to enter the auctions of the Financial Asset Acquisition Fund (FAAF[5]) and to provide collateral for Eurosys-

5 The FAAF has so far purchased assets at four auctions summing 19.43 billion euros and with maturities of 2 to 3 years.

tem loans. ABS issues continued to enjoy a high credit quality, with over 90% rated AAA in the second quarter of 2009.

- Finally, it bears mention that preference share issues topped 11 billion euros between January and June 2009 (5% of the total) compared to just 1.25 billion in 2008 or 225 million in 2007. Their increased use is basically strategic, and responds to the interest of financial issuers in bolstering their regulatory capital.

Gross fixed-income issues[1] registered with the CNMV TABLE 15

				2008			2009	
	2006	2007	2008	Q2	Q3	Q4	Q1	Q2[2]
NOMINAL AMOUNT (million euros)	523,131	648,757	476,276	134,468	90,554	133,727	116,427	105,988
Mortgage bonds	44,250	24,696	14,300	10,120	1,685	1,245	10,474	7,425
Territorial bonds	5,150	5,060	1,820	0	0	800	0	0
Non convertible bonds and debentures	46,688	27,416	10,490	3,744	4,215	1,927	15,492	23,785
Convertible/exchangeable bonds and debentures	68	0	1,429	0	0	1,429	0	0
Asset-backed securities	91,608	141,627	135,253	34,386	11,736	60,473	27,358	24,730
Domestic tranche	30,886	94,049	132,730	32,993	10,607	60,473	27,358	23,550
International tranche	60,722	47,578	2,522	1,393	1,129	0	0	1,180
Commercial paper[3]	334,457	442,433	311,738	86,118	72,868	66,853	61,552	40,555
Securitised	1,993	465	2,843	48	94	2,568	1,334	902
Other	332,464	441,969	308,895	86,070	72,774	64,285	60,218	39,653
Other fixed-income issues	0	7,300	0	0	0	0	0	0
Preference shares	911	225	1,246	100	50	1,000	1,550	9,493
Pro memoria:								
Subordinate debt issues	27,361	47,158	12,950	1,945	1,575	7,120	8,484	4,557
Covered issues	92,213	86,161	9,170	2,200	946	928	0	0

Source: CNMV.

1 Including those admitted to trading without an issue prospectus.

2 Latest data: 15 June 2009.

3 Figures for commercial paper correspond to amounts placed.

Issues of asset-backed securities[1] registered with the CNMV
Distribution by credit rating TABLE 16

% total unless otherwise indicated	2007	2008				2009	
	Q4	Q1	Q2	Q3	Q4	Q1	Q2[2]
Million euros	52,819	28,657	34,386	11,736	60,473	27,358	24,730
Percentage	100.0	100.0	100.0	100.0	100.0	100.0	100.0
Investment grade							
AAA	93.7	93.7	94.2	90.1	92.5	84.2	90.4
AA	0.9	1.3	0.3	0.6	1.5	1.4	0.9
A	1.9	1.6	2.8	5.0	2.6	2.4	2.9
BBB	2.0	1.5	1.6	2.4	2.5	4.7	2.2
Speculative grade							
<BBB	1.5	1.9	1.0	1.9	0.8	7.4	3.6

Source: CNMV.

1 Including mortgage bonds and non mortgage asset-backed securities.

2 Data to 15 June.

4 Spanish equity markets

4.1 Prices

As commented, the bear markets of 2008 and the first quarter of 2009 gave way to a significant second-quarter rally on main world bourses, Spain's included. Among the factors at work were financial system support schemes devised to cleanse bank balance sheets and get the credit cycle running once more, and fewer fears about the deteriorating prospects of main world economies, which, it now seems, may have touched bottom in the first six months of 2009. This brighter scenario helped revive trading on national markets, urged on by the slower decline of some economic indicators, though doubts persist about the length and depth of the correction in Spain.

The Ibex 35 fought back from a first-quarter fall of 15% and advanced 21.8% in the second quarter giving a year-to-date gain of 3.5%. In year-on-year terms, the Ibex has shed 26.8% of its value. Other national equity indices experienced a similar upturn in the year's second quarter, in some cases outperforming the general index. For instance, small and medium cap. indices managed second-quarter gains of 24% and 21% respectively, leaving them 17% and 6.4% up on their start-out levels for 2009. The FTSE Latibex, which had bucked the bear trend of the opening quarter, continued and even intensified its good run with commodity prices in support (see table 17).

The price rises of the second quarter were accompanied by a decline in volatility, which recouped the levels in place before the Lehman Brothers collapse (see figure 11) in September 2008. Implied at-the-money (ATM) volatility on the nearest expiry date of Ibex 35 options averaged 31.3% in the second quarter of 2009, against the 41.9% of the opening quarter and the 36.3% of full-year 2008; still some distance away from the 23.8% average recorded since January 1999.

Performance of Spanish stock indices (%) TABLE 17

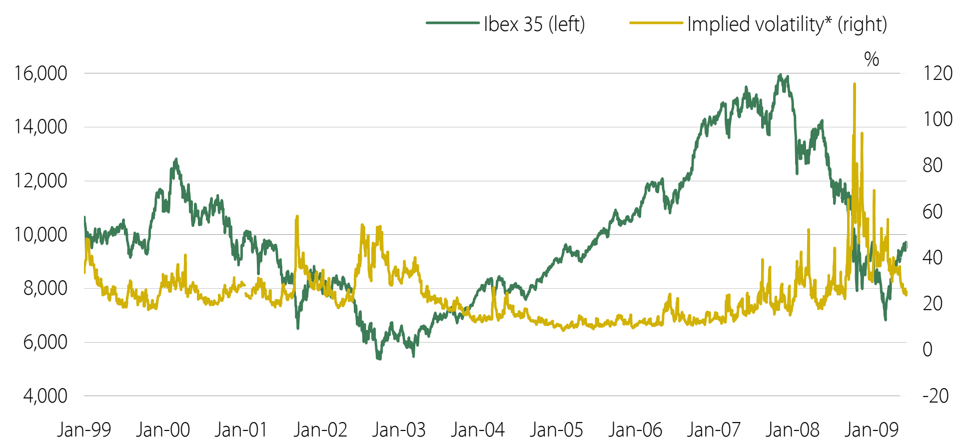
								Q2 09 (to 15 June)		
	2005	2006	2007	2008	Q3 08[1]	Q4 08[1]	Q1 09[1]	% Q	%/Dec	% y/y
Ibex 35	18.2	31.8	7.3	-39.4	-8.8	-16.3	-15.0	21.8	3.5	-26.8
Madrid	20.6	34.5	5.6	-40.6	-9.5	-16.9	-16.2	20.6	1.0	-29.5
Ibex Medium Cap	37.1	42.1	-10.4	-46.5	-14.5	-18.5	-12.5	21.6	6.4	-31.9
Ibex Small Cap	42.5	54.4	-5.4	-57.3	-23.1	-27.4	-6.0	24.5	17.0	-37.5
FTSE Latibex All-Share	83.9	23.8	57.8	-51.8	-27.7	-34.9	16.6	33.2	55.4	-28.9
FTSE Latibex Top	77.9	18.2	33.7	-44.7	-25.3	-31.8	6.4	29.8	38.1	-33.5

Source: Thomson Datastream.

1 Change vs. previous quarter.

Performance of Ibex 35 and implied volatility

FIGURE 11



Source: Thomson Datastream and MEFF.

* Implied at-the-money (ATM) volatility on nearest expiry. Data to 15 June.

All sectors[6] joined in the rally after five successive quarters in negative terrain, though with prices still languishing far behind their levels of one year ago. The top performers were the banks and companies in the basic materials, industry and construction sector. Specifically, the banks sub-sector (see table 18) advanced 43.1% in the second quarter of 2009, taking year-to-date gains to 8.8%. The country's two largest banks fared even better and together accounted for over two thirds of the IGBM gain in the second-quarter period. Meantime, basic materials, industry and construction achieved a price rise of 30% that took its year-to-date gains to 17.7%.

Among the other strong performers were consumer goods and services, which advanced 18.8% in the second sector and 5% over the length of the year. Oil and energy, conversely, scraped only a 3.6% rise in the second quarter. This was not enough to offset the preceding price tumble and left it 15.3% down since the year's outset.

The sector with the weakest second-quarter performance was technology and telecommunications whose 2.5% gain left it -2.8% in negative territory.

6 Of the Madrid General Index (IGBM) which we take as our reference in this report.

Performance of the Madrid Stock Exchange by sector and leading shares[1]

TABLE 18

annual % unless otherwise indicated

	weighting[2]	2008	Q3 08	Q4 08	Q1 09	2009- Jun[3] % Q	%/Dec 08	% annual
Financial and real estate services	**38.27**	**-49.2**	**-8.2**	**-26.2**	**-23.5**	**41.9**	**8.5**	**-33.3**
Real estate and others	0.32	-68.0	-28.7	-30.9	-28.1	-0.9	-28.7	-67.9
Banks	35.30	-49.0	-7.5	-27.1	-24.0	43.1	8.8	-33.4
BBVA	11.10	-48.3	-5.8	-24.4	-29.5	43.2	1.0	-36.1
Santander	18.45	-51.1	-10.0	-31.1	-23.1	51.2	16.3	-32.6
Oil and energy	**21.93**	**-33.3**	**-14.3**	**-10.6**	**-18.3**	**3.6**	**-15.3**	**-38.7**
Iberdrola	8.95	-37.1	-16.1	-8.4	-19.3	13.1	-8.7	-34.8
Repsol YPF	4.41	-38.1	-16.5	-27.7	-13.7	24.0	7.0	-40.4
Basic materials, industry and construction	**7.71**	**-50.5**	**-22.8**	**-21.9**	**-9.5**	**30.0**	**17.7**	**-34.1**
Construction	4.46	-47.7	-21.9	-11.9	-8.5	24.1	13.6	-28.9
Technology and telecommunications	**23.69**	**-28.8**	**-1.0**	**-5.6**	**-5.1**	**2.5**	**-2.8**	**-14.4**
Telefónica	22.95	-28.7	-0.5	-5.6	-5.2	2.2	-3.2	-14.2
Consumer goods	**4.98**	**-25.7**	**-8.1**	**-9.6**	**-8.1**	**17.3**	**7.7**	**-12.0**
Consumer services	**3.43**	**-45.1**	**-7.5**	**-14.7**	**-16.3**	**20.9**	**1.2**	**-29.8**

Source: Thomson Datastream and Bolsa de Madrid.

1 Shares capitalising at more than 4% of the IGBM.

2 Relative weight (%) in the IGBM as of January 2009.

3 Data to 15 June. Quarterly change (% Q) corresponds to the period between 31 March and 15 June 2009.

Shares with greatest impact on IGBM change[1]

TABLE 19

Share	Sector	2009- Jun[2] % Q	%/Dec 08
Positive impact			
SANTANDER	Financial and real estate services	9.46	3.01
BBVA	Financial and real estate services	4.80	0.12
IBERDROLA	Oil and energy	1.17	-0.78
REPSOL YPF	Oil and energy	1.06	0.31
BANCO POPULAR ESPAÑOL	Financial and real estate services	0.71	0.12
TELEFÓNICA	Technology and telecommunications	0.50	-0.72
INDITEX	Consumer goods	0.43	0.23
ACS	Basic materials, industry and construction	0.37	0.26
GAMESA	Basic materials, industry and construction	0.36	0.09
BANCO DE SABADELL	Financial and real estate services	0.31	-0.11
MAPFRE	Financial and real estate services	0.31	0.00
CRITERIA CAIXACORP	Financial and real estate services	0.28	0.12
ABERTIS	Consumer services	0.26	0.14
ENDESA	Oil and energy	0.25	-0.24
ACERINOX	Basic materials, industry and construction	0.25	0.08
Negative impact			
UNIÓN FENOSA	Oil and energy	-1.65	-1.64

Source: Thomson Datastream and Bolsa de Madrid.

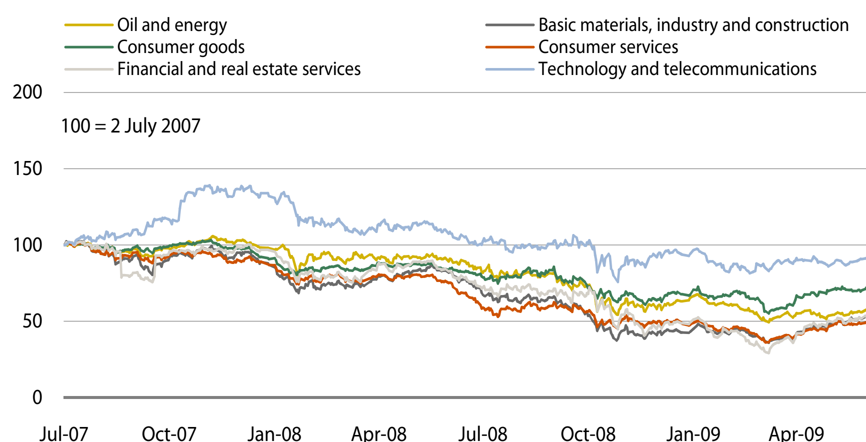
1 The shares listed are those having most impact (equal to or more than 0.20 points in absolute terms) on the quarterly change in the IGBM.

2 Data to 15 June.

Since the crisis began in summer 2007, all IGBM sectors have suffered a decline in their stock market value. Four of their number (consumer services, basic materials, industry and construction, financial and real estate services and oil and energy) have chalked up cumulative losses between 45% and 52%. The technology and telecommunications sector, traditionally viewed as a safe haven, managed to hold out until end 2007, but then joined in the bear run. As commented above, all sectors have been showing signs of recovery since March this year.

Performance of IGBM sector indices[1]

FIGURE 12



Source: Bolsa de Madrid.

1 Data to 15 June.

Table 20 below offers a snapshot of the quarterly performance of IGBM shares. The improved showing of the second quarter is evident from the smaller number of companies in losses (down to 18.1%) versus those with price gains exceeding 25% (41.7% of the total).

Performance range of IGBM shares

TABLE 20

% total IGBM companies	Q2 08	Q3 08	Q4 08	Q1 09	Q3 09[1]
≥ 25%	0.8	0.8	2.3	5.5	41.7
10% to 25%	6.0	5.3	1.5	7.9	26.8
0% to 10%	15.0	7.6	9.2	11.0	13.4
≤ 0%	78.2	86.4	87.0	75.6	18.1
Pro-memoria: total no. of companies					
	133	**132**	**131**	**127**	**127**

Source: Thomson Datastream.

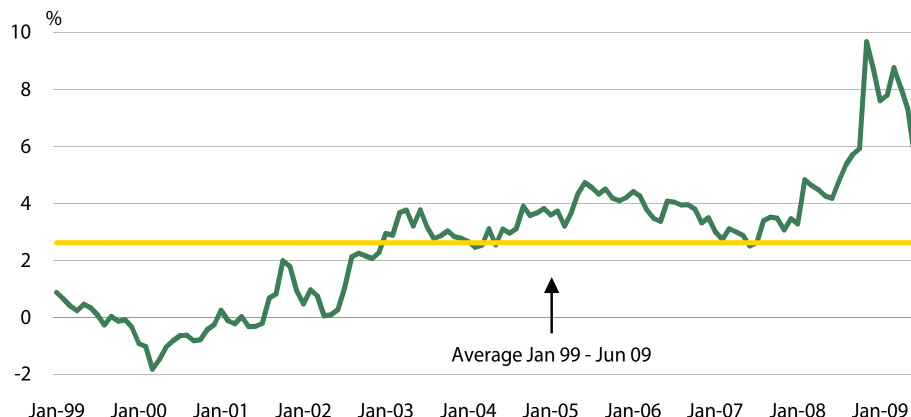
1 Data to 15 June.

The price-earnings ratio of the Ibex 35 has traced an upwards course (see table 10) that has taken it from just under 8x at the end of March to 10x in mid-June, reflecting both the price rally under way and, to a lesser extent, the lower earnings forecast for coming quarters. Despite this advance, the P/E of the Spanish market has fallen behind those of leading European bourses in contrast to the lead maintained in recent years.

The earnings yield gap (indicating the risk premium on equity investment versus long-term government bonds) underwent an intense second-quarter correction after

the maximum levels reached in the last quarter of 2008, under the combined effect of rising equity prices and the upturn in long-term government yields. The indicator, however, continues at historical highs, with the latest reading of over 5.5% more than doubling the average observed since 1999 (2.6%).

Earnings yield gap[1] of the Ibex 35 FIGURE 13



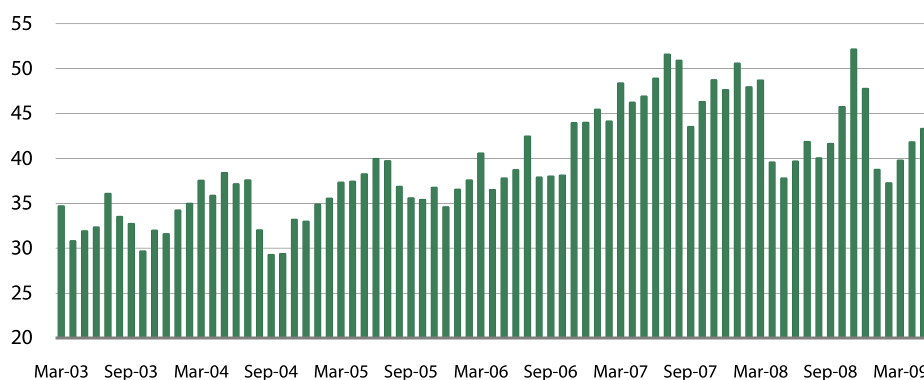
Source: Thomson Datastream and authors.

1 Difference between stock market yield, taken as earnings/price, and ten-year bond yields. Monthly data to June.

4.2 Trading and liquidity

Turnover on the Spanish stock market picked up in the second quarter after the notable declines of 2008 and, especially, the opening quarter of 2009 (see table 21). Specifically, average daily trading (data to 15 June) came to 3.49 billion euros compared to the 2.93 billion average of the first three months. Possibly the share price rally has encouraged investors to build positions in national markets. The jump in turnover versus capitalisation has translated as an increase in turnover velocity, the ratio between turnover and capitalisation in the electronic market (see figure 14).

Turnover velocity[1] of the Spanish stock market[2] FIGURE 14



Source: CNMV.

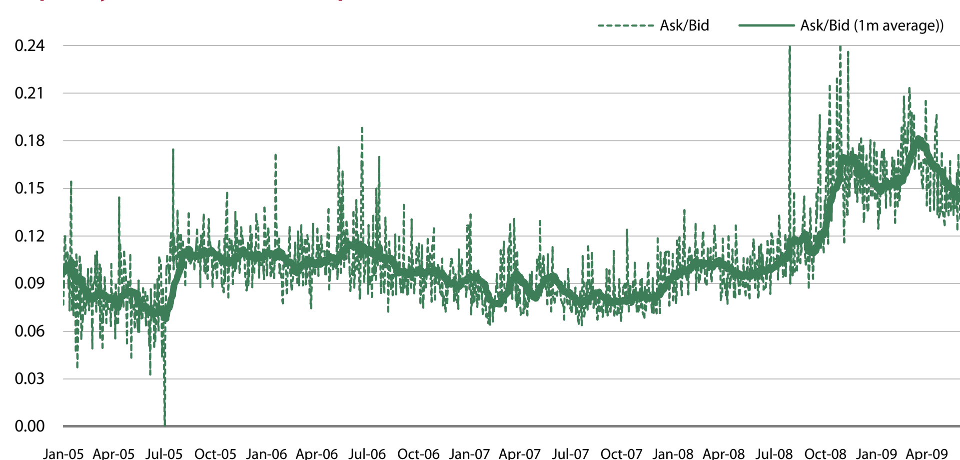
1 Ratio of cumulative trading volume in the electronic market in the last quarter to average monthly capitalisation in the same period.

2 Data to May.

The liquidity conditions of the Spanish market improved slightly in the second quarter, when the bid/ask spread of the Ibex 35 dropped to 0.15% (in monthly average terms) from just over 0.18% (see figure 15).

Liquidity indicator (bid/ask spread, %) of the Ibex-35[1]

FIGURE 15



Source: Thomson Datastream and authors.

1 Data to 15 June.

Turnover on the Spanish stock market

TABLE 21

Million euros	2006	2007	2008	II 08	Q3 08	Q4 08	Q1 09	IQ1 09 [1]
All exchanges	**1,154,294**	**1,667,219**	**1,243,387**	**318,939**	**287,680**	**253,514**	**184,654**	**177,835**
Electronic market	1,146,390	1,658,019	1,235,330	317,051	286,063	251,282	183,367	176,779
Open outcry	5,318	1,154	207	25	65	73	19	20
of which SICAV [2]	4,581	362	25	3	7	10	7	3
MAB [3]	1,814	6,985	7,060	1,646	1,406	2,042	1,178	940
Second market	49	193	32	18	10	1	1	1
Latibex	723	868	758	199	136	116	89	94
Pro-memoria: non resident turnover (% all exchanges)								
	58.4	61.6	65.5	65.5	66.6	64.3	na	na

Source: CNMV and Directorate-General of Trade and Investments.

1 Cumulative data from 1 April to 15 June.

2. pen-ended investment companies.

3 Alternative investment market. Data since the start of trading on 29 May 2006.

na: data not available at the closing date for this report.

II Reports and analyses

Characteristics of money market funds in different jurisdictions

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1 Introduction

Investment funds can be classified into various categories according to their portfolio composition. Each category groups funds whose portfolios entail assets with similar term and risk characteristics (regarding market, credit, liquidity, etc.). The classifications of investment funds, which can be established by supervisory authorities, professional associations or information providers, are intended to characterise investment fund policies and, therefore, to compare their behaviour. One category found in all classifications is that of "money market funds". This name implies that their portfolio consists of high liquidity and low risk assets, which leads investors to value these funds as quasi-money. However, in the context of today's financial crisis, money market funds have been affected by reduced liquidity. This effect has been aggravated by the fact that such investment funds undertook further risk in the years prior to the crisis.

Additionally, the subprime mortgage crisis has markedly affected other funds also called "money market" which are, however, managed more actively and use credit derivatives and other similar instruments in order to increase their return at the expense of higher risk. This is the case of the so called "dynamic money market funds". These funds, which should not be strictly classified as "money market", have been included within this category by certain supervisor and information providers causing certain confusion amongst investors who assume these funds are quasi-money.

The widespread concern regarding the behaviour of money market funds during the current financial crisis is deepened by their outreach over the past years. The United States has the greatest money funds market worldwide, its equity by the end of 2008 totalling 3.84 billion dollars followed by France with 0.4668 billion euros (45% of the European market), and Luxembourg with 0.334 billion euros. It should be highlighted that money funds are used by institutional investors for temporary capital placement, but also by conservative retailers (the Spanish market being at the forefront with 80% equity ownership).

The behaviour recently shown by these funds has triggered the reaction of professional associations and regulatory bodies, which point out the need to change the definition of investment funds and seek homogeneity at international level. The aim of this article is to recap the definitions and main characteristics of money market funds in different jurisdictions and their latest behaviour. To this end, the principal money market funds markets in Europe and the United States will be analysed. The second section deals with the various definitions of money market funds proposed by supervisors, professional associations and information providers. The third section tackles the characteristics of money market funds in various countries and their evolution in the current financial crisis, which has triggered different reactions from regulatory bodies and international agencies, as described in section four. Finally, conclusions are presented in the fifth section.

2 Definition of money market funds in different jurisdictions

The definitions of money market funds proposed by supervisors, professional associations and information providers differ when considering several restrictions to limit exposure to varied risks (credit, liquidity, counterpart, exchange rate or interest rate).

Amongst information suppliers, Lipper's definition centres both on the types of assets held by funds and the residual life to maturity of such assets (less than 12 months). In turn, Morningstar only focuses on funds' asset portfolio. As a result, this provider's money market fund category differs substantially from other providers' or supervisors' classifications. Both information providers draw a distinction between money market funds strictly speaking and dynamic money market funds.

On the other hand, professional associations also offer definitions of money funds. For instance, the European Fund and Asset Management Association (EFAMA), composed of fund managers, information providers and European national associations, has been working for several years on the classification of funds at European level in order to facilitate comparison and foster transparency for investors. In the report published in June 2008, it defines money market funds according to investment possibilities, specifying the credit quality of assets (above S&P investment grade) and the portfolio's duration (with a maximum average maturity of 60 days or, similarly, a weighted average modified duration of one year). EFAMA also subdivides money market funds according to different characteristics: duration, currency exposure or other structural characteristics (whether a valuation on an amortized cost basis is used, whether it seeks to maintain the net asset value constant at par net of earnings, or whether it invests exclusively in money market instruments with the highest available credit ratings).

Another international association is the Institutional Money Market Fund Association (IMMFA), which claims the existence of two money funds in Europe: one group focused on attaining a certain return and another on keeping a certain liquidity level, operating virtually under the same criteria as money market funds in the United States under the Rule 2a-7[1]. The IMMFA consists of money market fund providers focused on maintaining liquidity at a triple A rating, which comply with its Code of Good Practices (2003) to ensure that its members offer high quality products and services to investors.

2.1 Main differences at european level

Since September 1998 the European Central Bank (ECB) gathers information on monetary financial institutions (MFI), which include non-credit institutions such as money market funds. The ECB has defined money market funds as collective investment undertakings (CIUs) whose interests are, in terms of liquidity, close substitutes for deposits. They invest mainly (over 85% of their investment portfolio)

1 Rule 2a-7 under the Investment Company Act of 1940 sets forth the definition of money market fund in the United States, as described in the paragraph below.

in money market instruments, in other transferable debt instruments with a residual maturity equal to or lower than one year, in bank deposits and in other instruments which pursue a rate of return that approaches the interest rates of money market instruments[2].

Countries in the European Union send information to the ECB regarding their money market funds, albeit the ECB admits certain differences in the characteristics of investment funds included in this category, since national supervisors from member States apply different money market fund definitions, according to certain risk specifications. Table 1 shows a summary of money fund characteristics, as they are defined in Spain, France, Italy, Germany and the United States.

In Spain, the first approach to money market funds were the so called Money Market Asset Investment Funds (FIAMM, in Spanish), which were legally overruled by the Regulations of Act 35/2003[3], of 4 November, whereby the Directive amending the EC regulation on UCITS[4] was modified. A new money fund definition was published in Circular 1/2007 issued by the Spanish Securities Market Commission (CNMV) dated 11 July on statistical information required from CIUs in the European Union, which remained legally in force until 1 April 2009 when Circular 1/2009 of 4 February issued by the CNMV became effective, whereby the definition of money market funds was again modified.

The definition of money market fund put forward in Circular 1/2007 solely focused on restraining liquidity exposure according to the portfolio and assets maturity, and to the currency risk (with a maximum of 5% of the portfolio in non-euro currency). The new definition stated in Circular 1/2009 brings in some new aspects such as the introduction of limitations to credit exposure (based on the credit rating) and the full elimination of currency risk. Likewise, it further restrains the average portfolio maturity, still allowing for investment in assets with longer residual maturity. Also, for the first time in Spain, the term "money" or "monetary" –or similar ones– was exclusively introduced for those CIUs falling within this status, as well as their obligation to hold such status if they fulfil the relevant requirements.

In our country, dynamic money market funds have never been included in the money market fund category. Before Circular 1/2009 came into effect, they were considered part of the so-called global investment funds (grouping all those investment funds that cannot be classified into any other category). In April 2009, they were added to the absolute return fund category including the CIUs whose non-guaranteed management objective is to reap a certain periodical return/risk.

In France, for a CIU, both investment funds and investment companies (SICAV) to be classified as "money market", it must fulfil the characteristics set out in Order No. 2005-02, of 25 January 2005, regarding the prospectuses to be sent by CIUs to the Autorité des Marchés Financiers (AMF). By comparison with other jurisdictions, the criteria defining money market funds are not quite accurate and they centre on restrictions different from those of other supervisors. Specifically, these CIUs pur-

2 The current definition is set forth in Regulation No. 2423/2001 issued by the ECB dated 22 November 2001, relative to the consolidated balance of the MFI sector.

3 Royal Decree 1309/2005 of 4 November.

4 Directive 2001/108/EC, passed by the European Parliament and the Council dated 21 January 2002, whereby Directive 85/611/EEC of the Council, which regulates the undertakings for collective investment in transferable securities (UCITS), is amended.

sue a management objective set to a money market indicator and an interest rate exposure limitation, since they must be managed within an interest rate sensitivity between 0 and 0.5. It should be noted that, by contrast with other countries, they are allowed to invest in convertible debentures, though within certain limitations, thus allowing for a higher risk.

The few limitations imposed upon money market funds in France have allowed for the existence of other investment funds that, although called "money market funds", take on higher risk, namely: dynamic money market funds. Although the French regulatory body doesn't differentiate them in their classification, EuroPerformance does. The latter's classification, widely used in the French market, is based upon the purpose of the investment funds under management. They are classified as follows: (i) regular treasury CIUs, i.e. CIUs aimed at replicating the Eonia return; (ii) international treasury CIUs; and (iii) dynamic treasury CIUs and dynamic plus treasury CIUs, i.e. products that are not strictly geared to replicating the Eonia return and are more volatile than the rest since they are highly variable products in terms of techniques, assets and strategies applied. Dynamic CIUs account for 5.9% over the total money market funds reported by the AMF to the ECB in December 2008.

As a result of the shortfalls affecting money market CIUs in France during the financial crisis, the AMF created a task force grouping the main management companies in order to propose modifications to money market CIUs regulations. The measures have been subjected to public consultation[5] and the AMF expects to publish the final version of its proposals during the first half of 2009 to become effective in the second half of 2009. The recommendations include, among others, a stricter definition of eligible assets for money market CIUs. Specifically, three additional criteria are added to the current definition to reduce exposure to liquidity and credit risk, namely: (i) residual maturity of assets of less than two years; (ii) weighted average maturity of the portfolio below one year; and (iii) Credit risk compatible with the reduced global risk level of the CIU. On the other hand, the AMF is stricter as to the information furnished to investors and the marketing conditions for such products. In this regard, the claim is that CIUs in France should not use the term "money market" –or an equivalent term– unless they observe the criteria set out by the AMF. This requirement, if eventually introduced, will affect all dynamic money market funds currently in place in said country.

This new definition arrives after several years of discussion on the need for a change regarding the term "money market". Specifically, AFTE (French Association of Corporate Treasurers) recommended making a clear distinction between "risk-free" CIUs and other CIUs with various forms of diversification.

In Italy the definition of money market funds is mainly focused on the portfolio's duration and the assets they can invest in, limiting them based on their credit quality and forbidding investment in assets with no rating. In turn, several money market funds are differentiated according to the portfolio assets currency (money market funds in the, dollar, yen and other currency zones) with no hedging allowed.

In Germany the definition is quite similar to that proposed by the ECB and is based on the eligible assets and their residual maturities. A distinctive element, by contrast with the rest of the countries analysed, is that the portfolio maturity is not restrained. The Bundesverband Investment und Asset Management (BVI) offers a

5 Dated 24 February 2009.

detailed classification of German investment funds. It should be highlighted that fixed income funds include a subcategory "next to the money market", which may be confusing to investors.

The British regulatory body defines money market funds by restraining the assets allowed for investment, as well their remaining expiry term. Its distinctive feature is that limitations are imposed to investment in certain securities in order to create a more liquid portfolio. Specifically, at least 50% of the total net assets should consist of two-week reimbursable securities or deposits.

2.2 Money market funds in the United States

In the United States money market funds are defined in Rule 2a-7 under the Investment Company Act of 1940, adopted by the Securities and Exchange Commission (SEC) in 1983. It is highly specific and focuses on credit, market and operational risk. Compared to other countries, the definition highlights the significant use of ratings of portfolio assets, as well as a shorter maturity of both the portfolio and assets. Additionally, most money market funds in the United States have a rating assigned by a credit rating agency which applies even more restrictions than Rule 2a-7 to investment strategies and the portfolio composition to reach the maximum rating.

However, in addition to the restrictions imposed to money market funds in the United States, there are several other differences between them and European money funds, since their investment is closer to money than in the euro zone. On the one hand, American money market funds claim a security reputation, since they seek a stable $1.00 Net Asset Value (NAV). Although it can drop below $1.00 (what's known as "break the buck"), historically it has occurred only twice: in 1994 and in September 2008, after the bankruptcy of Lehman Brothers. This guarantee to recover at least the invested capital is not a legal obligation, but traditionally managers have rescued problematic money market funds fearful of capital outflows from money market funds or other investment funds under their management. Rule 2a-7 imposes maturity, quality and diversification restrictions in order to minimise any potential deviation between the stable NAV and the investment fund's portfolio market value. On the other hand, regarding the liquidity of these assets, money market fund investors have access to certain services delivered by sponsors, similar to those offered by banks with deposits. For instance, investors can issue cheques against money market fund accounts without having to sell their shares and wait for one or two days for their settlement.

On the other hand, in the United States money market funds are divided into two main groups, depending on whether they are tax exempted or not. Each one of them includes subcategories according to the target investor (retailer or institutional) and the purpose of the investment. Thus, tax exempt funds are divided as follows: (i) national funds, which seek revenue untaxed by the federal government by investing in municipal securities; and (ii) state funds, that invest mainly in short-term municipal securities of a single State, exempted from federal and state taxes for that State's residents. In turn, taxable funds are divided as follows: (i) non-government funds, which invest in a series of money market securities; and (ii) government funds, which invest mainly in US Treasury bonds and other financial facilities issued or guaranteed by the US administration or other bodies.

In the United States, dynamic money market funds are deemed an investment similar to money market funds, since they are aimed at providing liquidity and maintaining the principal, yet with the following characteristics: they invest in a broader range of assets; do not comply with Rule 2a-7 restrictions; pursue a higher yield objective; are less liquid; and are chiefly intended to maintain the NAV stable (although they usually do, the latter frequently fluctuates above and below).

Main characteristics of money market funds in different jurisdictions

TABLE 1

	Spain	Spain (Circular 1/2009)	France	France (2009 proposal)	Italy	Germany	United Kingdom	United States
"Money market" use restriction	NR	Yes	NR	Yes	NR	NR	NR	Yes
Credit risk/Investment policy (assets allowed for investment)	NR	- Assets with short-term rating ≥ A2 by S&P (or equivalent) - Assets with no rating whose rating issuer ≥A2	NR	Credit risk compatible with the reduced global risk level of the CIU	- Assets with short-term rating ≥ A2 by Moody's, A by S&P (or equivalent) - Cannot invest in assets with no rating	85% of total net assets: - Bank deposits - Money market facilities - Other money market funds	- ≥50% two-week reimbursable securities/ deposits - ≤80% transferrable securities	These securities may be: - First Tier - Second Tier (restricted) - Eligible - Subject to guarantees - Subject to demand features
Liquidity risk (portfolio maturity)	Portfolio mean duration (modified) ≤ 1 year	Portfolio mean duration (modified) ≤ 6 months	NR	Weighted average maturity ≤ 1 year (highlight in prospectus if ≤ 3 months)	Portfolio duration ≤ 6 months	NR	NR	Dollar-weighted average maturity ≤ 90 days
Liquidity risk (portfolio assets residual maturity)	≤ 18 months (except: index-referenced variable coupon, ≤ 1 year review) Limit: max. 40% of to-tal net assets > 1 year	- ≥ 90% of total net assets should be < 2 years - Rest: ≤ 5 years	NR	≤ 2 years (highlight in prospectus if ≤ 6 months)	NR	< 397 days (for assets within 85% of total net assets)	≤ 12 months	It may be: - ≤ 397 days - Government securities: ≤ 762 days (if the fund does not apply the amortised cost method)
Counterpart risk (limit investment with the same issuer)	General: ≤ 5% of total net assets Extendable: - 10% if >5% does not exceed 40% of total net assets - 35% if issued or guaranteed by a public entity (up to 100% in certain cases) - 25% if issued by credit institutions and asset-backed		General: ≤ 5% of total net assets Extendable: - 10% (if the same group ≤ 20%, maximum 40% of total net assets) - 35% if issued or guaranteed by a public entity - 10% in other funds - 25% mortgage-backed securities (maximum 80% of total net assets)		≤ 5% of total net assets Extendable: - 10% if >5% does not exceed 40% of total net assets - 35% if issued/guaranteed by a public entity (up to 100% in certain cases) - 10% expos. OTC derivative if a bank is counterpart, otherwise 5%	≤ 5% of total net assets Extendable: - 10% (max. 40% of total net assets) - 35% if issued/ guaranteed by a public entity - 25% of mortgage securities if > 5% does not exceed 80% of total net assets	≤ 5% of total net assets. Extendable: - 30% if government bonds - 10% if deposits - 10% if non-convertible securities - 10% if convertible securities	Depends on securities: - *First Tier* ≤ 5% - *Second Tier* ≤ 1% (maximum 1 million $) - Subject to demand Features or guarantee: i. General: ≤ 10% ii. *Second Tier*: ≤ 5%
Interest rate risk (sensitivity of interest rate)	NR	NR	0-0.5%	0-0.5% (indicate correct one in prospectus)	NR	NR	NR	NR
Currency risk	<5% in non-euro currency	No	NR (Types: euro-oriented/international)		NC (there are types) (no hedging permitted)	NR (there are types)	NR	No
Management objective	NR	NR	Reference: euro money market indicator (euro CIU) or non-euro/compound (international CIU)		NR	NR	NR	NR
Fund taxation[1]	1%		0%		12.5% over total[3]	0%	0%	
Investor taxation	Retailers: 18% Institutionals: 30% (upon assignment)		Depends on the type of CIU: - Capitalisation CIU: 27% upon assignment if > than annual assignment threshold[2] - Distribution CIU: personal type each year		0%	Personal tax over interests or dividends only if <1year[4]	Personal tax over interests or dividends (can be offset)	- Varies considerably according to the type of fund - Annual payment with interests or dividends

Source: Own preparation.

NR: No record. (1) For further information, see Ramírez, E. (2009). (2) In 2007 this threshold was 20,000 euros with yearly appreciations. (3) Taxes are withheld by the fund before the NAV is published; hence, information providers recalculate the gross NAV of tax withholdings to allow for international comparison. (4) As of 1 January 2009 the personal income tax is applied to any profit, up to 25%, regardless of the holding term.

3 Effects of the current financial crisis on money market funds

Having discussed the definitions of money market funds in different jurisdictions, we shall now analyse how the current crisis has affected each one of them.

3.1 Implications of the financial crisis in the Euro zone money market funds

Despite the euro zone has pursued the homogenisation of money market fund characteristics, the current financial crisis has surfaced out significant differences among countries.

The return of money market funds in different European countries, as well as their evolution in the current financial crisis, has been quite uneven (see Figure 1). It should be noted that money market funds in Spain and Italy have been characterised by a relatively low return vis-à-vis other countries. However, by contrast, they have not been as seriously affected by the current crisis. Specifically, in the case of Spain and Italy the average return in the three-year term prior to the onset of the crisis was around 120 basis points below the 1-day Eonia, against 50-60 basis points recorded in France and Germany.

In France and Germany the differential with the Eonia is due to management fees applied. In fact, several money market funds in France state in their prospectus their objective of earning a return equal to the 1-day Eonia, net of management fees. In Germany, in turn, fees reflect, to a great extent, the return difference with the Eonia, inasmuch as the average fees between 1999 and June 2008 were 0.546%. In Italy and Spain fees do not account for the differential with the Eonia, since in Italy they are similar to those applied in France or Germany (in 2002 they were 0.59%) while in Spain, although higher than in other countries (between September 2007 and September 2008 they reached 0.76%), they do not hit such differential. Said differences can be partly explained by the investors' profile. In Spain, retail investors are the ones mainly investing in money market funds; in fact, 83% of its total net assets as at September 2008 was represented by retailers[6]. In France, by contrast, traditional customers are the companies' treasuries (in June 2007 they accounted for 29% over the total net assets) and institutional investors (59% over the total, of which 29% of equity held by other funds), the retail investment being marginal (7% of total net assets).

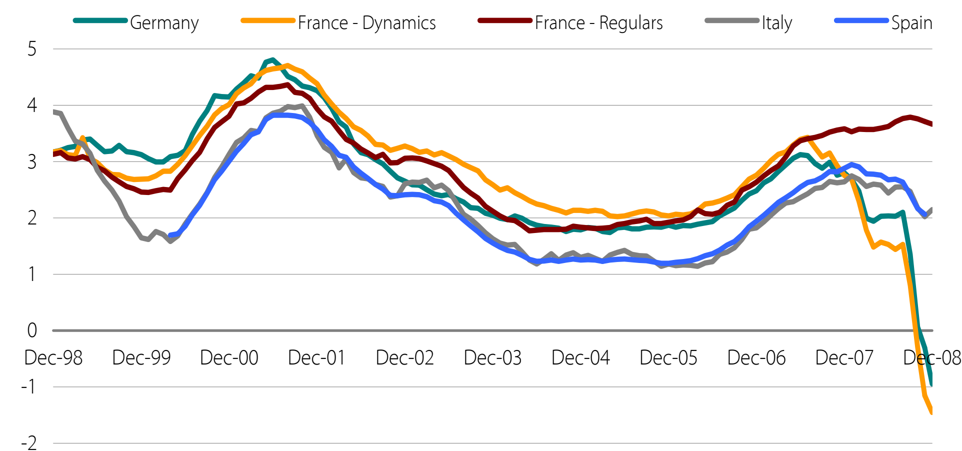
The lower return observed in Spain can be explained by the portfolio composition, mainly focused on safer and more liquid securities such as public fixed income

6 At the early stages of investment funds in Spain, the way in which investments by money fund companies were handled in tax and accounting terms rendered them less attractive than other investment funds. Hence, such companies preferred to place their treasury surplus in short-term fixed income investment funds rather than money market asset investment funds. Today, even though such tax differences no longer exist, institutional investors have not changed their investment policy. For further information on initial accounting procedures, please refer to the Resolution of 27 July 1992, adopted by the president of the Accounting and Account Audit Institute on the accounting criteria for interests in money market asset investment funds, Official Gazette of 4 November 1992.

(chiefly purchased through repos) and commercial papers. At the end of 2008 both types of assets accounted for 66% of the portfolio, a percentage far above that of money market funds in other countries. For instance, in 2006, 12%of the retail money market funds portfolio in Germany was invested in commercial papers or public debt, a percentage that has been growing since the onset of the financial crisis: in June 2008 they represented 26% of the portfolio.

Jank and Wedow (2008) have analysed the evolution of returns and flows of German retail money market funds in Germany which invest in Euro denominated securities before and after the present financial crisis[7]. The authors conclude that, within such a competitive framework as the current one, where investors disinvest in lower return investment funds to invest in higher return ones, investment funds managers have incentives to invest in riskier assets to increase their return. In fact, in Germany several money market funds have sought a higher return by investing in less liquid assets, especially during the 2002-2006 period when markets were quite liquid.

Annual average return[1] of money market funds in various European countries FIGURE 1



Source: CNMV, Lipper, BCE and Datastream.

Note: In Spain, historical data reflect the return of old FIAMM and, as from the publication of Royal Decree 1309/2005, of 4 November, of fixed income oriented investment funds turned into money market funds after the publication of Circular 1/2007, of 4 November. In Italy and France, data reflect the historical return of investment funds outstanding as at December 2008, according to the List published by the ECB. In Germany, data reflect the historical return of investment funds outstanding as at December 2008 in Lipper.

1 Arithmetic average.

The current financial scenario has unevenly affected money market funds in different countries. The most affected money market funds are those in Germany and dynamic money market funds in France, whose evolution is quite similar. This effect has been chiefly due to strong redemptions. In the case of France, institutional investors carried out substantial redemptions of dynamic money market funds in favour of regular funds, which have maintained high returns after the crisis outbreak. On the other hand, on average, money market funds in Italy and Spain have hardly been struck by the current crisis.

7 Jank y Wedow (2008) Sturm und Drang in money market funds: when money market funds cease to be narrow, Deutsche Bundesbank, Discussion Paper nº 20/2008.

Figure 2 shows average return and money market funds dispersion within each analysed country. By examining dispersion, we intend to examine the differences in return amongst the various funds within a single country. To this end, we shall analyse the first and third quartiles, i.e. the return below which lies the 25% and 75% of the bottom data, respectively.

Money market funds in Spain and Italy have historically reaped similar returns next to the average (i.e. due to the first and third quartile proximity to the average), while in Germany this effect occurs as from mid 2004. In turn, differences arising from the return of money funds in France have been significant due to a strong dispersion of the regular fund category (dispersion of hedge funds is slight).

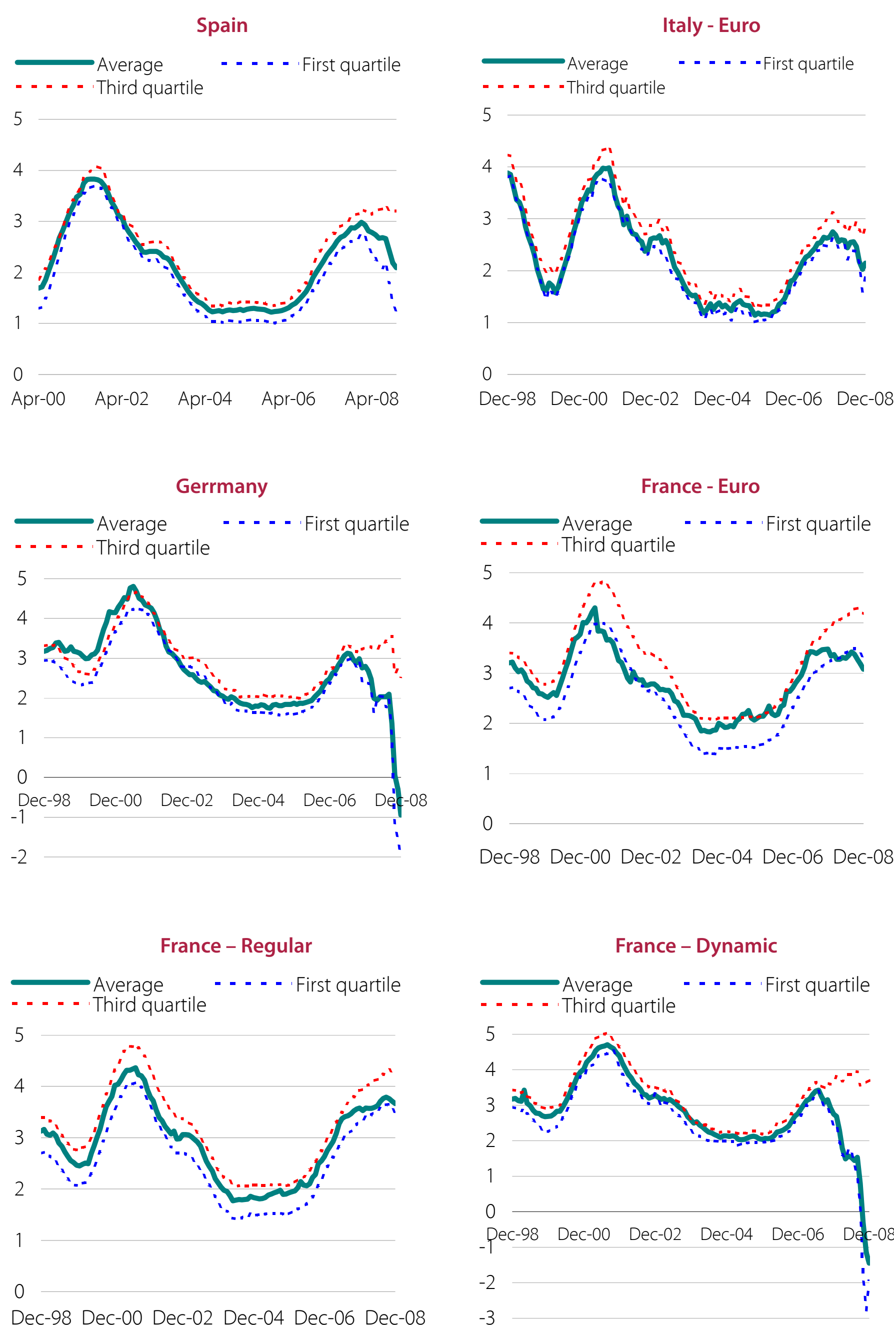
Whilst the dispersion of money market funds in Italy and regular money market funds in France has barely changed over the past year and a half, the same has risen markedly in the case of money market funds in Spain, Germany and dynamic money market funds in France, especially for the latter countries. This shows that, within a single country the crisis has affected money market funds differently. Thus, we find negative return funds –in some cases highly– coexisting with relatively high return funds. In Spain, although on average funds return did not fall dramatically in 2008, increased dispersion evidences several negative return money market funds, though not as significant as in the case of Germany or dynamic money market funds in France (this is because in the case of the last two the average coincides with the first quartile).

Jank and Wedow (2008) conclude that German money market funds that have invested in less liquid assets have encountered several problems due to major redemptions resulting in significantly negative returns. Likewise, in Spain, money market funds with the worst behaviour in the current context have been those with a higher level of net redemptions and a less liquid portfolio; these funds had invested between 25-50% of their portfolio in asset-backed bonds and securitised commercial papers, and between 25-50% in private fixed income assets other than commercial papers issued by Spanish issuers[8].

8 Since the end of April, after Circula 1/2009 came into effect, these money market funds no longer belong to the money market fund category.

Annual average return[1] and dispersion[2] of money market funds in different European countries

FIGURE 2



Source: CNMV, Lipper, BCE and Datastream.

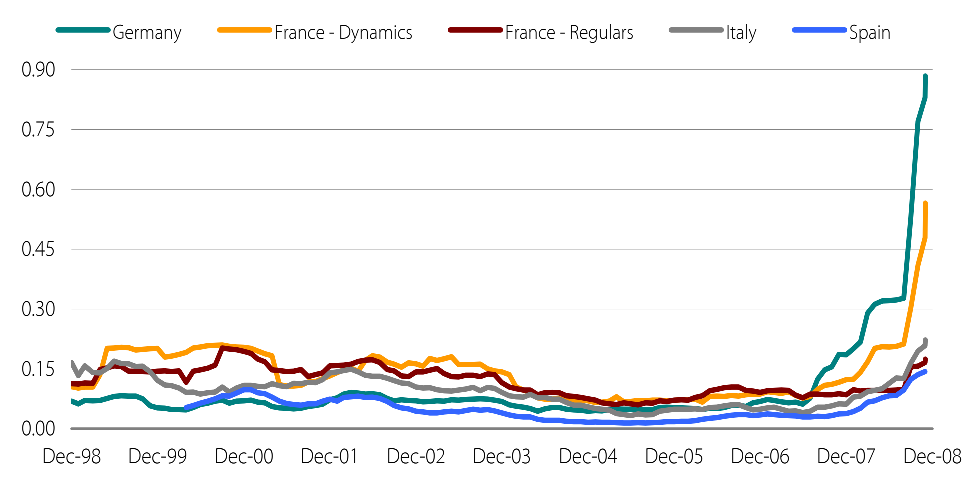
Note: In Spain, historical data reflect the return of old FIAMM and, as from the publication of Royal Decree 1309/2005, of 4 November, of fixed income oriented investment funds turned into money market funds after the publication of Circular 1/2007, of 4 November. In Italy and France, data reflect the historical return of investment funds outstanding as at December 2008, according to the List published by the ECB. In Germany, data reflect the historical return of investment funds outstanding as at December 2008 in Lipper.

1 Arithmetic average.

2 To analyse dispersion, the first and third quartiles are analysed, which are the return below which lies the 25% and 75% of the bottom data, respectively.

On the other hand, the volatility of money market funds, as well as their evolution since the start of the liquidity crisis, has varied from one country to another (see Figure 3). The increased returns of money market funds in France is accompanied by a similarly increased volatility, both for regular and dynamic money market funds. Said volatility can reflect the higher interest risk of these funds as it is possible to invest in assets with longer maturity (it should be noted that the definition of money market funds in France restrains neither the remaining expiry of assets nor the maturity of the portfolio; it only mentions that the sensitivity of interest rates should be between 0-0.5%). Historically speaking, the volatility of money market funds in Germany has been relatively low, similar to that of Spanish funds and lower than Italian funds, whilst return has been higher than that of both countries. Since the outburst of the crisis, the volatility of money market funds in Germany and dynamic money market funds in France has rallied due to their performance.

Mean volatility[1] of money funds in different European countries FIGURE 3



Source: CNMV, Lipper, BCE and Datastream.

1 Typical monthly deviation of investment funds calculated for a twelve-month period.

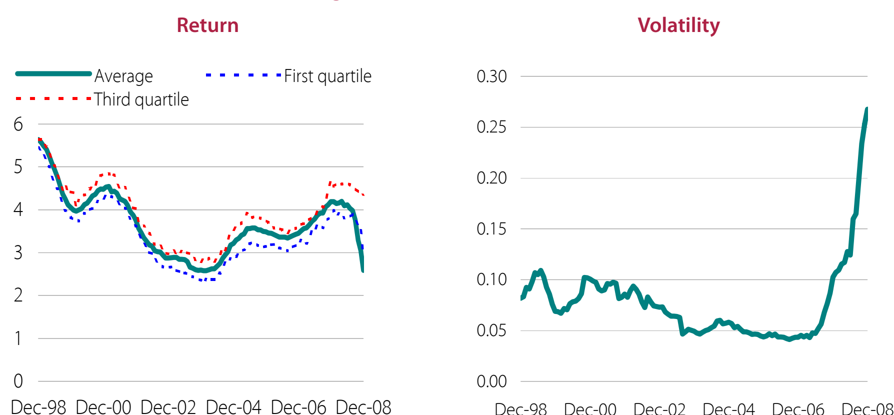
3.2 Implications of the financial crisis in money market funds in the United Kingdom

Sterling money market funds domiciliated in the United Kingdom constitute an irrelevant portion of the total net assets of these funds, since most of them are domiciliated in offshore centres. Specifically, in 2004 they hardly accounted for 4% over the total net assets of sterling money market funds.

The average return of these sterling money market funds domiciliated in the United Kingdom is closely correlated to the half a year lagged three-month GBP LIBOR, although the spread between them is high (during the three-year term prior to the start of the financial crisis it was around 130 basis points). The dispersion of the return of money market funds in the United Kingdom has been historically low, with a slight increase in the current context (see Figure 4). Since mid 2008 the average yield of money market funds has dropped significantly below the first quartile's level, thus giving rise to negative return funds.

The poor return of money market funds is accompanied by a relatively low volatility (see Figure 4). Until de beginning of the financial crisis, the average historical volatility had been lower than 0.1, which has climbed markedly over the past year and a half.

Annual average return[1], dispersion[2] and volatility of money market funds in the United Kingdom FIGURE 4



Source: Lipper.

Note: Date reflect the historical return of money market funds outstanding as at the last date.

1 Arithmetic average.

2 To analyse dispersion, the first and third quartiles are analysed, which are the return below which lies the 25% and 75% of the bottom data, respectively.

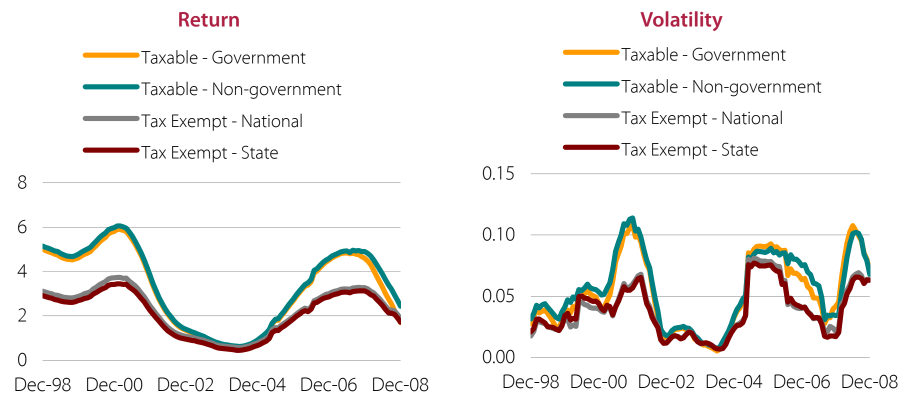
3.3 Implications of the financial crisis in money market funds in the United States

The return of money market funds in the United States varies substantially between tax-exempt funds and taxable funds, especially during high interest rate periods (see first part of Figure 5). In general, the return of money market funds is closely related to the six months lagged three-month interbank rate. Thus, in the case of taxable funds, the spread between both interest rates is around 50-100 basis points while for tax-exempt funds such spread matches that of taxable funds when rates are low, reaching about 250 basis points during high interest rate periods. It should be noted that in the United States, money market fund fees are lower than in Europe. For example, in 2007 they were 0.39%. This return has been accompanied by reduced volatility, in general lower than that of European money market funds (see second part of Figure 5).

The portfolio of money market funds is characterised by a high share of relatively low risk assets: at the end of 2007, public debts, commercial papers and repos accounted for 15%, 27% and 22% of the portfolio respectively. Although their significance has decreased over time, in the early 90's they represented 83% of the portfolio against 65% in 2007, mainly due to the fall of public debts and commercial papers. When interest rates come down, the portfolio composition shifts in favour of lower risk assets (such as public debts and repos), accompanied by a portfolio's longer average maturity (until 2004 the average maturity was between 45 and 60 days, then falling to 30-45 days).

Annual average return[1] and volatility of money market funds in theUnited States. Comparison by type of fund

FIGURE 5



Source: Lipper.

Note: Date reflect the historical return of money market funds outstanding as at the last date.

1 Arithmetic average.

In the current context money market funds in the United States have hardly been affected, and reduced return in the past year and a half has stemmed from official interest rate cuts. By contrast with Europe, since the beginning of the crisis, US money market funds have experienced capital inflows from both retail investors and large companies, due to three main factors. First, usually money market funds have positive net subscriptions when short-term rates are low, since their return adjustment has a certain gap compared to other competing products. Second, the instability and illiquidity observed in credit markets has caused company treasurers to use more money market funds. Third, the Department of the Treasury of the United States launched an optional temporary guarantee program in September 2008 for this industry, which stopped the solid redemptions made after the bankruptcy of Lehman Brothers. That is, the insurance provides a one-year guarantee to those money market funds enrolling in the program regulated by Rule 2a-7, proposed by and registered by the SEC (both retailers and institutionals) and whose NAV is below one dollar[9]. Money market funds with the strongest net redemptions in September 2008 were non-government taxable funds, which lost near 10% of their share over the total net assets (reaching 49% of the total net assets) in favour of government taxable funds (reaching 38% over the total). Despite this capital flight, the return of these funds was unaffected.

The financial crisis has not affected US money market fund investors as much as their management institutions due to the risk they undertake through the commitment of keeping a NAV equal to one dollar. In fact, since July 2007 approximately one third of the 100 main money funds have been financially supported by the fund sponsor in different ways: buying toxic assets at par value or securing the fund with a guarantee covering the par value. In order to receive further support, in September 2008 the Federal Reserve established a program to buy high quality asset-backed commercial papers (ABCP) from the money market fund portfolio under certain

9 This program is similar to the Deposit Guarantee Fund in case of a bank bankruptcy since, so far and by contrast with bank deposits, money funds were not guaranteed by the government.

conditions, as well as certificates of deposit and commercial papers issued by financial institutions with a high rating and a maturity below 90 days.

After the analysis of each group of US money market funds, we find that returns are quite similar and next to the average (this is because the first and third quartiles are quite close to the average). This minimum dispersion, much lower than the one observed in different European countries, has outlived the crisis outbreak.

4 Reaction of regulatory bodies and international agencies

Due to the effects observed, there is widespread concern among regulatory bodies and international agencies regarding money market funds.

In Europe, the CNMV and the French AMF have recently proposed more stringent limitations to the definition of money market fund (see definitions in the second section). Additionally, the CESR (Committee of European Securities Regulators) is now promoting a new common definition/classification, a review of the current regulations and the evaluation of mechanisms to manage liquidity under exceptional market conditions. The CESR further intends to propose a homogenous definition of money market fund, review eligible assets and analyse domestic measures on suspensions and partial redemptions.

Regarding US money market funds, several institutions[10] have emphasised the need to change certain aspects of money market funds. Briefly, the proposals touch upon three main aspects. First, the implementation of stricter restrictions regarding the facilities where money market funds can invest, with shorter maturity terms and greater liquidity. The purpose is that money market funds be better positioned for longer periods of extremes conditions and strong redemptions.

The second one suggests that money market funds can temporarily suspend redemptions for their subsequent liquidation. The ultimate goal is that, if a money market fund cannot maintain a NAV equal to one dollar, then shareholders should receive equal treatment.

The third one has been proposed by the Group of Thirty after pointing out that the widespread run on money market funds has stressed the dangers of institutions with no capital, no supervision and no safety net operating as large pools of maturity transformation and liquidity risk. This aspect translates into two recommendations. Firstly, money market funds that wish to continue providing bank-like services (such as transaction account services, withdrawals on demand at par or assurances of maintaining a stable NAV at par) should be required to reorganize as special-purpose banks with appropriate prudential regulation and supervision, governmental insurance and access to central bank lender-of-last-resort facilities. Secondly, those institutions remaining as money market funds should only offer conservative investment options with modest upside potential at relatively low risks.

10 The highlights of the speech of the president of the Federal Reserve, Ben Bernanke, on 10 March 2009, include the recommendations published by the executive committee of the Council of the Investment Company Institute (ICI) of 17 March 2009 and the article published by a steering committee of the Group of Thirty in January 2009, *Financial Reform: A Framework for Financial Stability*.

The vehicles should be clearly differentiated from federally insured instruments offered by banks, such as money market deposit funds, with no explicit or implicit assurances to investors that funds can be withdrawn on demand at a stable NAV.

5 Conclusions

The difficulties observed during the periods of higher financial instability of money market funds in the various jurisdictions have been triggered by various circumstances.

In the United States, the problems observed have been the result of excessive investment in assets issued by investment vehicles, whose prices plummeted in the summer of 2008 despite having high ratings. However, the worst effect of the current financial crisis has fallen upon their management institutions rather than on investors as such, due to the risk they undertake through their commitment of keeping a NAV pegged to one dollar.

In Europe, the effect has been quite heterogeneous across countries given the various possible portfolios under the existing definitions that, to a greater or lower extent, have allowed for higher risk money market funds. In broad terms, in the euro zone there are two types of money market funds: those aimed at maintaining a certain liquidity and security level, and those managed with a focus on increased return. The first group covers most of the money market funds in Spain, Italy and the so-called regular money market funds in France, while the second group includes most of the money market funds in Germany and dynamic money market funds in France. The second group of funds has been more seriously affected by the current liquidity crisis since, in order to obtain a higher return, they had invested in less liquid assets that turned out hard to sell when redemptions went up.

It should be highlighted that this crisis has driven money market funds to the extreme, since several money markets' liquidity has fallen dramatically. This fact has facilitated the identification of portfolios unsuitable for the ultimate purpose of these investment funds, in many cases favoured by the lack of legal limits that have favoured issues such as: high weight of less liquid assets; reduced weight of lower risk assets (public fixed income assets or commercial papers); or investment in assets with low credit rating.

The effects reported during the current financial crisis have brought on the reaction of regulatory bodies and international agencies, which have announced several recommendations and change proposals, regarding both regulations and operational conditions of money market funds. Amongst regulators, the CNMV has recently applied stricter restrictions to the definition of money market fund. Such restrictions were only fulfilled by a small number of registered money market funds.

Should these proposals make headway, money market funds will undergo significant changes in the forthcoming years, both in the United States, where increased protection is sought for money market funds and investors, and in Europe, where homogenisation and the clarification of the term "money market fund" are pursued.

The marketing of foreign CIS in Spain

Mª Lourdes Guindo Guindo (*)

* Mª Lourdes Guindo Guindo belongs to the CNMV's Directorate-General of Entities.

1 Introduction

The activity of collective investment schemes (hereafter CIS) is framed by the gathering globalisation of the issuance and marketing of financial products and services. This is especially relevant in the European Community, whose Directive 85/611/EEC (the UCITS Directive) harmonised the Europe-wide rules applying to CIS, while establishing the free circulation of the funds and companies subject to the same. These measures were subsequently written into Spanish legislation by article 15 of Law 35/2003 of 4 November on collective investment schemes (hereafter, LCIS), which also provides for the marketing of shares or units in CIS registered in another EU country but not subject to the UCITS Directive and those authorised in countries not belonging to the European Union. In the latter case, the scheme must seek the express authorisation of the CNMV and be entered in the register of foreign collective investment schemes (hereafter, FCIS) distributed in Spain. As we write, Spain is a net importer of collective investment products, with more FCIS registered for marketing than there are Spanish CIS registered abroad.

This article provides an overview of the current situation of FCIS registered in Spain. It begins with a backward glance at the development of FCIS, goes on to consider some of the key aspects of their regulation, marketing and supervision in comparison with Spanish CIS, then concludes with a summary of the main findings.

2 Historical development and current situation of FCIS

The presence of FCIS marketing shares and units in Spain has been expanding steadily since the first scheme joined the CNMV registers in 1989. In effect, their numbers tripled between December 2000 and December 2008 (see table 1). During this time, the number of funds rose from 76 to 312, overtaking companies in the year 2007. Companies, meantime, grew in number from 94 to 251. The largest increases took place between 2005 and 2007.

Key FCIS figures TABLE 1

	2000	2001	2002	2003	2004	2005	2006	2007	2008
No. of schemes	**170**	**191**	**219**	**233**	**238**	**260**	**339**	**440**	**563**
Funds	76	70	83	97	93	115	162	225	312
Companies	94	121	136	136	145	145	177	215	251
Assets distributed (thousand euros)	**8,594**	**7,533**	**6,538**	**9,159**	**17,786**	**33,615**	**44,103**	**37,093**	**18,181**
Funds	988	883	895	1,710	3,498	8,267	12,100	7,010	3,065
Companies	7,606	6,650	5,643	7,449	14,288	25,348	32,003	30,083	15,116
Participants (thousand)	**204**	**200**	**201**	**225**	**322**	**561**	**779**	**851**	**587**
Funds	22	24	17	31	51	104	144	143	112
Companies	182	176	184	194	271	457	635	708	475
Pro memoria:									
UCITS	167	188	216	229	233	256	335	436	558
Non UCITS	3	3	3	4	5	4	4	4	5

Source: CNMV and author.

The assets distributed by FCIS doubled in the 2000-2008 period (from 8.6 million to 18.2 million euros), with companies channelling most of the volume. This increase has its roots in: a) the creation of trading platforms by foreign funds, facilitating investors' access to the market, b) a growing interest in FCIS on the part of large net worth investors and c) a wide choice of products carrying a higher risk than the home-grown variety.

However the increase in FCIS assets distributed has not followed an even course. The onset of the financial crisis in summer 2007 cut short the growth trend and slashed their distributed asset volumes by 60% between 2007 and 2008. This decline owed to the surge in redemptions as investor confidence increasingly faltered, but also to the falling prices of portfolio instruments. Further, the collective investment industry had to contend for a time with strong competition from bank deposits, which gained in appeal with investors following the 2007 tax reform (standardising the tax treatment of savings products), and also with financial institutions, which stepped up their sale in order to combat their liquidity difficulties.

The number of FCIS participants too rose from 204,000 to 587,000 between the years 2000 and 2008. From 80% to 90% of these figures, depending on the year, corresponded to shareholders in companies.

These same three variables (number of schemes, assets distributed and number of investors) come out very differently when we look at domestic CIS (see table 2).

Key figures of domestic CIS TABLE 2

	2000	2001	2002	2003	2004	2005	2006	2007	2008
No. of schemes	**4,137**	**4,867**	**5,313**	**5,556**	**5,727**	**5,854**	**6,027**	**6,316**	**6,372**
Funds	2,467	2,599	2,538	2,554	2,628	2,730	2,869	3,017	3,016
Companies	1,670	2,268	2,775	3,002	3,099	3,124	3,158	3,299	3,356
Assets distributed (thousand euros)	**201,507**	**200,668**	**193,635**	**232,815**	**259,330**	**288,953**	**309,156**	**287,521**	**206,307**
Funds	186,069	181,323	174,734	210,627	236,154	262,201	279,003	256,040	179,613
Companies	15,438	19,345	18,901	22,188	23,176	26,752	30,153	31,481	26,694
Participants (thousand)	**7,879**	**7,748**	**7,428**	**7,985**	**9,240**	**8,859**	**9,199**	**8,639**	**7,105**
Funds	7,693	7,454	7,090	7,618	8,880	8,450	8,788	8,205	6,666
Companies	186	294	338	367	360	409	411	434	439

Source: CNMV and author

The number of domestic CIS rose by over 50% between 2000 and 2008. The register of CIS with corporate form doubled in this period, while the number of funds grew by 22%. As of December 2008, the files recorded slightly more companies than they did funds.

The assets of Spanish CIS expanded 2.4% from 2000 to 2008, though here too the financial crisis marked a watershed in their performance. From 2000 to 2006 their cumulative assets grew by upwards of 53%, only to fall back 33% in the two succeeding years. Investment funds account for over 85% of the assets distributed by domestic CIS. Companies start from well behind but have been expanding fast in recent years.

The number of investors in Spanish CIS grew in fits and starts to the year 2006, when it reached a record high of over 9 million. Since then, the fall has been so precipitous (over two million participants lost between 2007 and 2008) that the final numbers were 9.8% down vs. the period's outset. The decline traces exclusively to investment fund unitholders (-13.35%), since investment company shareholders increased year after year from 186,000 in 2000 to 439,000 in 2008. Note however that their numbers sum only 6.2% of the investor total.

We can draw various conclusions from the above statistics:

Firstly, companies dominate the FCIS sector by both assets and investor numbers, while the Spanish CIS sector is made up largely of investment funds. And while funds outnumber companies in the case of FCIS, the two are about neck and neck among domestic schemes.

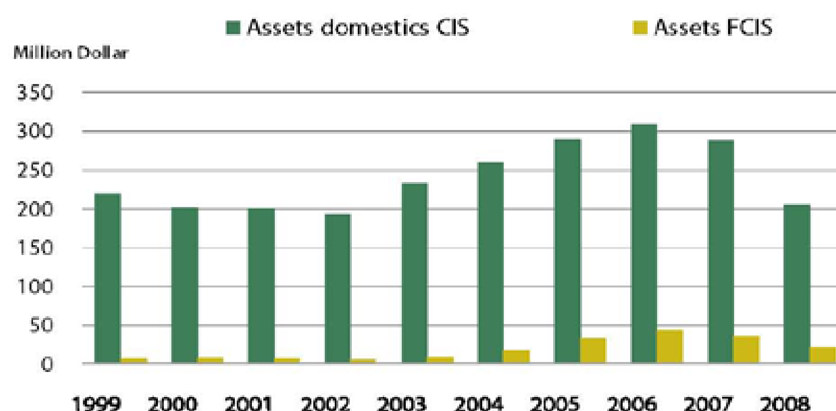
Secondly, the reasons for engaging in collective investment business tend to differ from domestic to foreign schemes. In Spain, the vast majority of companies are set up by private banks as investment vehicles for their large net worth clients, and only a very small percentage gear their offering to the general public. FCIS, conversely, are as likely to market companies as investment funds. In fact, as remarked earlier, most of the assets they distribute in Spain are held in investment companies.

FCIS gained relative weight versus domestic CIS over the 2000-2008 period:

- The number of schemes built up from 4% of the domestic CIS total in 2000 to 8.8% in 2008, with sustained advances year after year.
- The relative importance of FCIS assets and participants versus those of domestic CIS climbed steadily from 2000 to 2006 then fell away once more as the financial crisis took grip. In all, FCIS assets rose from 4.3% of the domestic CIS total in the year 2000 to 8.3% in 2008 (by way of a 2006 peak of 14.3%), while unitholder numbers rose from 2.6% to 8.3% (peaking at 9.9% in 2007).

Assets of domestic vs. foreign CIS

FIGURE 1



Source: Author.

More than 99% of the FCIS registered in Spain are UCITS or harmonised CIS, most of them with their registered offices in Luxembourg, France or Ireland, in that order (see table 3). These three countries are home to 88.45% of the FCIS registered in Spain. Although Luxembourg remains the most popular base for FCIS, those of French origin have been coming up fast since 2007, with increases of 47% in that year and 32% in 2008. A particular feature of French FCIS is the prevalence of exchange-traded funds; in 2008 alone, 20% belonged to this category, while the CNMV registers list 26 French ETFs that are quoted on the Spanish market. There are other French and Luxembourg-based ETFs entered in our registers, but they have not applied for admission to stock market trading.

Finally, the CNMV registers show only five FCIS marketed in Spain that are not compliant with the UCITS Directive, four of them German real estate investment funds.

No. of schemes. FCIS distribution by country of origin

TABLE 3

	2000	2001	2002	2003	2004	2005	2006	2007	2008
Luxembourg	118	146	158	165	164	161	189	230	274
France	33	13	19	21	25	35	83	122	161
Ireland	9	20	28	32	34	47	46	52	63
United Kingdom	3	3	4	4	3	5	6	12	14
Germany	5	9	9	10	11	11	12	15	16
Belgium	2	0	0	0	0	0	1	3	5
Austria	0	0	0	0	0	0	1	5	28
Malta	0	0	0	0	0	0	1	1	1
Netherlands	0	0	1	1	1	1	1	1	1
Total	**170**	**191**	**219**	**233**	**238**	**260**	**339**	**440**	**563**

Source: CNMV and author.

3 Regulation, marketing and supervision of foreign CIS registered in Spain

3.1 Regulation

The FCIS applying to register with the CNMV are subject to Directive 85/611/EEC, the Guidelines of the CESR[1], and the following Spanish provisions: Law 35/2003 on collective investment schemes, Royal Decree 1309/2005 approving the Regulations to Law 35/2003 on CIS and Circular 2/2006 of 27 June regarding information related to foreign collective investment schemes registered with the CNMV, as well as the advertising standards compulsory in Spain. Investors should also be apprised of other relevant Spanish legal requirements (particularly tax and exchange control regulations).

3.1.1. The development of FCIS regulations and formal procedures for registering with the CNMV

Since the first FCIS applied to market its shares and/or units in Spain, the CNMV has made numerous efforts to improve their registration process through the medium of regular circulars.

The way files are processed has evolved over time. Originally , the documentation FCIS had to send the CNMV (as per Circular 2/1993, which specified financial statements, plus any amendments to prospectuses, regulations or by-laws required by home state legislation) was both complex and time-consuming, considering that schemes possessed of an EU passport[2] are free to distribute their shares/units in Spain without leave from the CNMV. Also, the processing of files required the intervention of a series of intermediaries for each individual scheme, meaning the system was excessively cumbersome. It was in order to speed up procedures that the regulator issued its Circular 3/2003 of 29 December (repealing Circular 2/1993 of 3 March).

According to this Circular, a single distributor could be made responsible for supplying the CNMV with any updates to the registered material (prospectus, regulations and memorandum for the marketing of the scheme in Spain). And it also replaced the requirement to file financial reports with the CNMV with the obligation to have this information available for investor consultation at the regulator's head offices.

The registration procedure was further simplified by the rollout of an IT system allowing documents to be filed electronically, as specified in Circular 2/2006 of 27 June (repealing Circular 3/2003). The result has been to speed up file processing time and make information more quickly available, since the system has the capability to automatically update CNMV registers. The CNMV has also produced standard forms for certain documents, such as the memorandum on the marketing of the scheme within Spain, to assist the designated entity in preparing its paperwork.

1 Non harmonised provisions written into Spanish legislation in accordance with the guidelines approved by the CESR for simplifying the harmonised CIS (UCITS) registration process.

2 Certificate issued by the authorities of the home state to the effect that the CIS meets the conditions laid down in Directive 85/611/EEC.

Circular 2/2006 stipulates two figures to act as intermediaries with the CNMV. One, the entity responsible for electronic submissions, which may be the FCIS itself, its management company or a distributor or legal entity appointed by the scheme, and the other, a distributor designated by the FCIS to submit tax notifications in respect of corporate schemes under the requirements of article 52 of personal income tax regulations.

The above facilities make Spain a pioneer, together with Luxembourg, in the reception of mandatory documents by electronic means. The amended UCITS Directive, hereafter UCITS IV, envisages this same possibility at European level, and Spain will propose that the technical specifications developed by the CNMV become a benchmark for future electronic filing tools.

Another of the Circular's improvements is a reduction in the paperwork for already registered FCIS. Now they are only required to send any amendments to their simplified prospectus within a month, with a sworn translation into Spanish, and updates to the scheme's marketing memorandum for Spain.

3.1.2. Content of FCIS registered prospectuses

An analysis of the documentation provided by most FCIS with their registered offices in Luxembourg, France and Ireland reveals some important differences with respect to Spanish schemes.

The prospectuses of the FCIS registering their shares and/or units are organised differently depending on the country of origin. French prospectuses, for instance, have a well organised, compact structure similar to that specified by the CNMV for Spanish CIS, setting out the scheme's investment objective, risk profile, minimum recommended duration, expenses, commissions, tax treatment, etc. According to the CESR guidelines, simplified prospectuses should run to two pages at most. This precept is scrupulously respected by Spanish CIS, but French FCIS prospectuses, while certainly short, tend to occupy more than two pages. In contrast, Luxembourg and Irish simplified prospectuses lack any kind of standard format and do not adhere to the CESR guidelines regarding length.

As to the investment policies pursued by these FCIS, the information gathered during file processing (in the absence of direct statistical data) points to two distinct stages marked by the approval of the CIS Regulations (Royal Decree 1309/2005) and of a Ministerial Order on CIS derivatives trading (Order EHA 888/2008), both still in force. Prior to the entry of these norms, FCIS used assets not yet permitted under Spanish legislation like, for instance, derivative products on commodity indices or other underlying instruments. Their policies were also geared to high or very high risk profiles, which they addressed with products such as hedge funds. However, the Regulations and the above Order have largely done away with differences vs. domestic CIS as regards product risk or the range of assets eligible for investment. On the question of portfolio management strategies, FCIS have tended to be first movers in the Spanish market with such innovative techniques as CPPI (Constant Proportion Portfolio Insurance).

Another differential feature of FCIS is that they tend not to carry the guaranteed products so popular among Spanish CIS.

The question of fees is harder to elucidate, for while the fees published in domestic CIS prospectuses are those actually charged, most FCIS prospectuses disclose only a maximum amount or percentage. So it is not possible to draw any prior comparisons for this variable.

Note finally that the CNMV imposes tougher conditions for the registering of FCIS shares/units in Spain than the supervisors of partner countries. For example, all the documents required for registration (full and simplified prospectus and regulations or by-laws) must be stamped by the home state authorities, though here too each country has its favoured procedure. Thus French supervisor AMF treats the full and simplified prospectus and the regulations as a single document, so places its stamp on one page only among the three. Meantime, the documentation delivered by Luxembourg or Irish CIS bears the supervisor's stamp on the full and simplified prospectuses, while the regulations or by-laws are certified by a notary public.

3.1.3. The regulatory future: UCITS IV

The European Council's proposed recast of the UCITS Directive 85/611 aims primarily to write the recommendations of the 2006 White Paper on UCITS into a level 1 provision. It accordingly tackles such matters as the management company passport, fund mergers, master-feeder structures, the new simplified prospectus (to be known as key investor information), the cross-border sale of UCITS and supervisory cooperation. The changes introduced by the new Directive will come into force in July 2011 after the corresponding transposition period.

In connection, firstly, with the cross-border distribution of funds, UCITS IV envisions an authority-to-authority notification by electronic means, such that the home state authority conveys the start-out information directly to the host state regulator, who may not request any additional material. More importantly, marketing work can begin right away without the need to advise the host state authority. The CNMV's role, as such, will be confined to registering the documents supplied. However, any later changes in marketing procedures must be reported to the supervisor by the management or investment company.

Translation requirements are also simplified. In future, only the simplified prospectus will have to be translated into the local language of the host country, while remaining material can be drawn up or translated into a language customary in the sphere of international finance.

Finally, the host state authorities retain full powers of decision regarding all aspects outside the Directive's scope of application.

We can say then that the regulatory future will be much simpler for FCIS wishing to register in Spain. One possible drawback could be the adoption of level 2 measures concerning the technical side of electronic submissions which specify predetermined formats for automatic entry to the CNMV's registers other than those currently in use.

3.1.4. Supervision

Unlike domestic CIS, which come under the supervision of the CNMV, FCIS are overseen by the corresponding home state authority.

Rule 5 of CNMV Circular 2/2006 establishes that the legal entity appointed by the FCIS or, if applicable, each of its distributors must send the CNMV on a quarterly basis a statistical report on the funds marketed in Spain, including details like name and registration number, type of CIS, number of unitholders or shareholders, amount distributed and volume of investment.

The CNMV simply checks that this report is received within the stipulated deadline.

3.1.5. Marketing

FCIS, like their domestic counterparts, are marketed in Spain by entities authorised to sell CIS units and shares (Spanish brokers and broker-dealers, Spanish portfolio management companies, and European credit institutions and investment firms under certain conditions), which the FCIS has appointed as distributors in Spain by virtue of agreements filed in the corresponding CNMV register.

The FCIS registered with the CNMV are basically sold through the commercial platforms of major banks, whereas domestic CIS also use other standard financial product outlets like bank branches, brokers, etc.

In the 2006-2007 period, the top FCIS distributors were two Spanish banks, Santander (Allfunds and Banco Banif) and BBVA, and two foreign banks (Deutsche Bank and BNP Paribas). In 2008, the Spanish banks retained their lead in absolute terms but saw their shares drop sharply with respect to the previous year (by 64.4% in the case of Santander and 44.7% in that of BBVA). Among the foreign distributors, Deutsche Bank conserved its top ten place, while J.P. Morgan International Bank Limited moved into third spot behind Santander and BBVA. Note that the fifth position by investment volume is occupied by a brokerage firm (see table 4).

The top ten FCIS distributors in Spain TABLE 4

Share of total (%)	2006	2007	2008
Allfunds	19.90	13.3	6.5
Banco Banif	7.50	8.3	7.2
BBVA	9.70	7.6	4.2
BNP Paribas España	7.80	5.6	3.4
Deutsche Bank	5.90	6.3	5.8
JP Morgan International Bank Limited	-	-	6.2
Morgan Stanley*	3.90	3.5	4
UBS Bank	3.90	4.3	4.5
Sarasin Alén Agencia de Valores	-	-	5.5
Popular Banca Privada	3.70	3.4	-
Crédit Suisse	3.20	3.3	5.3
Banesto	2.80	3.3	-
Total top 10	**68.30**	**58.9**	**52.6**

* In 2008 Morgan Stanley's distribution business was taken over by La Caixa.

These commercial platforms provide an integrated suite of investment fund services spanning administration, advice and sector-specific information. They conclude agreements with the world's biggest fund managers for the sale of their shares or units, so can offer investors better conditions than they could get by buying directly.

Investors purchasing shares or units via these platforms can register them in their own name or that of a nominee. This second option is the most widely used by almost all registered FCIS; another difference with respect to their domestic counterparts. The use of nominees or omnibus accounts in CIS marketing is a common practice in partner countries. In Spain it was out of bounds for local CIS until the entry of the current law, in November 2005, but with its use confined to schemes distributing abroad.

The share or units subscribed by investors through these omnibus (global) accounts do not figure in their own names in CIS registers but in the name of the nominee, who holds the shares or units on trust for the investor, notwithstanding the internal itemisation realised by distributors in Spain in order to keep individual account records for each client who transacts with them directly. To this end, they must secure an authorisation from the client after informing him/her of the risks entailed and of the credit rating held by the nominee entity.

Spanish investors subscribing FCIS shares or units through authorised distributors must be supplied with the same material delivered to anyone investing in domestic CIS –simplified prospectus and financial reports– plus the fund marketing memorandum attached as an annex to the simplified prospectus. This memorandum, as stated, is a standard document setting out relevant facts about the fund's distribution in Spain, such as the registration of shares/units, the subscription/redemption procedure and the tax rules applicable.

The CNMV's supervisory labours regarding FCIS distributors in Spain are largely the same as for the distributors of domestic products. Essentially, it oversees compliance by means of scheduled inspections supplemented by specific investigations in the case of investor complaints or charges.

4 Conclusions

There are several conclusions we can draw from the overview of FCIS marketing presented in this article.

The first is that CIS business is organised differently in partner countries compared to Spain as regards the split between funds and companies. FCIS mostly market investment schemes with a corporate form, while a majority of domestic CIS are investment funds, with the company structure basically reserved for private banking investors. Conversely, the policies, strategies and other contents of their sale prospectuses are in most respects similar.

Because of these differences, FCIS registered in Spain have ceased to compete head on with domestic CIS, due basically to their wider investment scope, and are now just one more in a list of financial products.

Finally, the CNMV's powers in FCIS-related matters are confined to registering the information they supply on the marketing of their shares or units and to control and monitor the sales practices of their distributors in Spain, since their supervision falls to the authorities of their home state. It has, however, made a major effort to speed up and simplify administrative procedures, employing normative and technical means to maximise their efficiency.

Some key aspects of IA – the increasing role of Impact Assessment in European financial regulation and supervision

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Abstract

This article gives an overview over some key aspects of Impact Assessment (IA), an approach to policy making which plays an increasing role in financial regulatory policy and supervisory practice within Europe. It aims at providing the reader with the intuition and the basic understanding needed to consider the potential usefulness of IA and its implementation in practice. The article highlights the generally modest, but necessary changes to more traditional approaches to the policy making process it implies. Much emphasis is put, in this regard, on market, regulatory, and, in particular, supervisory failure analysis, in contrast to other, better known key elements of an IA which are the evaluation of the positive and negative effects of a range of alternative policy proposals, and a proper process for public consultation.

1 Introduction

Impact Assessment - or IA in short – is a concept which has come ever more to the fore over the last decade in Europe. In the area of financial regulation, this development has culminated in April 2008 in the adoption by the three bodies in charge of financial regulation in the EU, the so-called Level 3 Committees, CESR, CESB, and CEIOPS[1], of a common document: the "Impact Assessment Guidelines for EU Lamfalussy Level 3 Committees". The event was given sufficient importance for the Chairs of the three Committees to decide to write a common foreword, in which they stress the fact that the IA Guidelines, if used effectively, will "give additional structure to policy making and reinforce the Committee's commitment to transparent, and evidence-based policy making. One key feature through which this is achieved is the role given in the Guidelines to market and regulatory/supervisory failure analysis as tools for ensuring that the case for regulatory intervention is considered properly." The importance of that approach for national regulators stems in part from the fact that the L3 Committees play a key role in the development of regulatory policy and supervisory practice in the European Union and that they are therefore directly or indirectly at the origin of what happens at the level of the Member States.

This article, whose intended audience is supposed to come from a broad range of areas with a possibly heterogeneous background (lawyers, accountants, economists, administrators, fund managers, traders, etc. working, for instance, as regulators, supervisors or being market participants, or generally interested readers), gives, in section 2, a brief overview of how the Impact Assessment approach came to its current prominence with financial regulators in Europe. It then explains, in section 3, key aspects of the methodology. Market failure analysis is dealt with in more detail in

1 CESR is the Committee of European Securities Regulators, CEBS is the Committee of European Banking Supervisors, and CEIOPS is the Committee of European Insurance and Occupational Pensions Supervisors.

section 4, and regulatory failure and supervisory failure analysis in section 5, before section 6 concludes. The article's aim is to provide basic information on those areas of the IA approach, which, in the experience of the author, are less familiar to the intended audience.

2 Some history

The increasing place IA has within European financial regulation is part of a larger movement in which the European Commission's "Better Regulation Initiative"[2] played since 2001 a key role. The initiative was the basis for the development, over the last 10 years or so, of an IA culture within the Commission which was reflected in the establishment of an Impact Assessment Unit in DG Markt, and, in June 2005, in the publication of the Commission's "Impact Assessment Handbook". This handbook, which integrates and replaces the previous approach of single-sector type of assessments, has a broad focus covering all economic sectors and giving due weight to the social and environmental impact of proposed policy measures[3].

At the same time, regulators across Europe took their own initiatives in terms of reforming their approach to regulation. For instance, the British Financial Services Authority was given, by the Financial Markets and Services Act of 2001, principles of good regulation which include a thorough focus on "Cost-Benefit Analysis" (CBA), a term which often is used interchangeably with IA. "RIA Guidelines" (Regulatory Impact Assessment is another term sometimes employed in place of IA or CBA) were published by the Irish financial regulator in 2005, and in Germany, the government published a kind of RIA Guidelines[4] as early as in 2000. Moreover, many other regulators across the EU already had key elements of the impact assessment approach in place, like considering several alternatives in the process of policy making, or consulting market participants publicly before taking a final policy decision.

In parallel, the financial services industry embraced the new approach, particularly when the scope of the Commission's progressive Financial Services Action Plan (FSAP) became more visible. It is, however, fair to say that some initiatives by the private sector date back much earlier, like the impact analysis used by the Italian Banking Association, ABI, which is very much complementary to what regulators aim at.

It is therefore not surprising that the three Level 3 Committees, when they assessed the question of the usefulness of the IA methodology and the need for developing their own guidelines gave a positive answer to it in order to reflect the specialised nature of the financial services regulatory policies and supervisory practices, as well as the specific circumstances in which they are developed within the European Union. Since the publication of the L3 IA Guidelines, several measures have been taken by the Committees to develop the IA approach within the financial regulatory community: in October 2007, the first 3L3 training seminar in Eltville (Germany) –devoted

2 This initiative grew out of the Göteborg and Laeken Councils in 2001, which gave two directions: the need to consider the effects of policy proposals in their economic, social and environmental dimension, and to simplify and improve the regulatory environment.

3 One might stress that similar initiatives also exist at the international level (see, for instance, the "Guiding Principles for Regulatory Quality and Performance" of the OECD from 2005).

4 Leitfaden zur Gesetzesfolgenabschätzung (which can be translated as guidelines for the impact assessment of legislative proposals).

to IA topics, which was followed by another similar seminar in June 2009 in Warsaw (Poland)– both these seminars, and other should follow, spanned all financial sectors; sector-specific training seminars for securities, banking and insurance and pensions regulators organised by the three respective L3 Committees; implementation of the commitment given by the L3 Committee Chairs through impact assessments carried out by the expert groups, working groups and task forces which develop and assess policy (this is often done with the support of specially designated IA advisors), and publish the result of their IAs in consultation papers; finally, in the course of 2008, the IA Network was established which ties together the IA advisors and the experience they make within the work streams of the three respective L3 Committees in order to ensure a consistent and homogenous approach across all regulatory policies and supervisory practices in the different financial sectors.

3 What Impact Assessment means[5]

IA is a way of identifying whether or not there is a problem in the market, how serious it is, whether or not the situation can be left to the market alone to resolve or can be improved upon through some form of regulatory response. It implies assessing the likely effects –positive ones and negative ones, direct effects and indirect effects– of proposed regulatory changes or the impact of previous regulatory interventions. It involves a structured analysis that helps clarify the potential advantages and disadvantages of proposed policy options and whether or not they would have the desired impact in practice. IA helps to identify unforeseen side effects and hidden costs associated with regulation. It also provides for consultation with stakeholders to make regulatory policy more transparent and to ensure that their views and interests are understood and taken into account as appropriate. Thus, IA provides information that can help policy makers to rationalise the policy making process and thereby improve the efficiency with which the most effective policies are identified, chosen and implemented.

In other words, an IA is more than just the investigation of the effects of a regulatory policy which is already decided. The reason is simple: when such an investigation revealed that the policy has negative effects which have been neglected or overlooked before, it would be often too late or very costly to revise and change it. Therefore, an IA includes analysing the very reasons for a policy proposal right from the start of the policy making process when the nature of the problem is still to be identified. It is however not identical with that process, as it is only a tool to help decision makers to carry out their work, not to substitute to it.

An IA typically involves the following eight key steps:

i Identifying the problem and the threat it poses to regulatory objectives. Market, regulatory, and supervisory failure analysis provide a coherent framework for analysing problems and the risk they pose to regulatory/supervisory objectives, and deciding whether or not intervention in the market is justified.

ii Defining broad policy objectives - linking a proposed policy and its specific and

5 The following sections very much rely on the presentation in the EU L3 IA Guidelines. This presentation has, however, been slightly changed and geared towards the interests of securities markets regulators and supervisors.

operational objectives to regulatory objectives helps justify regulatory interventions.

iii Developing main policy options –it is important to identify a range of policy proposals, including the "do nothing" (or "status quo") option and "market solutions", i.e. solutions without any regulation and supervision.

iv Assessing the likely positive and negative effects as well as the net effect of each policy option. It is important to consider possible side effects and unintended consequences of the policy options. The consistency and cumulative impact of implementing several policies simultaneously should also be considered because of the possibility of links between policies which might at first seem unrelated –for instance because they concern different policy areas.

v Comparing options, i.e. the balance between positive and negative effects, and identifying a preferred policy option.

vi Consulting on the draft policy proposal which also reports on the IA by communicating the way in which steps (1) to (5) have been considered in a clear and effective way to all stakeholders. The stakeholders are given an appropriate response period.

vii Publishing the responses received and giving public feedback that explains what the final policy decision is and why it was made given the results of the consultation.

viii Once it is implemented and enforced, the policy should be kept under review as appropriate.

This IA process involves effective engagement with stakeholders throughout –possibly in addition to the formal consultation process set out in step 6. These key steps, which include many intuitive elements, are explained in more detail in the EU L3 IA Guidelines and this article will not belabor each of them. Instead the focus will be, in what follows, on step 1 which deals with market, regulatory, and supervisory failure analysis.

4 What market, regulatory, and supervisory failures are and why they matter for an IA

Market failures are a feature of markets which generate inefficiencies, where inefficiency refers to a market in which it is possible to generate an overall welfare gain. By identifying the exact nature of a market failure, it is possible to consider what types of policy response might generate such an improvement in welfare.

In an efficient market:

1. prices reflect all costs, including costs to third parties, which may mean e.g. the market failure "externality" is absent. This type of market failure can occur where financial services firms fail to take account of the effect that their actions might have on the wider market place (like the failure of a key player in the market);
2. consumers and financial services companies take decisions that reflect all pos-

sible, relevant information, i.e. the market failure "information asymmetry" is absent. This is often not the case, for example, because investors have a limited knowledge of the quality of investment products. It is important to note that information asymmetries generally only lead to market failure in circumstances in which an informational advantage is exploited. This can happen when two parties' incentives are misaligned;

3. firms cannot make excess profits by charging prices in excess of "marginal" cost (which is the increase in a firm's total cost when output is increased by a very small unit, and in the long run includes the cost of capital), i.e. it has not influence on the market price as the market failure "market power or lack of competition" is absent; and

4. when there is rivalry between the consumption of a product and market participants can be excluded from the consumption of this product. In other words, the market failure "public good" is absent.

A more detailed explanation and examples of these four market failures is given below. There are other market failures, but focussing on these four captures much of the essence of market failures in the area of financial markets. Regulatory and supervisory failures can be analysed as actions by regulators or supervisors which unduly fail to alleviate or eliminate or even generate market failures for a variety of reasons discussed in more detail in section 6.

Why does the presence and extent of these market failures matter? In an efficient market firms produce at the lowest possible cost, in terms of resources used, and consumers buy the products they want at the minimum possible price for a given quality. Moreover, at this price, supply and demand are in balance. To the extent that transactions lack these characteristics, there is a "welfare loss" –a waste of resources– which regulation and/or supervision may be able to address. But regulation/supervision can only be justified by a market failure when it can improve on the market solution to that market failure. There may be various circumstances in which regulation and supervision are able to achieve this, but there are also other situations in which they are not of any help or even might make things worse.

The first key analytical step in the proposed IA methodology is to establish whether or not there is an economic case at all for regulatory/supervisory intervention by conducting a market, regulatory, and/or supervisory failure analysis as not only markets may create inefficiencies, but also regulatory and supervisory actions (more on this in section 6). At first, the understanding of the perceived problem will be intuitive. However, it is essential for good policy making that such intuitions are confirmed or corrected by a thorough analysis.

In essence, this exercise consists in answering the following questions:

- Is there a significant market, regulatory and/or supervisory failure and what is its nature?
- If no intervention or further intervention take place, will the market correct the failure by itself in the short term?
- Can regulatory/supervisory intervention improve the situation in a way such that the benefits obtained are larger than the costs generated?

If significant market, regulatory and/or supervisory failures are identified, the market is not able to correct the failure by itself, and there is a policy which generates a benefit which is larger than its costs, regulatory/supervisory intervention is justified. If no such policy option could be identified then it would be best to leave the market, regulatory or supervisory failure unaddressed –even though the market may not work very well. In what follows, the concepts of market and regulatory failure are explained further. Obviously in practice, it is not always easy to present policy decisions in such simple terms. However, using the framework proposed by the Guidelines has already proved valuable in many circumstances and allowed to make progress in situations which looked at first glance rather intricate.

5 Some key types of market failures

In this section, the four types of market failures presented previously will be elaborated somewhat further, including some examples from the area of securities markets.

5.1 Externalities

A good or service generates externalities if its production or consumption affects the welfare of economic agents (i.e. people or firms) other than its original producers or consumers without prices reflecting such effects. Externalities may be negative and/or positive. They are "negative" for those on whom they impose costs and "positive" for those who gain from them. Negative externalities occur in a production process when decisions adopted do not take account of all the costs which result from the firm's actions but are not borne by it.

> *The classic example in financial services is systemic risk in securities markets, where the failure or even the risk of a failure, for instance, of a larger fund or a group of funds or a fund which plays a key role in a given market lead to runs on, for instance, other funds (for instance in terms of significant redemptions) with potentially significant implications for the wider market and considerable financial damages for investors. The key issue is that the entity which generates the systemic risk does not take into account, when it decides about its business strategy, the possible costs imposed on others. In other words, it has the potential to severely "pollute" the financial markets without having to pay for that.*
>
> *One concrete example is the failure of the derivatives dealer Enron Corporation in December of 2001 which exposed the practice of using OTC derivatives to hide debts or losses, and artificially boost income. It revealed that collateralizing OTC derivatives might be inadequate as a risk mitigation device. Enron's failure showed how a bankruptcy can have a sever impact beyond the immediate creditors and cause sharp declines in the market capitalization not only in the energy sector, but the overall equity market. One reason was that investors were – in the face of intransparent trading markets – compelled to presume that almost any firm had a potentially large exposure to Enron. In response, many firms voluntarily announced their losses to Enron because they feared that the market's expectation would by far overestimate the true losses.*

Consumer fraud may be regarded as a negative externality in consumption. Financial crime also bears negative externalities in terms of the costs people incur in defending themselves against it and in being involuntarily associated with it.

5.2 Imperfect and asymmetric information

Individual decisions are affected by imperfect information about quality (that can be unobservable ex-ante), price (information on which can be very costly to obtain) and the future (data on which can be unavailable). Information asymmetries exist when one party to a financial transaction has more or better information than the other party and exploits its informational advantage. Excessive costs of accessing information, for example, may give rise to this market failure.

> *Some financial products (or the firms supplying them) may be so complex that disclosure, by itself, cannot enable customers to make informed choices. In financial services, the outcome of a contract may depend on the provider's financial soundness and competence for decades into the future. This information cannot be known at the point of purchase.*

Information asymmetry can work both ways. A product provider may be selective about the information that it gives the investor: it prefers not to reveal information that puts the product in a bad light. Equally, a purchaser of product may not disclose that he or she has privileged information, for instance, about the true value of the product. An important area in which information asymmetry may explain the market outcomes that we observe is where one party to a transaction (the principal) uses an agent to act on his/her behalf. The principal aims to sign a contract that aligns the agent's interests to his/her own. But it can be hard for the principal to monitor the agent (an information problem) and the agent may have incentives to take specific decisions that are not aligned with principal's interests.

> *An important example is when an investor (principal) uses a financial advisor (agent) who is remunerated through commission paid by a product provider. Another simple example is when the investor (principal) uses a fund manager (agent) to invest his or her funds.*

It is sometimes useful to classify products/services according to the nature of the informational problem linked to them[6]:

- "search goods", where the products are typically homogeneous, the quality is known ex ante and consumers/investors are "searching" for the lowest price;
- "experience goods", where the products are typically heterogeneous (i.e. the price depends on the quantity and the quality), and their quality becomes known ex post, i.e. after the product has been purchased;
- "credence goods", where the quality may never be discovered, even after the product has been purchased. The consumer/investor has to have faith into the judgement and competence of the product provider.

6 In line with standard terminology in what follows the term "good" is used instead of "product". The classification can easily be transposed to financial products.

Financial products are often, but not always, similar to credence goods. This may be the case, for instance, for apparently standardised products like company shares, financial futures or vanilla-type options. Indeed, the value of the share may depend critically on the corporate governance structure, the possibility to enforce voting rights and the quality of the management. Similarly, the value of the future or the option depends on the quality of money management.

Two forms of asymmetric information can be distinguished depending on the exact timing at which the information asymmetry occurs, i.e. before the transactions' contract is signed (so-called "adverse selection") or afterwards (so-called "moral hazard").

An example of the first situation, adverse selection, is when the seller of a financial product may have private information about the quality of a product at the time of contract. In the fund industry, an example would be an investor putting money into a fund offering high returns without being aware, for example because of misleading information, that the fund pursues a (possibly unsustainable) high risk strategy.

An example of the second situation, moral hazard, is when the buyer of a financial service may not be able to assess the quality of the service after conclusion of the contract. Another example would be when investment firm managers are inadequately monitored by shareholders, because the business strategies chosen by the managers may be more risky than the shareholders would accept. This problem is likely to be particularly relevant when the managers can profit from the upside of the business strategy, but it is mainly the shareholders who are affected from a downside movement. In other words, as a result of moral hazard, the business strategies may be more focussed on the private benefits of the managers than on maximising profits and dividends.

In the context of financial market regulation, the distinction between the two forms of asymmetric information may be needed since the means of regulation to address these problems may differ, as well. For instance, while in the former situation it may be appropriate to stipulate certain disclosure requirements, in the latter situation, a regulatory measure could define the liability of the service provider.

5.3 Market power

Market power is exercised when prices are changed solely by the decision of one or a few market players: prices are set by these firms with limited regard to customers or competitors, such that revenues above the marginal cost of all production inputs (including the market cost of capital) can persist rather than be eroded by competitive pressures. In other words, there are, in contrast to a situation of perfect competition, excess profits. Market power can arise if firms collude and agree on a price strategy or if there is de facto collusion – which may be tacit in nature. Market power is also exercised through the use of brands, when prices and costs are not really interlinked (the brand premium may far exceed the cost of creating the brand). It can also result from investor inability to discipline producers, probably due to information asymmetries, so that a false competitive focal point may drive transactions.

For example, one effect of "fit and proper" requirements or conduct of business requirements is to create an entry barrier that reduces the strength of competitive pressures.

There is also the case of natural monopoly. This arises where sunk costs are very large relative to unit production costs, so that average costs are decreasing for any volume of production for which there is demand. If there are these kind of economies of scale in production or there are network economies in distribution, a single producer or distributor seems the most efficient means of satisfying all demand. Aside from huge sunk costs acting as a barrier to entry giving rise to natural monopoly, a non-natural monopoly may be created by other barriers such as regulation. Market power is often, but not always, reigned back in contestable markets by the threat of potential entrants.

5.4 "Public goods"

Public goods as opposed to "private goods" have two particular characteristics: first, no additional cost has to be incurred in order for an individual to benefit from consumption of the product, i.e. there is no rivalry between market participants for its consumption; secondly, it is impossible or at least very difficult to exclude individuals to benefit from such products.

An example of a public good in the context of financial markets is financial stability. Every market participant benefits from financial stability and the "provision" of this "good" for an additional market participant is basically costless. In other words, if the financial market is stable, every market participant can benefit from this situation without affecting the ability of others to benefit from stability. In this context, the monitoring of the solvency of financial firms who are systemic in nature can be considered to be a public good as the financial health of these firms is a precondition of financial stability.

Regarding the provision of public goods, the market mechanism in general fails to generate an efficient outcome and produces too little of the public good. Because the market will not supply or will supply too little of it, public goods may provide a rationale for regulatory or supervisory activity.

In the example of financial stability, this would correspond to a situation where, if the market were left to decide on its own about the measures taken to promote financial stability, it would not take up all steps necessary to efficiently achieve a stable situation.

The reason for this sort of market failure is that the producer of the public good does include into its business strategy that the good will also benefit other market participants. Moreover, every market participant will anticipate benefits from the provision of other market participants for free. In other words, they will free ride. This reduces the individual incentive to incur the cost of production.

Preserving stability in the financial markets is one of the main objectives of financial regulators. Regulatory intervention is warranted since following the reasoning described above, private action does not in general contribute to maintaining market stability and may often have incentives conflicting with it.

The provision of generic information about financial products can be seen as a public good. There is a demand from investors for such information, but it may not be worthwhile for any one firm to expend significant resources in providing it, because much of the benefit would accrue to its competitors. The result is that the market –if left to its own devices– does not provide as much generic information as investors would be willing to pay for.

6 The potential for regulatory and supervisory failure

Regulatory and supervisory failures, like market failures, may be an economic justification for further regulatory/supervisory intervention (including deregulation). They refer to actions whose economic costs are higher or economic benefits lower than was originally expected such that the net effect is harmful or more harmful than it need have been.

This typically happens where regulation or supervision has unforeseen and unintended effects arising from the interaction with a specific characteristic of the market affected, or when the regulatory or supervisory practice is no longer adapted to the realities of a rapidly evolving market. For example, a specific action may have been intended to increase welfare but in fact reduced it by distorting rather than facilitating competition or by not being correctly targeted on the relevant market failure. Equally, it may have been expected that an intervention would reduce welfare but the reduction may in practice have been much greater than expected. This might happen because of unforeseen effects of the intervention on other economic markets or because demand in the targeted market was much more sensitive to price increases than was believed to be the case.

Appropriate weight has to be given to phenomena of supervisory failures. One reason is that this kind of failure creates inefficiencies which may be as strong as those generated by market or regulatory failures, but because there are rooted in the daily practice at working level within a space of possibly very heterogeneous and specific supervisory cultures, they are more difficult to discover, identify, and reduce or eliminate. Traditionally, no distinction has been made from an IA perspective between regulation and supervision, perhaps because supervision was considered to be one particular aspect of regulation, i.e. its implementation in practice. However, it occurs that the supervisory practice and regulation may be both distinct and complementary. They may be distinct, because supervisory practice, for instance, does not necessarily follow existing regulation (which would be sometimes a case for enforcement), and they are complementary as practical supervision might, for example, have to find solutions to details unforeseen by regulation. In practice, the worlds of supervision and regulation are also often somewhat separate within financial authorities (though bridges certainly exist). As a result, it seems worthwhile giving more weight than in the past to the analysis of supervisory practice from an IA perspective.

One aspect often overlooked in the process of regulation and supervision is that they may affect competition in various ways. For example, regulation concerning the process of becoming authorised may reduce or erect a barrier to entry and therefore increase or decrease competition. Imposing high level of fixed costs or limiting ac-

tivities to some institutions or individuals may result in a decline in the number of competing firms or individuals. It is sometimes difficult to be clear about the extent of competition in a given market. Competition is a process which pushes firms to decrease the prices and to increase the quality of their products, where those who perform better drive out those who perform less well, and where the entrepreneurial spirit can unfold. It might be tempting to identify competition with rivalry, i.e. a process where competitors try to outperform each other. However, such a definition would not convey with any precision how much rivalry is good. Effective competition can be defined as a situation where firms do not make any excess profit (which is not necessarily the case under rivalry).

It is important to keep in mind that regulatory and supervisory interventions generally do increase the cost of producing financial services. In addition to the direct increase in prices or reduction in sales that this might lead to, prices can also be affected by competition and market parameters, like interest rates. What then needs to be analysed is the effect of the cost increases and how these effects balance with other effects: (i) will the costs be reflected in prices? i.e. will costs be passed to consumers?, (ii) if costs are reflected in prices, by how much will sales fall? and (iii) will the efficiency of competition be negatively affected and what might this imply for the consumer in terms of prices and supply? These are often difficult but always important questions to answer. More generally speaking, when assessing a policy, it will be important to consider the direct costs as well as indirect costs of regulation.

To summarise, in the identification of regulatory and/or a supervisory failures, there are at least five possibilities to keep in mind.

- First, the market may not have been subject to a significant market failure and the observed problem may be due to the effects of existing regulation/supervision. This could be regulation/supervision that was wrongly prescribed for this market or regulation/supervision that was intended to affect another market but unexpectedly impacted on this one too.

- Secondly, the market may have been subject to a significant market failure and regulation or supervisory practice was introduced that was successful in correcting it: the problem we observe may be due to a different market failure and have another cause. It may, for example, be a side effect of the successful regulation or of other regulation.

- Thirdly, the relevant market may have been subject to a significant market failure and regulation or supervisory practice was introduced that actually made it worse.

- Fourthly, the relevant market may have been subject to a significant market failure and regulation or supervisory practice was introduced that has so far failed to work but may do so in due course.

- Fifthly, the case when national regulators and/or supervisors do not have the authority to act on a matter or when bureaucratic issues block the function of the single market.

7 Conclusions

This article gave an overview on the current practice of Impact Assessment (IA) in the area of financial regulation. It stressed particular one possible change with respect to more traditional approaches to the process of policy making and supervisory practice: the need to give more weight to market, regulatory, and supervisory failure analysis. Thereby, this brief presentation has put slightly more emphasis than the L3 IA Guidelines themselves on the notion of supervisory failure. One reason is that this kind of failure creates inefficiencies which may be as strong as those generated by market or regulatory failures, but because there are rooted in the daily practice at working level within a space of possibly very heterogeneous and specific supervisory cultures, they are more difficult to discover, identify, and reduce or eliminate.

Finally, it needs to be stressed that the IA approach is much more flexible than it might seem at first glance. Indeed, one of its principles is proportionality, which means that an IA needs to be proportionate to the significance, complexity and uncertainties of the problem or problems to be solved. Otherwise, it risks consuming scarce resources inefficiently or being insufficiently robust. Both would be counterproductive. The principle of proportionality will allow regulators and supervisors to keep the detail of IAs within reasonable limits.

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III Regulatory novelties

New aspects of the accounting standards of securitization funds

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1 Introduction

In recent years the securitization fund (SF) sector has recorded substantial development marked by its rapid growth, since it has grown from 20,000 million euros issued to 2002 to around 140,000 million euros in 2008. Changes have also been recorded in its operating possibilities, since the opportunity has been opened up, after creation of the SF, to incorporate new assets or issue new liabilities, or extend the range of assets susceptible to securitization. This growth and these changes explain why there has been a greater demand for information by investors in this type of structure[1].

The need to intensify transparency, in particular with respect to complex financial products, such as those relating to the securitization process, has been highlighted at various international levels, in particular the recent G-20 Washington and London communications[2], which seek better and enhanced breakdowns regarding these products and the risks associated with investment in them. The Financial Stability Forum, in June 2009 when updating its report on measures to improve reaction capacity of markets and institutions, also highlighted these aspects, proposing a greater informational breakdown with respect to assets securitized and their security, and in the periodic information to be issued, in line with the proposal of the international securitization associations (SIFMA, ESF, ASF, AuSF) in their joint report of December 2008.

This all makes it necessary to have uniform, standardised, periodic and complete information in order to achieve adequate informational transparency which accords to the current reality of the sector.

Current regulation to date[3] has already obliged funds to publish their annual accounts, which had to be the subject of audit and were prepared in accordance with the Spanish 1990 General Accounting Scheme (Plan General de Contabilidad – "PGC"). These standards, however, have been repealed by the new PGC promulgated by Royal Decree 1514/2007, of 16 November, which aim to a very high degree to harmonise our internal accounting legislation with the International Financial Reporting Standards (IFRS). This new Scheme includes greater use of reasonable value, particularly in the field of financial instruments; an obligation to include new statements, such as Cash Flow Statements and Statement of Changes in Net Worth; and the need to include further breakdowns in the explanatory notes.

The new legislation represents a substantial improvement in the quality of the pub-

1 As highlighted in Gregorio Arranz Pumar: "El modelo español de titulización: una aproximación jurídica institucional". CNMV Bulletin. Quarter I, 2009, pp. 90-102.

2 In November 2009 and April 2009, respectively.

3 Securitization funds are basically regulated by Act 19/1992, of 7 July, in relation to mortgage securitization funds (MSF), and Royal Decree 926/1998, of 14 May, regulating asset securitization funds (ASF). Both are generically referred to in this article as SF.

lic financial information available to investors. Nevertheless, it does not take into account the particular structural and operational features of SF. The need thus arose to adapt the new PGC to the particular features of SF. CNMV Circular 2/2009 responded to this need, and to that of establishing a gradual implementation.

This article examines the principal new features and adaptations which have been made in the new Circular in order to take into account the particular features of SF previously described. Section two includes the considerations which led to developing the Circular, section three describes its general aspects, sections four and five relate to accounting principles and information requirements, section six to the transitional period for application and section seven summarises its preparation process. Finally, section eight contains the principal conclusions.

2 Legislative impulse behind the sector plan

The CNMV 2007-2008 activity plan provided for adaptation of sector plans of the different entities supervised to the new accounting framework, which was carried out during 2008 for collective investment undertaking management companies, investment services firms, risk capital companies, governing companies and collective investment undertakings. However, SF did not have a previous scheme and it was necessary to create it from scratch. The possibility was initially raised of applying the new General Accounting Scheme directly to SF (Royal Decree 1514/2007, of 16 November), as happened with the 1990 Scheme. Nevertheless, evolution in the sector and in international legislation in the field, particularly at accounting level, required specific rules which facilitate preparation and understanding of the public and statistical information of SF.

The CNMV 2009 activity plan thus included, as an objective, sector accounting adaptation by publication of a specific Circular for SF.

The new 2007 Accounting Scheme harmonises Spanish accounting standards in line with International Financial Reporting Standards (IFRS). The result is a profound reform of our accounting regulation which includes the following new features: greater use of reasonable value, particularly in the field of financial instruments, an obligation to include new statements such as Cash Flow Statement and the Statement of Changes in Net Worth; and the need to include new breakdowns in explanatory notes.

The new legislation represents a substantial improvement in the quality of the public financial information available to investors wishing to ascertain the financial situation of undertakings. Nevertheless, some shortfalls can be highlighted in the case of SF, since it does not take into account their particular structural and operational features, which particularly include:

- A lack of legal personality, not having a net worth and their results being zero, insofar as any surplus is attributed to the assigning entity via a mediation margin or similar.
- They present a pass-through structure, by being positioned as mere intermediaries between the holders of bonds issued by the SF itself and the assets securitized

or transferred by the assigning entity, and in this respect bondholders have the securitized assets as sole security, including the creditworthiness improvements accorded by the assignor.

- They are institutions for which registration in the Commercial Registry is optional, and therefore various doubts were initially raised regarding their subjection to the Commercial Code and their conceptual accounting framework. However, the conclusion was eventually positive, taking into account the pull of commercial law and the broad nature by which the scope of the Spanish General Accounting Scheme is defined.

In addition, application of the Accounting Scheme directly to SF raises difficulties which would have to be resolved, such as:

- The disappearance of start-up expenses linked to subordinated loans could alter the financial balance of SF already created and give rise to their liquidation;
- The absence of net worth and legal obligation to include a statement of changes therein;
- The need to establish principles which permit the pass-through structure of SF to be reflected in accounting terms.

Furthermore, in January 2008 the European Central Bank (ECB) began to draw up a regulation for the purpose of obtaining statistical data at European level on securitization operations. In order to obtain this data in Spain a prior legislative development was required. The ECB Regulation[4] was eventually approved in December 2008.

Finally, as well as annual accounts, SF have been publishing certain information on each coupon payment date to holders of liabilities issued. However, there was no uniform simultaneous information on all SF which could facilitate monitoring by investors, analysts, rating agencies and other users.

As a result of the foregoing as a whole, over the course of 2008 work began on legislation which would not only adapt the new accounting scheme to SF but would also include the information requirements of the ECB and accord uniformity to the information issued by funds.

The SF legislation itself is set out in CNMV Circular 2/2009 on accounting standards of securitization funds[5], to which this article is devoted. This legislation develops the Accounting Scheme and is in line with the philosophy which inspired the Transparency Directive, which although not necessarily applicable to all SF, –for example, private SF are excluded whose securities have not been the subject of public offering and are not admitted to trading on a regulated market– has served as a reference framework to improve the transparency of these institutions.

In addition, it must be emphasised that its preparation took into account the viewpoints of the sector and representatives of auditors, who provided a comparison be-

4 Regulation (EC) 24/2009 of the ECB relating to statistics on assets and liabilities of instrumental companies engaged in securitization operations, of 19 December 2008.

5 Circular 2/2009, of 25 March, of the Spanish National Security Market Commission (Comisión Nacional del *Mercado de Valores*), on accounting standards, annual accounts, public financial statements and reserved statistical information statements of securitization funds.

tween the different possible alternatives in each of the more significant areas of the Circular.

As indicated in its first section, Circular 2/2009 must be applied by mortgage and asset SF in preparation of the information included in annual accounts, public financial statements and reserved statistical information statements.

The Circular will be applicable to over 400 SF, grouped in seven management entities, with a balance in circulation of 275,865 million euros.

The modifications made by the Circular can be grouped into two main areas:

- Suitable accounting principles for the special characteristics of SF.
- Enhanced financial information requirements.

Table 1 shows a summary of the principal new features. The following sections deal with the accounting principles and information requirements.

Accounting principles v. information requirements TABLE 1

	Recording Principles	Information requirements
Before Circular 2/2009	1990 PGC	Annual accounts
With Circular 2/2009	Circular 2/2009 (new PGC on supplementary basis)	Annual accounts Half-yearly public information Reserved quarterly information

Source: own preparation.

3 Accounting principles

Adaptation of the accounting legislation of SF took account of their legal and operational characteristics, which particularly include the absence of legal personality and a nil net worth.

The Circular makes provision for the specific aspects of this sector, although the Spanish General Accounting Scheme must be applied by SF insofar as not provided by the Circular.

The principal accounting treatment included in the Circular is summarised below.

3.1 Statement of recognised income and expensesmperfect

Taking into account the legal nature of SF the statement of changes in net worth laid down by the Commercial Code has been replaced by the statement of recognised income and expenses. Consequently, the obligation is eliminated to publish the second part of the full statement of changes in net worth, which is also required by the Spanish General Accounting Scheme.

In this statement of recognised income and expenses all those items must be shown which, in accordance with the Spanish General Accounting Scheme, must be recorded directly in net worth.

Since SF have a nil net worth, at the end of each period the net balance of amounts recorded directly in this statement will be reflected in liabilities in the balance sheet.

For this purpose the Circular provides for the heading "Adjustments reflected in balance sheet of recognised income and expenses".

3.2 Reflection of profit and loss for the period

The profit (loss) obtained by the SF as a result of its activities reflected in the assignor (or holders of the liabilities issued) by recognition of an expense (income) separately in the profit and loss account. It should be recalled that SF have a nil net worth.

3.2.1. Reflection of losses

Losses incurred by the SF in a specific period will be reflected in the liabilities issued by it, beginning with the variable commission time allocation account (see section 4.2.2) accrued and not settled in previous periods and continuing with the most subordinated liabilities, taking into account the reverse order of priority of payments established contractually on each payment date.

The amount of losses to be reflected in liabilities, determined by the difference between their book value and present value of estimating their future cash flows, must be shown separately in the balance sheet.

The amount reflected in liabilities may be the subject of reversion in subsequent periods when the SF obtains positive results. This reversion must take place in reverse order to that established for the reflection of losses, ending with the variable commission.

3.2.2. Reflection of profits – variable commission

The profits obtained by the SF in the specific period must be attributed:

- Firstly to setting off losses reflected in periods prior to the liabilities issued by the SF (see section 3.2.1).
- The remaining profit is normally attributed to the assignor, through accrual of an expense in the profit and loss account by way of variable commission.
- The amount attributed to the assignor may only be settled in the part corresponding to results realised. The settlement of results corresponding to capital gains on trading portfolio and to positive conversion differences must be deferred separately in liabilities on the balance sheet, until effective removal of the assets or liabilities which have given rise to them.

Furthermore, any settlement is subject to the existence of sufficient funds o pay contractual commitments to holders of issues of the SF.

3.3 Deterioration in value of financial assets

In order to determine the amount of deterioration in value in an objective and comparable manner, without departing from the principles established in the Spanish

General Accounting Scheme, the possibility was initially assessed of applying a principle similar to that established in Bank of Spain Circular 4/2004, which is based on a default timetable. The justification was twofold:

- Normally, the portfolios of financial assets of SF comprise assets whose deterioration in value by assignor entities is determined by applying the principles laid down in Bank of Spain Circular 4/2004.
- SF currently determine the amount of deterioration in value of their financial assets by applying principles based on the length of time of the default. These principles differ in practice between SF.

Subsequently this initiative was ruled out, since the principles also had to be applied to securitized assets deriving from non-financial entities, and further taking into account the possible tax implications which the proposed treatment could have for SF. The non-deductibility for tax purposes in some cases of losses as a result of deterioration in value recorded on the basis of the timetable would mean recognising an asset for deferred tax which is difficult to recover, since the tax base for corporate income tax of SF is generally zero.

Finally, the treatment set out in the Circular does not differ much from the provisions of the Spanish General Accounting Scheme. Nevertheless, as could also happen under the 1990 Accounting Scheme, situations may occur in which the provisions required by this Circular are not entirely deductible for tax purposes.

3.4 Hedging accounting

In order to simplify the documentation requirements of accounting for hedging, and without departing from the principles laid down in the Spanish General Accounting Scheme, the Circular provides for a presumption of efficacy for certain very frequent hedging accounting in SF.

In this respect, when an SF uses one or more financial swaps for hedging interest rate risk by which it delivers and receives variable cash flows, it will be presumed that this hedging is highly efficacious provided that it can be demonstrated, in relation to the risk covered, that:

- The flows received from the assets securitized are equal to and obtained in the same period as those handed over to the counterparty of the financial swap.
- That the flows received from the counterparty of the financial swap are equal to and obtained in the same period as those delivered to the liabilities issued.

4 Information requirements

The Circular establishes enhanced information requirements for SF: it reduces the periods for publishing information (from annually to half-yearly), requires that reserved information be sent quarterly for the purposes of monitoring and supervision, and increases the breakdown of information.

These enhanced information requirements fulfil two objectives:

- Facilitating greater transparency in the market:

  Half-yearly periods are established for the publication of financial information, in line with the provisions of the Transparency Directive.

  The degree of information breakdown, in qualitative and quantitative terms, required both in annual accounts and in half-yearly information is substantially increased.

- To permit monitoring and comparability of SF:

  The Circular establishes various models of half-yearly public statements which will permit sector comparison and analysis of the evolution of SF.

The quarterly statistical information models, established in line with the initiatives set out by the European Central Bank, will permit evolution of the sector at European level to be ascertained.

4.1 Public information financial statements

The Circular includes model public information statements which must be sent half-yearly to the CNMV for publication.

An obligation is included to send balance sheet, profit and loss account, cash flow statement and statement of recognised income and expenses. In addition, a greater breakdown of information is required, in the form of tables, in relation to the assets securitized and liabilities issued, such as: distribution by region and type of assets securitized, defaults, including the number of months of delay, bad debts, concentration coefficients, the value of security, default ratios by securitized asset, credit improvements and recoveries, average lifetimes, liability payments, changes in rating, and the amounts and dates of repayments.

A further novelty is that SF by compartments are required to provide half-yearly financial statements for each compartment and for the whole. The Circular means by SF by compartment those which have several orders of priority of payments for the application of flows deriving from asset portfolios isolated from each other, which includes so-called “Multi-assignor SF”.

4.2 Annual accounts and management report

The Circular establishes a maximum period of four months from the end of the financial year to send the annual accounts and management report with the corresponding audit report to the CNMV. With respect to their content, we can emphasise that:

- The balance sheet, profit and loss account, cash flow statement and statement of recognised income and expenses of the annual accounts must conform to the model public financial statements.

- The notes to the accounts must include the minimum breakdown of content required by the PGC. Furthermore, all information regarding the assets

securitized and liabilities issued by the SF to which the additional half-yearly information tables relate must be included in the notes or, as the case may be, in the management report.

- The management report must include:

  - A true explanation of evolution in the business and its situation, together with a description of the principal risks and uncertainties which are faced.

  - A forecast of incoming and outgoing cash flows of the SF until maturity of its assets and liabilities, based on updating the existing hypotheses on rates of default, bad debts and early repayment of securitized assets.

4.3 Reserved statistical information statements

As already indicated in section two, ECB Regulation 24/2008, of 19 December 2008, aims to obtain statistics on the financial activities of the securitization sector within the economic area. Specifically, it requires consistent, complementary and comprehensive information which avoids duplication and enables the series of assets securitized to be ascertained at European level, independently of the accounting principles followed by credit institutions in recording them.

In this respect, the Circular established various statistical information models, of a reserved nature, which must be sent quarterly to the CNMV.

The model statistical information statements have been prepared in close collaboration with the Bank of Spain and taking the following premises into account:

- Containing the information requested by the European Central Bank.

- As far as possible simplifying their preparation: avoiding requests for information already available through the financial statements sent by credit institutions to the Bank of Spain, tabulating all those aspects susceptible of being so and including various instructions for their completion.

5 Entry into force and transitional period

The Circular will apply to all information within its scope which affects periods which begin on 1 January 2008.

Nevertheless, transitional periods have been established, taking into account the importance of the modifications made and the need for adaptation by SF managers for technical implementation of the information processes. The transitional periods basically relate to the following:

- The sections relating to annual accounts and management report will be applied for the first time to the annual accounts for the 2009 financial year.

- Taking into account that direct imputation of start-up expenses to the profit and loss account could give rise to alteration in the structure of the terms and conditions established in issue agreements of the SF, depreciation is permitted

in the residual period in accordance with the former legislation in respect of those expenses pending depreciation on 1 January 2008.

- The half-yearly and quarterly statistical financial information must be sent to the CNMV remotely in XBRL format. To this end the IT developments are being prepared which will have to be implemented by managers in their IT systems. This justifies that the first public and reserved information statements to be sent to the CNMV will relate to periods ending 31 December 2009.

- The accounting standards relating to deterioration in value of financial assets, hedging accounting, financial security and financial assets and liabilities will come into force on 1 January 2009, except in relation to the imputation of losses.

As a result of the foregoing exceptions, at the date of entry into force two dates are established for preparing reconciliations:

- 1 January 2008, and therefore the annual accounts for the 2008 financial year must include a reconciliation of the balance sheet at the end of the 2007 financial year taking into account the transitional rules.

- 1 January 2009, and therefore the annual accounts for the 2009 financial year must include:

  - A reconciliation of the balance sheet at the end of the 2007 financial year without taking into account the exceptions under the transitional rules.

  - A reconciliation of the balance sheet and profit and loss account, between the figures published at the end of the 2008 financial year and those which would have resulted from applying the Circular without taking into account the exceptions to the transitional rules.

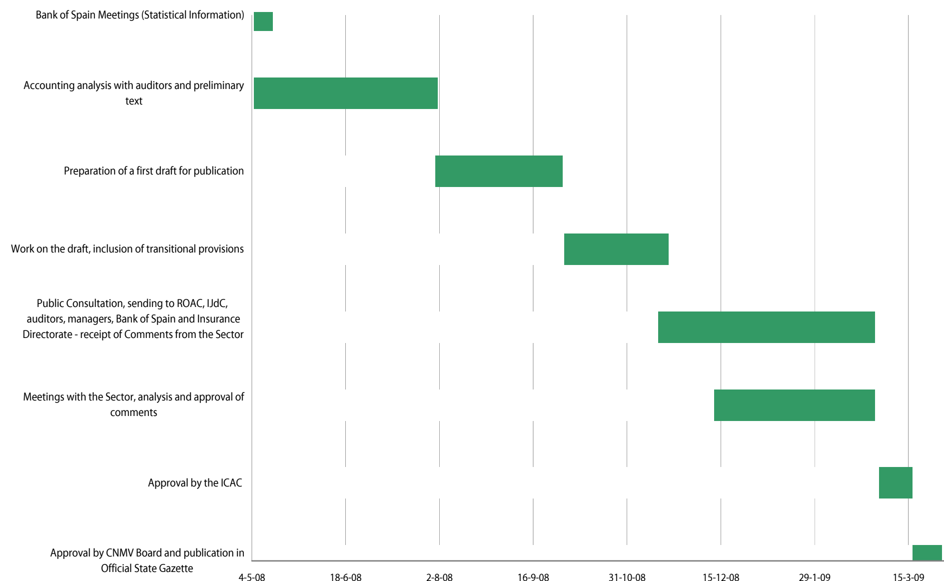
The adjustments to balance sheet deriving from the new accounting principles must be made with a counterpart in a reserve account the net amount of which, taking into account the nil net worth of SF, must be reflected in the corresponding assets or liabilities in accordance with the provisions of the Circular.

6 Preparation process

Drawing up the text published in the Official State Gazette on 31 March took eleven months of preparation, broken down into different stages which are shown in Figure 1.

Process of preparation of CNMV Circular 2/2009 (Gantt Chart)

FIGURE 1

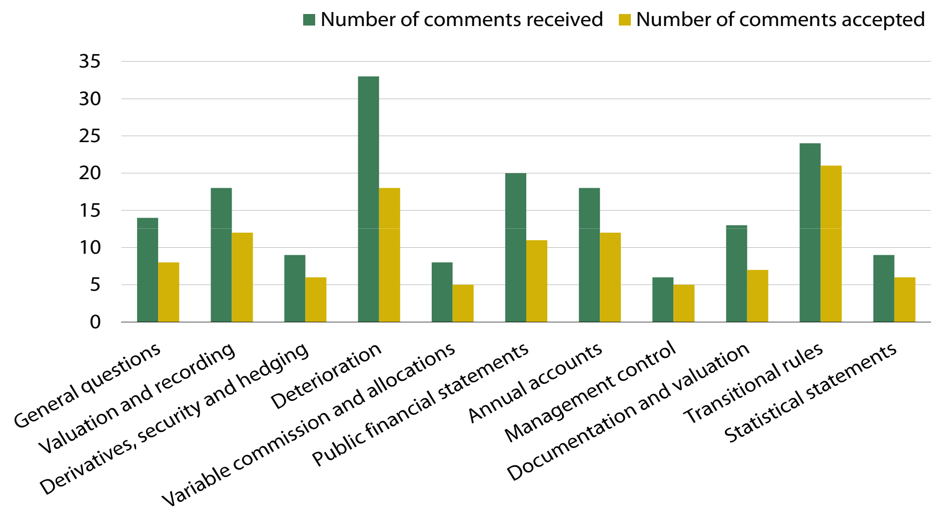


Source: own preparation.

The comments received during the public consultation stage came from the principal securitization managers in Spain, audit firms, professional associations and regulatory bodies (Bank of Spain and "Instituto de Contabilidad y Auditoría de Cuentas"). Graph 2 summarises the questions to which the comments related.

Summary of the comments received by rules

FIGURE 2



Source: own preparation.

From the series of comments received, it can be seen that the rules which appear to have raised most doubts related to deterioration and transitional provisions.

The comments relating to annual accounts and financial statements mostly involved formal modifications or adaptations to the information which SF have been publishing in markets. An effort was made for uniformity in order to facilitate comparability of information between the different SF, which meant not accepting some comments.

Of the series of comments not accepted, three particularly stand out in the most questioned areas, along with the reasons for not including them.

i Accrual principle v. cash principle: from the outset there was awareness of the importance in these instruments of cash flows and the possibility was raised of accounting based on the cash principle. Several comments received, not only from managers but also from some regulators, were very positive towards this thesis.

However, the subjection of SF to the Commercial Code, and therefore to the new PGC, made this possibility non-viable. In addition, the accrual principle permitted a clear record of certain income and expenses of relevance to investors (commissions of managers and assignors, mediation margin, deterioration based on estimated flows) which was difficult to record in accounting based on the cash principle.

Consequently, it was decided to develop a sector scheme based on the accrual principle with a large degree of information breakdown in the field of cash flows, which includes information not only on cash flows for the period but also future receipts and payments forecast by management.

ii The Circular obliges managers to establish adequate policies, methods and procedures for valuing risk and documentation of operations and detailing qualitative and quantitative information on the risks of the SF.
Comments were received from the sector which highlighted that the information handled by management companies is not identical to that which assignors have, making certain valuations and information requirements required by the Circular difficult or non-viable.

Section 12 of Royal Decree 926/1998, of 14 May, obliges management companies to value risks and correctly document operations. The Circular does not consequently impose additional requirements to those established in the said Royal Decree or in the PGC.

It is true, however, that entities will have to make an effort when incorporating the effective IRR of assets, valuing derivatives or documenting the efficacy of hedging. In particular, since the Circular did not incorporate a deterioration timetable, it is the management company which must assess whether the events which have occurred in the financial period can give rise to a negative impact on estimated cash flows.

iii The transitional provisions of the Circular establish 1 January 2008 as transition date, and permit non-application of rules which involve greater complexity in calculation of resources in the annual accounts for the 2008 financial year.

In this case it was requested that the transition date be fixed at 31 December 2008, as happened for other sector schemes (insurance). Since there was no prior sector scheme, and the previous PGC was repealed, to accept the proposal meant applying the new Spanish General Accounting Scheme in the 2008 financial year. Since it was not adapted, its application could generate greater problems (or even foment the existence of audit qualifications) than proposing 1 January 2008 as transition date.

Furthermore, accounting, as the language which it is, is subject to evolution and adaption to the changing reality of the SF sector and modification of other commercial or fiscal rules could give rise to the inclusion of improvements in aspects which, as a result of the existing legal factors or the technical difficulties which they involved, have not been incorporated in this Circular. Matters such as deterioration, the regularity of statements or their contents could be updated in the medium or long term.

7 Conclusions

The new Circular means, for the first time, tackling the regime of financial and statistical information applicable to SF from a comprehensive perspective, in which account is taken of the particular features of these vehicles. This Circular will furthermore facilitate their adaptation to the new accounting standards deriving from promulgation of the new Spanish General Accounting Scheme.

For this reason a transitional regime was established which considerably limits the degree of changes which must be implemented in the first year of application, i.e. in the annual accounts for 2008. In addition, in order that it does not give rise to a deterioration in information for its users, management companies are required, in the annual accounts for the year following 2009, to apply the Circular in full as from 1 January 2008, in order that the figures for the 2008 financial year are fully comparable.

The new half-yearly public information requirements represent a significant standardisation of the periodic information which was already being provided by management companies with respect to the SF which they administer. The fact of being published not only in PDF (©Adobe Acrobat) format but also in XBRL represents a substantial advance which will permit its automatic processing by investors, analysts, rating agencies and other users.

It will also facilitate the preparation of statistics, the public dissemination of which will further facilitate monitoring key figures in this sector, which plays an important role in the management of assets of assignor entities, mainly financial institutions, although non-financial undertakings also participate in which the securitization mechanism provides a tool of great utility in managing the liquidity risk to which they are exposed.

It could be said that significant improvements in the quality of financial information result from the obligation to recognise derivatives on balance sheet, at their reasonable value, the accounting of hedging and the new regime of deterioration of financial assets, which requires SF to record a loss by deterioration from when it occurs, without waiting for entry into a default situation.

Furthermore, the new cash flow statement, as well as the additional breakdowns required of receipts and payments, attempt to capture the importance played by cash and the receipts and payments cycle to this type vehicle.

If it can be said in general that what is important when evaluating any investment is cash flow, as repeatedly indicated by analysts and investors, this is even more

true in the case of SF as a result of their eminently pass-through nature, already mentioned.

In this respect, in the public consultation period a certain preference was indicated for an accounting standard based on the cash principle. Although this was not possible, as a result of not being compatible with the conceptual accounting framework of the Commercial Code, the importance of cash in this type of vehicle seems unquestionable, and thus it has been given particular consideration both in the principal statements, with inclusion of the Cash Flow Statement, and in the breakdowns required in the explanatory notes and management report.

The importance and particular nature should likewise be mentioned of the profit and loss account and statement of recognised income and expenses. As already mentioned, SF do not have a net worth and their results are nil. The final balance of both statements will therefore be zero, since any positive result will be appropriated by the assignor as mediation margin and any loss will be absorbed by the liabilities of the SF, taking into account their order of priority.

Both statements nevertheless provide useful information on performance of the SF over the course of the year: whether it has had positive or negative results as a result of its operations (basically the differential between income and interest expenses, the results of hedging and losses or reversions as a result of deterioration), and how such returns have affected the assets and liabilities of the SF.

The greater transparency resulting from application of the new Circular is expected to make a positive contribution to development of the sector, increasing liquidity of these instruments and reducing the "ignorance" premium, as some have called it, associated with this type of complex instrument, and in which it is necessary, for correct assessment of risk, to be aware of the characteristics and updated situation of the underlying assets which have been the subject of securitization.

Furthermore, having for the first time a specific standard which provides much more detail on the manner of accounting and which requires greater informational content, will serve as a useful tool for the purposes of the supervisory responsibilities for these vehicles which is entrusted to the CNMV.

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Compliance by CIU depositaries with the function of oversight and supervision

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1 Introduction

This article aims to explain and place in context CNMV Circular 3/2009, of 25 March, on the content of the half-yearly report on compliance with the function of supervision and oversight of collective investment undertaking (CIU) depositaries (hereinafter the Circular). Section 2, by way of background, comments on the role of the depositary in the configuration of CIUs and historic regulation of both the function of oversight and supervision and of providing information to the CNMV on results for the financial year. Thereafter, section 3 explains current aspects in this field (CIU Act[1], CIU Regulations[2] and Order EHA/596/2008[3]) and section 4 is devoted to the specific features contained in Circular 3/2009. This regulation has set out the scope of review of periodic public information, qualified the concept of anomaly of special relevance, and developed the half-yearly depositary report required by the CIU Regulations. Section 5 contains some conclusions by the author.

2 Preliminary considerations regarding the oversight function

2.1 The concept of the depositary in CIUs

Collective Investment Undertakings (CIUs), except in the particular case of self-managed SICAVs, are legally structured in the form of a triangle, as indicated by Tapia Hermida (1998): firstly the participants/shareholders, co-owners of the assets and liabilities of the CIU, secondly the CIU Investment Company (SGIIC), which is legally attributed with ownership powers, without being owner of the CIU, and finally the CIU depositary, which acts as qualified depositary as a result of the diversity of functions imposed on it by legislation, which go beyond traditional deposit.

Depositaries have two basic functions. Firstly custodianship and deposit of all securities and other assets which make up the net worth of the CIU, and their administration (taken as meaning implementing collection of the corresponding returns at maturity or payment times and carrying out such acts as may be necessary in order that the securities or assets in custody preserve the value and rights inherent in them). Secondly, the function of oversight and supervision of the CIU Management Company, which is not only a verification of compliance with legislation relating to management of the CIU but is aimed at guaranteeing that management takes place in the best interests of the participant/shareholder. It thus constitutes a first level of

1 CIU Act: Act 35/2003, of 4 November, on collective investment undertakings, amended by Act 25/2005, of 24 November, regulating risk capital entities and their management companies, and by Act 43/2007, of 13 December.

2 CIU Regulations: Regulations under Act 35/2003, promulgated by Royal Decree 1309/2005, of 4 November, amended by Royal Decree 362/2007, of 16 March.

3 Order EHA/596/2008, of 5 March, regulating certain aspects of the legal regime of the collective investment undertaking depositary and specifying the content of position statements.

supervision over management which falls outside the direct control of the participants/shareholders. The nature of the relationship between the CIU depositary and participants/shareholders could be classified in this respect as fiduciary[4].

2.2 Historic regime of oversight and supervision functions of depositaries and of information for the CNMV regarding their results

The repealed Act 46/1984, of 26 December, regulating CIUs, established an obligation of oversight on the part of depositaries in Section 29, in the sense of overseeing that management conforms to legal and regulatory provisions, without specifying either the content or manner of compliance. Section 56.b) of the 1990 Regulations also repeated this function of oversight of management and for the first time configured the obligation, excessively broad and ambiguous, to communicate to the CNMV any anomaly which they detect in management, but without determining the scope of this oversight or the manner of complying with it.

It was the Ministerial Order of 30 July 1992, on specification of the functions and obligations of depositaries, position statements and major holdings in collective investment institutions (hereinafter the 1992 Ministerial Order), in force until 7 June 2008, which profiled the content of the oversight and supervision function in three aspects:

- Verification that transactions carried out by the management company or directors of the SIMCAV[5] have taken place under a market regime.

- Verification that transactions by funds and SIMCAVSs have respected the investment criteria and coefficients laid down by applicable legislation.

- Supervision of the criteria, formulas and procedures used by the management company to calculate the liquidating value of holdings in the investment fund.

They also had to notify the CNMV of anomalies detected in the area of information, documentation and publicity sent to the CNMV by the manager/SICAV, when the checks carried out gave rise to inaccuracy or insufficiency of the information, or if for any other reason the depositary was in disagreement with its content. It did not specify either the period or manner of sending the results of the said information verification.

Furthermore, notice had to be given of any irregularity noticed in management or administration in carrying out the function previously detailed of oversight and supervision. In this case it was laid down that the report must be in writing, but without indicating the period for sending the information.

Notwithstanding the previous regulation, practical experience of supervision of CIU depositaries led the CNMV to appreciate a need to clarify the cases in which com-

4 Rius Riu, J.M. (2009): "Trusts and Trust-like Devices in the European Union: An Example of the Possibility and Desirability of Legal Transplants in European Private Law". First draft of doctoral thesis. European University Institute. In addition, I would like to thank Joan Rius for his special collaboration in structuring and review of this article.

5 Variable capital investment companies, known as "SICAVs" as from Act 35/2003, which eliminated open-ended type investment companies, fixed capital securities investment companies ("SIMs") established in the 1984 CIU Act.

munication was necessary by depositaries. To this end it transposed the principle that depositaries should have communicated at least:

- Incidents detected in the course of their oversight work which are expressly covered by the Order of 30 July 1992, on specification of the functions and obligations of depositaries.
- Incidents detected in the course of their oversight work which could affect the liquidating value of CIUs for which they carry out the depositary function.
- Incidents which involve infringements penalised by legislation.
- All those incidents detected which, notified to the manager, had not been rectified by the latter.

3 Current regime of depositary oversight and supervision functions

3.1 Act 35/2003

The in-depth reform of the Spanish legal regime of collective investment took place with Act 35/2003, of 4 November, on collective investment undertakings (CIU Act), which repealed the previous CIU Act. Section 60 laid down the obligations which CIU depositaries must comply with, in particular those relating to the function of oversight and supervision set out in the following letters:

- b) Assuming, with participants or shareholders, the function of oversight over the management carried out by investment fund management companies and by the directors of investment companies. To this end, they must in particular verify that the limits on investments and coefficients laid down in this Act are respected.
- e) Settling, for account of funds, repayments of holdings, the net amount of which it must debit to the fund account. To this end it is responsible for supervising the criteria, formulas and procedures used by the management company in order to calculate the liquidating value of holdings.
- h) Overseeing compliance with legality in the actions of the management comany when it acts as commercialiser of investment funds.
- j) Carrying out any other function which contributes to better implementation or as complement to the custodianship and oversight function.

Furthermore, Section 62.1 of the CIU Act maintains the obligation of depositaries to notify the CNMV of any anomaly which they detect in the management of institutions whose assets they hold in custody.

3.2 Royal Decree 1309/2005

Royal Decree 1309/2005, of 4 November, promulgating the Regulations under the CIU Act, 35/2003 of 4 November, and adapting the tax regime of CIUs (CIU Regulations) devotes Section 93 specifically to the function of oversight and supervision.

This provision lays down the requirement that depositaries request sufficient information monthly from the manager/SICAV permitting them to correctly carry out their supervision and oversight function. In respect of this information (and all other information, documentation and publicity which the manager/SICAV must send to the CNMV in accordance with current legislation) they must carry out the appropriate checks in order to contrast its accuracy, quality and sufficiency. The results of these verifications must be set out in a half-yearly report on compliance with the oversight and supervision function, which they must send to the CNMV.

The CIU Regulations furthermore authorise the CNMV to determine the content and model to which this report must conform, along with the period and manner of sending it. It further provides that the report must include all legislative breaches or anomalies detected by the depositary in the management or administration[6] of CIUs.

Section 93.3 of the CIU Regulations distinguishes two type of communication based on the seriousness of the anomaly, which must be set out in the half-yearly report:

1) Anomalies which are not of particular relevance:

   The half-yearly report must incorporate the observations which the CIU Management Company, or directors of the SICAV, as the case may be, may have made. To this end, the depositary, before sending the half-yearly report, must have indicated this anomaly to the CIU Management Company, or to the directors of the SICAV, as the case may be.

2) Anomalies of particular relevance:

   The depositary must report on them in writing to the CNMV as soon as possible. The CIU Regulations do not require that observations by the manager be included in the half-yearly report.

In addition, Section 93.5 provides that the Minister of Economy and Finance, and with his express authorisation the CNMV, may establish specific functions of oversight and supervision by depositaries with respect to the balances of holders or shareholders of CIUs, an aspect not yet implemented.

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6 The reference to administration refers to Section 62.b) of the CIU Regulations. This section provides that the CIU management activities of CIU Management Companies must amongst others cover the following:

a) The management of assets.

b) Administration of the CIU. This activity is deemed to include the following tasks: legal and accounting services in relation to management of the CIU, client consultations in relation to CIUs managed, valuation and determination of liquidating value, including the applicable tax regime, monitoring control of compliance with applicable legislation, maintaining the register of holders or shareholders, distribution, as appropriate, of returns, subscription and repayment of fund holdings and, as the case may be, acquisition and disposal of CIU shares.

c) The commercialisation of holdings or shares in the CIU.

3.3 Order EHA/596/2008

Order EHA/596/2008, of 5 March, regulating certain aspects of the legal regime of the collective investment undertaking depositary and specifying the content of position statements (hereinafter the Depositaries Order) repeals the 1992 Ministerial Order and updates the legal regime of depositaries in accordance with the changes made in the CIU Act and CIU Regulations, with more detailed regulation of the functions of depositaries. With respect to the function of oversight and supervision, it can be emphasised that it redefines and qualifies the principal functions of the 1992 Ministerial Order, specifies the tasks which depositaries must carry out in order to supervise the direct commercialisation of funds by managers, and makes a first legislative definition of the concept of anomaly of special relevance.

3.3.1. Function of oversight and supervision

Section 2 of the Depositaries Order maintains the principal functions of the 1992 Ministerial Order with respect to oversight and supervision, although it introduces new features regarding its scope and manner of implementation. In summary, as far as these functions are concerned, it requires:

a) Verification that transactions carried out in respect of property, rights, securities or instruments by the management company/SICAV, for account of CIUs, have been carried out under a market regime.

b) Verification that transactions of investment funds and of investment companies comply with the requirements, coefficients, criteria and limitations of legislation, verifying the adequacy of investments for the investment vocation defined in the CIU prospectus, thus reviewing the aptitude of assets in which investment is made. A monthly regularity is established for these reviews.

c) Supervising the procedures, criteria and formulas used by the management company/SICAV to calculate the liquidating value of holdings in investment funds, and as a new feature with respect to the 1992 Ministerial Order, also of the shares of SICAVs.

The Depositaries Order specifies to a greater extent than the previous 1992 Ministerial Order the manner of carrying out the tasks of supervision and oversight:

- It obliges the manager/SICAV to send the reserved statements relating to the CIU to the depositary fifteen days before sending to the CNMV in order that the depositary can carry out the appropriate checks in respect of reconciliation of the CIU positions.

- In relation to prospectus and periodic public information, the depositary must, before this information is sent by the manager/SICAV to the CNMV, verify its accuracy, quality and sufficiency.

- It must have an internal procedure manual which details the scope of the reviews, the methods used and the regularity with which the function must be carried out of control and oversight of coefficients, investment policies and criteria for calculating liquidating value, as well as the remaining functions entrusted by legislation. This manual must be approved by the management body of the depositary and always be duly updated.

Section 2.5 of the Order implements the obligation to supervise the actions of the manager as commercialiser of investment funds, set out in the CIU Act, indicating that it must verify that the commercialisation procedures established by the manager in documents such as commercialisation manuals conform to the provisions laid down by legislation which are applicable thereto.

3.3.2. Anomalies of special relevance

The Depositaries Order lays down a definition of anomalies of special relevance in Section 2.4, for the first time in the legal system, which two possible cases:

- Those anomalies which could have an appreciable impact on liquidating value.
- In the case of acts or omissions classified as serious or very serious infringements by the CIU Act penalty regime.

Gauging the threshold of impact on liquidating value which gives rise to consideration of the anomaly as specially relevant appears to be left to the criterion of the depositary, which must include it in its procedure manual.

4 Contents of Circular 3/2009

The Circular aims to systemise the sending of information to the CNMV by depositaries in compliance with their oversight function. In order to facilitate analysis by the CNMV of reviews carried out by depositaries in exercise of their oversight and supervision function, the Circular specifies the scope of the review which depositaries must carry out of the periodic public information from CIU managers and self-managed SICAVs which is sent to the CNMV. It also implements the concept of specially relevant anomaly, setting out the incidents which may be detected by depositaries which will lead to immediate notification to the CNMV. Finally, the Circular regulates the content, manner and period for sending the half-yearly depositary report on anomalies detected.

4.1 Specifications regarding review of periodic public information

The Circular specifies, in Rule 5, the minimum scope of the verification which the depositary must carry out in respect of the accuracy, quality and sufficiency of periodic public information before it is sent to the CNMV by the management company or SICAV. It provides that "it shall deemed to be complied with when as a minimum there is review of the coincidence of the investment and cash portfolio with information from the internal records of the depositary, the contents of relevant events, the commissions established and information on connected transactions between manager and depositary. The foregoing information must be supervised both for financial CIUs and real estate funds." On this premise of minima the legal uncertainty in the sector is eliminated in respect of possible breaches in exercising the oversight and supervision function in relation to this periodic information.

A priority in time is therefore established in the review of certain periodic information data by reason of its importance:

- The reconciliation of portfolio and cash with the records of the depositary, as fundamental elements of the net worth of the CIU.
- Content of relevant events[7], as particularly significant for investors in the CIU when taking investment or disinvestment decisions.
- Management commissions in respect of assets and liabilities, management of results and deposit, being expenses with an appreciable impact on liquidating value.
- Connected transactions between manager, or its managed CIUs or self-managed SICAVs, and depositary (transactions for the acquisition or sale of securities or financial instruments in which the depositary is seller or buyer, respectively), which must have been carried out in the exclusive interest of the CIU and at prices or on conditions equal to or better than market prices or conditions.

The Circular also indicates that the remaining periodic public information must be reviewed in the month prior to sending the said information to the CNMV, verifying that it is consistent on the terms laid down in the entity's procedure manual.

4.2 Anomalies of special relevance

In the field of defining the anomalies which must be notified to the CNMV, the Circular repeats the two references indicated in the Depositaries Order as anomalies of special relevance, although it qualifies and restricts the second by considering, as anomalies of special relevance, acts or omissions classified as serious or very serious infringements in Chapter VI of the CIU Act, "provided that the said infringements do not relate to obligations of the depositary itself or breaches by the manager which are not the subject of the supervisory function of depositaries". In this manner the acts or omissions contained in the letters of Sections 80 and 81 of the CIU Act will not be considered as anomalies of special relevance which are specified by the Circular itself and detailed below:

Section 80 cites the following letters:

- c) Breach of the obligation to audit accounts.
- g) Use of names or initials reserved by this Act to CIUs and their management companies by persons or entities not registered in the corresponding registries, and activities carried out by them which are reserved to the said institutions or entities, without prejudice in both cases to liabilities of other type which they may have incurred.
- h) Resistance or refusal to undergo the inspection established in Section 70.
- o) Breach by depositaries of the functions and obligations covered by Sections 60 and 62 of this Act, provided that they give rise to serious prejudice to investors or shareholders in a CIU.
- q) Maintenance by the CIU Management Company or by investment companies for a period of six months of own funds below those required in order to obtain the requisite authorisation.

7 See CNMV Circular 5/2007, of 27 December, on relevant events of CIUs.

- r) Absence of customer care department on the terms laid down by Section 48.

- t) Breach of the rules for separation of depositary and company responsible for management of the CIU, laid down in Section 68.

- u) The commission of serious infringements when, during the five years prior to their commission, a final penalty has been imposed on the infringer for the same type of infringement.

In respect of Section 81 it indicates the following letters:

- c) Maintaining accounting in accordance with principles different from those laid down by law when this detracts from the net worth image of the entity or CIU affected, and breach of standards for drawing up accounts or the manner in which official books and records must be maintained, when this gives rise to serious prejudice to third parties.

- i) Breach by the depositary of the functions and obligations covered by Section 60 and 62 of this Act when it need not be classified as very serious.

- j) Elimination or reduction of a significant holding in breach of the provisions of Section 45.8.

- k) Failure to comply with the provisions of the third part of paragraph c) of Section 11.2 of this Act.

- l) The commission of minor infringements when during the two years prior to their commission a final penalty for the same type of infringement has been imposed on the infringer.

The Circular also specifies the following acts or omissions under Sections 80 and 81 of the CIU Act, which will be considered anomalies of special relevance provided that they relate to the function of oversight and supervision by the depositary in accordance with the Depositaries Order:

1. In relation to public information subject to control by the depositary:

    - Omission or falseness in the accounting and in the information which must be provided or published in accordance with the CIU Act, unless it is of a purely isolated or occasional nature.

2. In relation to the action of managers in the interests of shareholders and par ticipants and information which must be sent to depositaries:

    - Breach by management companies of the functions and obligations covered by Section 46 of the CIU Act, provided that it involves serious prejudice to investors or shareholders of a CIU.

    - Breach by management companies of the functions and obligations covered by Section 46 of the CIU Act when it need not be classified as very serious.

3. In cases arising through incidents detected in the controls carried out by the depositary:

    - Deficiencies presented by investment companies or management companies in administrative and accounting organisation or in internal control

procedures, including those relating to risk management, when the said deficiencies endanger the solvency or viability of the entity.

- Engaging in actions or operations prohibited by legislation with the ranking of Act or Regulation, regulating the regime of CIUs, or breach of the requirements laid down therein, unless they are of a merely isolated or occasional nature.

- Deficiencies presented by investment companies or CIU Management Companies in administrative and accounting organisation or in internal control procedures, including those relating to risk management, after the period granted for the purpose for their rectification by the competent authorities has elapsed and provided that this does not constitute a very serious infringement.

In part 2 of Rule 6 of the Circular the possibility is provided for the depositary to inform the CIU Management Company of anomalies of special relevance, which must be notified without delay in writing to the CNMV in accordance with Section 93.4 of the CIU Act. It thereafter requires, as with the CIU Regulations, inclusion of anomalies of special relevance in the half-yearly report. This obligation is somewhat different to the contents of part 3 of Rule 5 relating to specifications regarding the review of periodic public information, which concludes:

"Consequently, in the half-yearly report the incidents must be included detected in review of all periodic public information, except for those anomalies of special relevance which must be notified to the CNMV immediately".

It is not illogical to predict that depositaries must again indicate in the half-yearly report the relevant anomalies already previously notified, whether or not relating to periodic information, and incorporate the observations of the manager even though the CIU Regulations do not require them.

Finally, the Circular lays down an obligation for depositaries to include in their procedure manual the system of communication to management companies/SICAVs of incidents and anomalies which they detect as a result of the monthly controls carried out in relation to the reserved statements received.

4.3 Half-yearly report

As from entry into force of this Circular, on 1 July 2009, CIU depositaries are under an obligation to send to the CNMV, remotely via CIFRADOC/CNMV or similar channel established by the CNMV, a report for each calendar half-year and each manager of whose CIUs they are depositary, or for each self-managed SICAV for which they are depositaries at the reference date of the half-yearly report. It must be submitted before the final calendar day of the second month after the reference period. Consequently, the first information which must be sent will be that relating to the second half of 2009, which must be submitted before 28 February 2010.

In the event of replacement of the depositary, only the depositary recorded in the records of the CNMV on the final day of the reference period will be under an obligation to send the half-yearly report, and for the period between its appointment and the final day of the half-year.

For hedge funds/hedge fund CIUs, if not all information for the half-year is available for the purpose of review, since these institutions have a period of three months to prepare and send reserved statements to the CNMV, it may be taken that the half-yearly report will cover the anomalies detected in the statements which have been the subject of filing. Those for the remaining statements for the period must be included in the following half-yearly report.

Annex A of the Circular sets out five model notices, sequentially coded from D01 to D05. The first four models must be used for depositaries to report certain results of the supervision and oversight function specified by the Depositaries Order, in accordance with the controls established in the procedure manual of the entity referred to by Section 9 of the Order. The fifth model will contain complementary information in order that the CNMV has up to date contact information of the depositary.

All models, except D05, must be completed for each CIU, except in the case of CIUs by compartments, in which they must be completed for each compartment. They must set out the observations which the CIU Management Company, or self-managed SICAV, as the case may be, may have made as a result of notification of the anomaly by the depositary. The content of the models is as follows:

Model D01 – Valuation of assets:

Incidents must be shown which affect the valuation of assets, capture of prices, introduction of valuation parameters and other valuation incidents which are detected in the control of reserved statements or monitoring of the evolution of liquidating values. In this model one record will be created for each incident.

There must be identification of the type of CIU, its registration number or that of its compartment, and a description of the security motivating the incident and its ISIN. Furthermore, the impact must be valued of the incident in euros and in percentage terms in respect of liquidating value, indicating the date of the incident and the date of resolution by the manager with the observations provided by it on the requisite prior communication to the depositary.

Model D02 – Reconciliation of certificates and balances:

This will report the number of incidents detected in the monthly reconciliation processes of reserved statements provided by the manager, or self-managed SICAV, with the internal records of the depositary by type of asset and for each CIU.

As with the previous model, there must be identification of the type of CIU, its registration number or that of its compartment and a description of the type of security giving rise to the incident. Differences resolved must be distinguished from those not resolved, and in most cases it must report the number of differences, their total amount in euros, the greatest impact on liquidating value and the average time outstanding. The observations of the manager must also be included.

Model D03 – Other incidents with liquidating value:

This form will show, for each CIU, total incidents detected in the half-year as a result of monitoring the evolution of liquidating value which have not been included in the previous model. The Circular indicates, by way of example, deficiencies in accounting for corporate events or in the time allocation of interest or commissions.

Identification of the CIU is the same as in the previous cases. There is also a require-

ment to distinguish between incidents resolved and not resolved and the information requirements in both cases are the same as in model D02.

Model D04 – CIU legal limits and coefficients:

This will show legal breaches, both resolved and pending resolution, on the final day of the reference half-year, which they have detected as a result of the oversight function. It must be completed for each manager and the information must be grouped by type of breach for total CIUs.

It must report the type of breach, the number of breaches and their average time outstanding, separating resolved and outstanding breaches. It must further include the observations of the manager.

Model D05 – Complementary information:

This will identify the person responsible at the CIU depositary and his or her position and a contact person with telephone and fax number and corresponding e-mail address.

In point 5 of Rule 3, relating to the structure of the half-yearly report, it states that when the depositary, in its supervision and oversight function, detects incidents or breaches which do not fall within the structure of the half-yearly report, it must give notice thereof in writing to the CNMV, providing detailed information thereon together with the comments which it has received from the management entity.

It must therefore be considered that the CNMV requires a complementary half-yearly report, to be submitted in writing, setting out aspects deriving from carrying out the oversight and supervision function which have not been notified in previous forms. This complementary report relates to the same period and must be delivered within the same periods as the standardised half-yearly report which comprises the five model forms referred to. The requirement for this report has legislative cover in Section 93.3 of the CIU Regulations, which provides that depositaries must send a half-yearly report to the CNMV on compliance with the oversight and supervision function in which they must state the accuracy, quality and sufficiency of the information which is sent to them by the CIU Management Company, or directors of the SICAV as the case may be, as well as the remaining information, documentation and publicity[8] which they must send to the CNMV.

The rule does not detail the content of the complementary report. Nevertheless, since the depositary is under an obligation to inform the CNMV without delay in writing of anomalies of special relevance which are detected in exercising supervision and oversight in the management or administration of CIUs, there can be no doubt that relevant anomalies which do not fit into model forms D01 to D04 must be set out in this complementary half-yearly report. One possible case for reporting could for example be incidents deriving from the review of fund commercialisation procedures set out in manager manuals, a task set out in the Depositaries Order.

The Circular states that the preparation and submission of the half-yearly report

8 Prior sending to the CNMV of publicity relating to CIUs is not obligatory but optional, although public documents which must obligatorily be handed over on first subscription for each fund by a holder, such as the fund prospectus or periodic reports to holders, must be sent to the CNMV. The Depositaries Order in this respect refers to the obligation to verify the accuracy, quality and sufficiency of the prospectus and the periodic public information without referring to the term "publicity".

by the depositary must take place without prejudice to the fact that it must at all times evidence to the CNMV the results of its tasks of supervision, oversight, deposit and custodianship, and be in a position to provide more extensive information on incidents or anomalies detected in the course of its review. This evidence must be preserved for a minimum period of five years.

5 Conclusions

The Circular has completed the process of updating the legal regime of CIU depositaries, in particular in regulation of compliance with the function of oversight and supervision of managers/SICAVs and notifying the results of reviews to the CNMV.

It has specified aspects which must be supervised, and reported, as the case may be, more or less immediately to the CNMV. Specification of the scope of verification of the accuracy, quality and sufficiency of periodic public information, prior to sending it to the CNMV, confers legal certainty on the depositary since it indicates the minimum aspects to it which must be reviewed in order that the supervision function in this field is considered to be complied with, without prejudice to the obligation to verify the consistency of the remaining periodic public information in the month after it is sent to the CNMV.

The definition of anomalies of special relevance facilitates a stricter control by the depositary, due to the obligation to notify the CNMV of such incidents in writing without delay. The CNMV may thus immediately have very important information relating to CIUs which will enable the appropriate actions to be taken without delay. The uniformity of the half-yearly information sent by the CIFRADOC system will furthermore permit a more systematic analysis by the CNMV of anomalies in CIU management.

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Credit rating agencies: analysis of the proposal for European Parliament and Council Regulation

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1 Introduction

The European Parliament and Council Regulation on credit rating agencies (agencies) was approved by the Parliament on 23 April 2009[1]. This text was also agreed by the Council through Coreper, although it is still pending formal approval, which will foreseeably take place at the end of July (or, if not possible by then, in September). It is expected that the Regulation will be published in the Official Journal of the European Union at the end of September 2009 and therefore enter into force towards the middle or end of October 2009 (20 days from publication). Existing agencies will be able to apply for registration between six and nine months after entry into force of the Regulation (between April and July 2010). Regulated entities (banks, investment firms) will have 12 months from entry into force (up to October 2010) to ensure that they only use ratings issued by registered agencies for regulatory purposes.

In the article published in the CNMV Bulletin for the third quarter of 2008[2] there was an explanation of the debate on the need to introduce a regulation of agencies in Europe and the different models of registration and supervision which European legislators were going to discuss were anticipated. This article analyses the supervisory structure which has finally been included in the legislation and furthermore provides a full analysis of the basic aspects of the Regulation.

In the first section there is a brief explanation of the basic concepts necessary for a legal understanding of the scope of the substantive provisions of the Regulation. In the second section the scope of application of the Regulation is examined, indicating the different approach adopted in relation to European agencies and with respect to agencies of non-European countries. The third section analyses in depth analyses the question of agencies from non-European countries and deals in more detail with the two mechanisms introduced by the Regulation to permit European Union issuers to use the ratings of these agencies for regulatory purposes. In successive sections the substantive regime of regulation is examined and the complex supervisory structure agreed by European legislators is explained. Finally, there is a brief analysis of the foreseeable impact of the regulation in Spain and various final considerations are included.

1 References included in the text to certain articles refer to the version of the Regulation approved by the European Parliament on 23 April.

2 García Alcubilla, R. and Ruiz del Pozo, J. (2008): "Credit rating agencies: The debate on future European legislation". *CNMV Bulletin*, Quarter III, pp. 85-103.

2 Fundamental concepts

The Regulation introduces for the first time a Community legislation of credit rating agencies. This has meant incorporating a series of terms into Community law which until now were only used by the market. At global level securities supervisors grouped in IOSCO had agreed on and set out various concepts in their code of conduct for credit rating agencies, such as those of rating agency and rating. Despite the voluntary nature of the IOSCO code of conduct for rating agencies, these definitions meant a certain international standardisation which has been taken into account by European legislators, with certain qualifications. The principal concepts established by the Regulation are mentioned below.

Credit rating agency (or rating agency)

A credit rating agency is a legal person whose occupation includes the issue of credit ratings on a proffessional basis. In accordance with this definition, in order to determine which entities are subject to the Regulation an interpretation of the concept of credit rating or rating is fundamental.

Credit rating (or rating)

An opinion regarding the creditworthiness of an entity, a debt or financial obligation, debt security, preferred shares and other financial instrument, or of an issuer of such a debt, obligation or financial instrument, issued using an established and defined ranking system of rating categories.

The Regulation also contains a negative definition of rating, when providing that the following will not be considered credit ratings:

- recommendations within the meaning of Article 1.3 of Commission Directive 2003/125/EC;
- investment researchs, as defined in Article 24.1 of Commission Directive 2006/73/EC and other forms of general recommendation such as “buy”, “sell”, or “hold” relating to transactions in financial instruments or to financial obligations; or
- opinions about the value of a financial obligation or a financial instrument.

One question of interpretation still not resolved arises from the need to distinguish between a credit rating and a “score” in relation to obligations deriving from commercial, industrial or consumer relations. In the translation of the text of the Regulation approved by the European Parliament, the English term “score” has been translated as *calificación crediticia* (“credit rating”). This already gives an idea of the difficulty of separating the two concepts. The question is not purely theoretical since entities engaged exclusively in issuing scores would not be subject to the Regulation, and therefore would not need to be registered. It seems that in accordance with the notion assumed in general by the market, a scoring model is that which provides a measurement of the solvency of an entity using statistical information on defaults and quantitative methods to determine the weight of each of the variables used in the model. Scoring models are normally used to measure the solvency of individuals and small and medium companies.

Since a credit rating may also be based exclusively on quantitative models, it seems

that the type of model used in order to determine solvency (qualitative versus quantitative) should not be the key factor for distinguishing between “ratings” and “scores”.

The objective of the European legislators could be to exclude classifications regarding the solvency of individuals or entities which as a result of their small size do not capture funds in securities markets. However, the distinction based on type of entity classified does not derive from the literal wording of the Regulation, and therefore the work of interpretation which CESR must carry out in order to determine which entities are excluded from registration and supervision will not be easy.

Rated entity

Legal person whose creditworthiness is rated in the credit rating, whether it has solicited that credit rating or not or provided information for that credit rating or not.

Home Member State

Member State in which the credit rating agency has its registered office. The location of the registered office in the European Union of a rating agency (parent or subsidiary) is the criterion used to allocate the competent authority which will be responsible for registering and supervising it. A group of rating agencies will have as many home Member States (and consequently competent home authorities) as Member States in which it has established subsidiaries.

Regulatory purposes

Regulatory purposes” means the use of credit ratings for the specific purpose of complying with Community law, as implemented by the national legislation of the Member States. This is a key notion in the Regulation since in order for a rating to be used to comply with regulatory purposes it must have been issued by a registered agency.

Uses of ratings for regulatory purposes

As just mentioned, the Regulation defines as “regulatory purposes” the use of credit ratings for the specific purpose of complying with Community Law, as implemented by the national legislation of the Member State. Consequently, a use for regulatory purposes means that an entity is obliged in certain circumstances to use a rating because this is so required by a Community rule.

At the present time Community legislation only imposes the use of ratings in two cases:

- In European Parliament and Council Directive 2006/49/EC on adaptation of capital of investment services firms and credit institutions. In this Directive, which replicates the Basel II agreement, entities are permitted to calculate regulatory capital using the standard method which is based on the use of ratings issued by agencies recognised as External Credit Assessment Institutions (ECAI) by banking supervisors.

- In a much more limited manner in Directive 2006/73/EC implementing Directive 2004/39/EC in relation to markets in financial instruments, Article 18.2 considers that a money market instrument is of high quality when it has obtained a maximum rating from the agencies which have rated it.

Finally, it is intended that future Community legislation on the solvency of insurance undertakings will also contain uses of ratings for regulatory purposes.

Consequently, the use of ratings for regulatory purposes imposed by domestic legislation of Member States falls outside the scope of application of the Regulation. This means that Member States can in their legislation maintain uses of ratings for additional purposes, but may not impose any additional requirement on agencies beyond those laid down in the Regulation.

Entity which has issued the rating

The Regulation considers that ratings can be assigned to a certain legal entity, and therefore that the ratings issued by groups of agencies (for example, Fitch, Moody's or Standard & Poors) must for legal purposes be issued by one of the entities in the group.

This is not a purely theoretical question, since determination of the entity which has issued the rating has practical consequences. For example, in the case of a group of rating agencies established outside the European Union with subsidiaries in a Member State, the regime is different depending on whether a rating used for regulatory purposes in Europe has been issued by a European subsidiary (the agency must be registered in the European Union and there are no additional requirements) or whether it has been issued by an entity in the group domiciled in a third country (in this case the rating must be endorsed by a subsidiary of the group with registered office in the EU).

Even within the European Union it is relevant to determine where the rating has been issued. For example, all subsidiaries of the Fitch group in the EU will be subject to the same regulation under common supervision by the college of competent authorities which supervises the whole group in Europe. A breach of the Regulation may, however, be attributable solely to one of the subsidiaries, for example because it does not comply with the requirements relating to publication of the ratings which it issues. In this case, the supervisory measures, after discussion in the college, would have to be adopted by the competent authority of the home State.

The Regulation does not establish any criterion, however, to determine which agency within a group is the one which has issued the rating, and therefore groups of agencies would be free to assign ratings between group entities. Given the complexity of the question, it would be desirable for the CESR to establish criteria in order to promote a uniform interpretation by agencies that can be in line with the objectives of the Regulation.

One of the factors to take into account in order to determine the entity which issues the rating could be the country of residence of the issuer whose debt is rated, or the country of residence of the originator of the assets in the case of rating of securitizations. It could make sense for the rating to be issued by the agency which is domiciled in the country of the issuer or originator, since it will be this subsidiary which requests from the issuer the information necessary to issue the rating (at least when a qualitative method is used). The agency need not have subsidiaries or branches, however, in the countries of the issuers which it rates. And in the case of ratings issued without the participation of the issuer (for example, based on purely quantitative models), it does not seem that the domicile of the issuer is a determining factor.

Furthermore, groups of agencies regularly use resources localised in different countries in order to issue a rating. For example, it is common for analysts situated in different countries to take part in the same rating. The same happens with respect to the committees which take the final decision regarding the rating.

In cooperation with agencies and other market participants CESR will discuss these and other factors in forthcoming months in order to bring about an appropriate response to this difficult question.

3 Scope of application of the regulation

The Regulation provides two different ways of determining its scope of application, one for rating agencies with registered office in the EU and another for agencies domiciled in third countries.

European agencies

The Regulation establishes a reserve of activity. The activity of issuing ratings is reserved in the EU exclusively to entities which are registered as agencies in accordance with the Regulation. This means that legal persons established in the EU which issue ratings are subject to the Regulation and are obliged to register with the competent authority in the EU.

Agencies from third countries

On the other hand, agencies of third countries (i.e. of countries which are not members of the European Union) will only be subject to the Regulation insofar as their ratings are used for regulatory purposes by supervised entities in the EU. In other words, these agencies do not need to be registered in order to issue ratings in the European Union, but these ratings may not be used for regulatory purposes by EU supervised entities.

Consequently, in this case the direct subjects of the Regulation are the EU entities supervised to the extent that they wish to use ratings issued by agencies of third countries for regulatory purposes (they may not do so if these agencies are not subject to the Regulation). Agencies are therefore indirect subjects, since they are only affected by the Regulation to the extent that banks and other European supervised entities use their ratings for regulatory purposes.

For example, an issue of bonds by Telefónica, S.A. may not be rated by an agency with registered office in the EU if the agency is not previously registered in accordance with the Regulation (even if the said rating is not used for regulatory purposes by any European supervised entity).

However, this issue may be rated by a non-Community agency without being subject to the Regulation (although in this case European supervised institutions may not use this rating for regulatory purposes).

What the Regulation in fact establishes is an incentive for agencies of third countries to submit themselves to the legislation of the European Union, since European supervised entities will thus be able to use their ratings for regulatory purposes. Furthermore, it constitutes an incentive for EU issuers to commission their ratings solely to agencies subject to the Regulation, since their placement is thereby fa-

cilitated amongst supervised entities. For example, credit institutions which use the standard method for calculating their own funds requirements for credit risk will be interested in ratings issued by an agency subject to the Regulation.

In the following section there is an explanation of the two procedures which the Regulation has established in order to permit European entities to use the ratings issued by agencies domiciled in third countries for regulatory purposes.

Prospectus issuers

Although the Regulation does not consider contracting a rating relating to the issuer or its securities as a use for regulatory purposes, the Regulation imposes on issuers an obligation to state, in the prospectuses which are published by reason of public offerings of securities or their admission on trading on a regulated market, whether the rating has been issued by a registered or unregistered entity.

4 Agencies established in third countries

One aspect subject to considerable debate during negotiations on the Regulation in the Council and in the European Parliament was the use in the European Union of ratings issued by agencies from third countries. The European Commission proposal did not establish any mechanisms permitting the use for regulatory purposes in the EU of these ratings, therefore imposing an obligation on agencies from third countries to establish a subsidiary in Europe in order to be able to issue ratings which could be used for regulatory purposes in the EU. The Council and Parliament, in order to meet the requirements of global agencies and European supervised entities, modified the Commission proposal in order to allow the use for regulatory purposes of ratings issued by agencies from third countries in the European Union. The mechanism used is twofold: an endorsement procedure and another of certification based on equivalence.

As previously mentioned, agencies from third countries do not need to be registered in order to issue ratings in the European Union, but these ratings may not be used for regulatory purposes by EU supervised entities if they do not follow one of the two procedures set out by the Regulation.

The Regulation considers, for all purposes, the ratings of agencies of third countries issued following any of the two procedures to be ratings issued by a registered agency. Consequently, the Regulation establishes precautions in both procedures to ensure that the issue of ratings in third countries respects requirements as stringent as those set out in the Regulation.

The notion which determines the possibility of accessing one procedure or another is that of "systemic importance to the financial stability or integrity of financial markets of one or more Member States". Consequently, interpretation of this concept is fundamental. In particular, it must be examined whether an agency from a third country which has been recognised as External Credit Assessment Institution (ECAI) for the purposes of the Directive on capital adequacy previously mentioned, is already "important" for any European Union Member State and therefore would not fulfil the requirements to proceed by the certification procedure.

Endorsement

The system of endorsement is provided for agencies whose ratings have systemic importance for the financial stability or integrity of financial markets of one or more Member States.

The endorsement system allows agencies established in the European Union and registered in accordance with the Regulation to authorise the validity in Europe of a rating issued in a third country by an entity in its group (for example, Standard & Poors London may endorse the ratings issued by Standard & Poors New York)[3], provided that a series of conditions are fulfilled.

The Regulation only permits the endorsement of a rating when there is an objective reason for this rating to be made in a third country and when the activities which give rise to the rating fulfil the following conditions:

- the endorsing agency has verified and can demonstrate on an ongoing basis to its competent authority that the conduct of rating activities by the agency of the third country complies with requirements at least as stringent as those contained in the substantive requirements of the Regulation (referred to in the following section);
- the ability of the competent authority (or of the college of competent authorities) of the endorsing agency to evaluate and supervise compliance by the third country agency of the requirements referred to in the previous paragraph is not limited;
- the endorsing credit rating agency makes available on request from its competent authority all the information necessary to enable that competent authority to supervise on an ongoing basis the compliance with the requirements of the Regulation;
- the agency established in a third country is authorised or registered and subject to supervision in its country;
- the legislation of the third country prevents the interference by the competent authorities and other public authorities with the content of methodologies and ratings; and
- there is an appropriate cooperation agreement between the competent authority of the endorsing agency and the competent authority of the third country agency.

The agency which has endorsed ratings issued in a third country will be responsible for the ratings endorsed and for compliance with the conditions established in the Regulation.

Certification based on equivalence

This system is intended for small credit rating agencies of third countries which do not have subsidiaries in the European Union, on condition that they are not of systemic importance to the financial stability or integrity of the financial markets of one or more Member States. Consequently, the advantage of certification with

3 The Regulation also permits the endorsement of ratings issued by an agency which does not belong to the group of the endorsing agency, provided that the activities leading to issue of the rating have been carried out in whole or in part by the endorsing agency.

respect to endorsement is that certified agencies would not be obliged to establish a subsidiary in the European Union.

An additional restriction in the Regulation is that certification is only permitted in respect of ratings made by the agency related to instruments issued in a third country or to issuers domiciled in a third country. Consequently, their ratings of issuers domiciled in the EU or of instruments issued in the EU may not benefit from certification and consequently may not be used by European entities for regulatory purposes.

The system of certification takes place in two consecutive stages:

a) Determination of equivalence: certification requires that the European Commission has previously determined, on prior advice from CESR, the equivalence of the legal and supervisory framework of the home country of the agency which applies for certification with respect to the requirements set out in the European Regulation.

   In order that the legal and supervisory framework of a third country is considered equivalent at least the following conditions must be fulfilled:

   - the third country agencies must be subject to a system of authorisation or registration and to supervision and control of effective compliance on an ongoing basis;

   - the third country agencies must be subject to legally binding rules equivalent to those set out in the substantive requirements under the Regulation; and

   - the legislation of the third country must prevent interference by supervisory and other public authorities with the methods used by the agencies and their ratings.

   The equivalence mechanism does not constitute automatic access to the Community for agencies of the third country considered equivalent, but is a prior requirement which permits agencies of that third country to be individually assessed and be granted an exemption in respect of some of the organisational requirements applicable to credit rating agencies active in the Community.

b) Certification decision: the application for certification must be examined by a college of competent authorities following a process similar to that established for an application for registration. In order to obtain certification the following conditions must be fulfilled:

   - the applying agency must be authorised and registered and be subject to supervision in the third country;

   - there must be an appropriate cooperation agreement with the competent authority of the third country agency.

5 Substantive content of the regulation

The Regulation aims to correct the deficiencies in the functioning of rating agencies detected as a result of the financial crisis. Community legislators have considered that agencies did not reflect rapidly enough deterioration in market conditions in

their ratings. This led to a consensus regarding the need to establish common rules in the European Union to contribute to the correct functioning of the internal market and ensure an adequate level of investor protection.

The objectives of the Regulation are therefore to improve the integrity, transparency and reliability of rating activities in order to contribute to the quality of ratings issued in the European Union. To this end the Regulation establishes conditions for the issuance of ratings and rules relating to the organisation and activities of agencies in order to promote their independence and avoid conflicts of interest.

One fundamental principle of the Regulation is preservation of the independence of agencies. It consequently provides that competent authorities must not interfere in the content of ratings or in the models used to determine them.

Another important principle of the Regulation is the proportionality of some of the requirements in relation to the size of agencies. The aim of the legislators is to adapt certain organisational requirements to the specific conditions of small agencies (with less than 50 employees). In these cases, competent authorities are granted the power to exempt these agencies from some of the rules (specifically the presence of two independent members on the board of directors, the compliance function and mechanism for rotating analysts), provided that they can demonstrate that they fulfil the objectives of the Regulation by other means more appropriate to their size.

The substantive rules set out in the Regulation are based to a large extent on the voluntary compliance standards set out in the Code of Conduct for rating agencies prepared by IOSCO. The rules are basically contained in Articles 5 to 10 of the Regulation and are completed by the details included in Annex I. They can be organised into five main areas whose basic content is summarised below:

Independence and absence of conflicts of interest

Agencies must take the necessary measures to ensure that the issuance of ratings is not affected by any existing or potential conflict of interest, which involves the agency itself, its managers, rating analysts, employees, any other individual whose services are placed at disposal or under control of the agency or any person directly or indirectly linked to it by control.

a. Organisational requirements to avoid conflicts of interest

   Boards of directors of agencies must have a minimum of two independent directors, whose remuneration is not linked to the results of the agency.

   Furthermore, agencies must create a compliance function department and an internal function responsible for periodic review of the quality of their ratings.

b. Operational requirements to avoid conflicts of interest

   Agencies must concentrate their professional activities on the issuance of ratings. Agencies may not provide consultancy or advisory services. In particular, agencies must not make proposals or recommendations regarding the configuration of securitization operations. They may, however, provide auxiliary services provided that this cannot generate conflicts of interest with the issuance of credit ratings.

   Furthermore, agencies are required to publish the names of entities rated from which they receive more than 5% of their annual income.

Finally, agencies must maintain records to keep the documentation related to the preparation of each rating.

Employees

Agencies must ensure that their employees have adequate knowledge and experience to carry out their functions.

Furthermore, it is provided that the remuneration of employees must not be linked to the income which the agency obtains from the entities rated.

One fairly novel element which is not present in the IOSCO Code is the requirement for agencies to establish a mechanism for adequate gradual rotation in respect of analysts and persons who participate in the ratings committees. In order to prevent that the maintenance of prolonged relationships with rated entities undermine the independence of the persons who determine the ratings, an obligatory rotation is imposed which must take place in a staggered manner and individually by analysts and not the complete team at a time.

Fundamental hypotheses, models and methodologies of ratings

A basic principle set out in the Regulation is that agencies must use rigorous, systematic and constant models which can be validated on the basis of past experience.

Furthermore, in order to increase transparency the Regulation imposes an obligation on agencies to publish information regarding the fundamental hypotheses, methodologies and models which they use in their ratings. The intention of this requirement is that information on models is sufficiently detailed to all users of ratings to carry out their own verifications and assess whether they can trust the said ratings or not. However, this requirement must be interpreted in such manner that it does not impose the publication of reserved confidential commercial information and consequently seriously impede innovation.

Furthermore, agencies are required to take adequate measures to ensure that the ratings which they issue are based on a complete analysis of all information which they have and which is relevant in accordance with their rating method. To this end, agencies must take the necessary measures so that the information used in the elaboration of ratings is of sufficient quality and derives from reliable sources.

In addition, agencies must on an ongoing basis, and at least once a year, monitor their ratings and methodologies and revise them, in particular when substantial changes take place which could affect a rating.

Finally, it is also provided that in the event that the fundamental hypotheses, models or methodologies used for ratings are modified, the agency must immediately notify the market which ratings will probably be affected and review these ratings as soon as possible, and at the latest within the six months following the modification.

Disclosure or publication and presentation of ratings

Agencies must, in a non-selective manner and without delay, publish ratings and decisions to suspend a rating.

Furthermore, the Regulation has introduced an obligation, considerably questioned by agencies, that a clear distinction be made between ratings of structured financial instruments and other instruments (using different symbols). Furthermore, non-

solicited ratings must be identified as such and must indicate whether the entity rated has participated or not in the rating process and whether the agency has had access to internal documentation of the entity.

The content of rating reports is regulated, and they must respect the minimum content set out in the Regulation (Annex I, Section D). Specifically, agencies must, in reports, include information as to whether they consider the quality of the existing information regarding the entity rated to be satisfactory and to what extent they have verified the information which has been provided to them by the said entity.

When the lack of reliable data, the complexity of the structure of a new type of financial instrument, or the existing information is not satisfactory or raises serious doubts regarding the reliability of the rating, the agency must abstain from issuing a rating or withdraw existing ratings.

Finally, the Regulation imposes an obligation on agencies to inform entities at least 12 hours prior to publication of the rating so that entities can verify that no factual error has been made.

General and periodic communications

Agencies must in an ongoing manner publish information regarding their activities (list of auxiliary services, methodologies, code of conduct –if they have one– etc.).

Furthermore, the Regulation establishes periodic information obligations. Specifically, agencies must provide CESR with standardised information regarding the behaviour of their ratings issued, including rating transition frequency. CESR must create a central repository in order to make this information available to the public.

Finally, agencies must also annually publish a transparency report which includes information, amongst other, regarding their legal structure, record maintenance policies, internal control mechanisms and financial information on their income, distinguishing between income from rating activities and from auxiliary services.

6 Supervisory structure

6.1 Objective of the Regulation: coordinated supervision

The article published in the CNMV Bulletin for the third quarter of 2008 anticipated the different registration and supervision models which would be discussed in the Council and European Parliament. In simplified terms the options which were placed on the table (from less to more "pro-European") were: supervision by the home State, combined supervision by several countries (by colleges of supervisors) under the coordination of CESR, and finally supervision by a newly created European agency.

Finding a solution acceptable to all in a very short period of time has involved considerable efforts on the part of governments and members of the Parliament. The solution has been a very complex compromise. European securities supervisors now have the task of bringing about efficient functioning in practice.

The different positions of the Member States and European Parliament during negotiation of the Regulation has given rise to a mixed system in which supervision and registration decisions must be discussed by a series of institutions (college of supervisors, CESR, mediator) prior to their adoption by the competent authority.

The most "pro-European" forces in the negotiations were to be found in the European Parliament. The Parliament has not managed to impose the creation of a European agency for the supervision of ratings, but the counterpart for granting its agreement to the Regulation model has been its description in the text itself as temporary.

Thus, the Regulation itself imposes an obligation on the European Commission to publish a report within one year from its entry into force on functioning of the supervisory system, analysing in particular cooperation between authorities and the legal status of CESR. Furthermore, recital 25a expressly mentions that the supervisory architecture provided in the Regulation must not be considered as the long term solution and considers that reforms of broad scope will be necessary in the supervisory model, taking into account the conclusions of the Larosière Report. In its Communication of 27 May 2009 on financial supervision in Europe, the European Commission further proposes that the registration and supervision of rating agencies be entrusted to the future European Securities and Markets Agency which is intended to be set, as transformation of CESR, over the course of 2010. This proposal was for the most part seconded by ECOFIN on 9 June 2009.

In essence, the Regulation formally attributes registration and supervision of agencies to the competent authorities of the home State (those where the agency has its registered office).

Nevertheless, in order to enable all authorities to have the possibility of participating in this registration and supervision, it is required that decisions which the competent authority adopts are previously agreed by a college of supervisors. Furthermore, if members of the college do not reach agreement on any decision the Regulation imposes the intervention of CESR and of a mediator[4].

It may consequently be considered that the weight of supervision is attributed to the colleges, although for legal reasons final decisions regarding registration and supervision must be taken by one authority (that of origin) in accordance with its administrative law. The additional advisory role attributed to CESR and to a possible mediator (established in turn by CESR) is due to the concern with which legislators have viewed the possibility that effective power to supervise agencies is concentrated in one or a few European regulators, as well as the danger that they adopt diverging practices.

The Regulation therefore provides that CESR carry out an important task of coordinating supervision of the different colleges and competent authorities. The work of CESR will further permit all European authorities to contribute to this supervision being European.

In any event, the opinions of CESR or of the mediator would not be binding on the competent authorities which have power to take the final decision. This could give rise to non-uniform decisions regarding the same cases. For example, a group of

4 The concept of the mediator is covered in a very confused manner in the Regulation. CESR will have to clarify its scope.

rating agencies with subsidiaries established in several Member States could be in serious and ongoing breach of the requirements of the Regulation. And members of the supervisory college of this group could have different opinions regarding the measures to be adopted, for example regarding the appropriateness of withdrawing registration from the group, which would mean withdrawing registration in all countries where the group has subsidiaries. In an extreme case, the registration could be withdrawn in certain countries and maintained in others. In other words, if the ZZZ rating agency group has subsidiaries in Italy and France, the Italian authority could withdraw the authorisation of ZZZ Italy, whilst ZZZ France would continue operating if the French authority did not withdraw the registration. In this case, nothing would prevent ZZZ France from issuing ratings on Italian issuers which could furthermore be used by Italian banks in order to calculate their capital requirements if the ZZZ group has the status of ECAI in Italy (as previously mentioned, prudential supervisors of credit institutions recognise the group of entities as ECAI and not each member of the group individually, unlike the system provided in the Regulation).

Logically, this outcome would be contrary to the objectives of the Regulation, and therefore despite the fact that the formal supervisory decision is attributed to the home authority, fluid cooperation in the framework of the college would be essential in order to agree on policies and relevant supervisory decisions.

6.2 Composition of colleges

The objective of European supervision is also key to understand the extent to which the Regulation defines the criteria for forming part of colleges. Colleges will thus be made up by:

- On an obligatory basis, all authorities where the agency has a registered office (a subsidiary, for example).
- On a voluntary basis, at their election, the competent authorities of the countries in which the agency has a branch or in which the ratings of that agency are in widespread use or this use may have a significant impact.

In this manner, virtually all authorities of the EU would have the possibility of being members of the colleges of the principal agencies, which could hamper their functioning. The Regulation requires CESR to prepare recommendations regarding the functioning of colleges. Although CESR could not limit the right of its members to form part of colleges in accordance with the conditions previously referred to, it is perhaps appropriate to establish different types of members in order that a small nucleus of authorities carries the weight in each college and they can thus function efficiently. The Regulation furthermore only authorises the collection of registration and supervision fees by authorities of the home State. This could constitute a substantial restriction on certain countries participating in the college when they are not the home State.

6.3 System for decision-making in colleges

An important question not resolved in the Regulation is the procedure which colleges must follow in order to take decisions (what type of quorum and majorities

will be required, how many votes each member will have, etc.). CESR must also provide answers to these questions.

It seems that the decision to register the agency requires unanimity of members of the college (if there is no unanimity the competent authorities must refuse registration). With respect to other decisions (withdrawal of registration or other penalties, supervisory measures, etc.) if there is no agreement between the members of the college, and after CESR has given its opinion, the competent authorities must decide, and must explain the reasons for their decision and the diverging positions.

In the event of disagreement between members of the college regarding registration and supervision actions, the Regulation provides for an appeal to CESR and also for possible intervention of a mediator. Ensuring that the involvement of CESR and of the mediator facilitates agreement between the authorities without slowing down the decision-making is a further challenge which CESR will have to tackle in forthcoming months.

6.4 International cooperation

Since the principal financial centres (amongst others, the USA, Japan, the EU) have decided to regulate agencies, coordination between supervisors must be extended beyond the borders of the European Union in respect of global rating agencies. IOSCO has begun work on designing mechanisms for international cooperation between the authorities which have supervisory competence over the said agencies. The objectives of this cooperation would be to coordinate the regulatory responses to new problems which arise in the market, to facilitate national supervision –since supervisors would have greater knowledge of the activities of the agencies in other countries and of the degree of supervision which their local authorities exercise– and to exchange information in specific supervisory cases.

The international cooperation mechanisms could be multilateral (colleges of supervisors) or bilateral. Colleges of supervisors seem to be the ideal system in order to achieve the objectives referred to in the previous paragraph. However, cooperation through colleges should not exclude the formalisation of bilateral agreements between supervisors, which would permit more specific collaboration and possibly greater information exchange. The Regulation further lays down, as a prior requirement, both in the endorsement procedure and in that of certification, that these cooperation agreements on supervision exist between the authorities of the agency of a third country and the corresponding authorities of the European Union.

7 Impact of the regulation in Spain

If the objectives of the Regulation are fulfilled, the independent, objective and quality credit ratings which Community legislation promotes will lead to an improvement in the functioning of markets and in the confidence of investors and consumers.

The consequences which the Regulation will have on the rating agency sector in Spain, on Spanish legislation which makes use of ratings and on the CNMV, will obviously be more direct.

The global rating agencies will have to consider the impact of the Regulation on their form of operating and on the organisation of their groups of companies. Specifically, for the global agencies with subsidiaries with registered office in Spain (Fitch, Moody's and Standard & Poors) it will be of interest to know how the principle of proportionality will be applied to their Spanish subsidiaries and to those located in other Member States. As previously explained, the competent authorities have the power to exempt agencies of less than 50 employees from some of the rules (presence of two independent members on the board of directors, compliance function and mechanism for rotating analysts and persons who approve ratings).

For their part, following the recommendations of the Joint Forum and of the European Commission, legislators could raise the desirability of reflecting on the use of ratings in domestic legislation.

In Spain, the following are examples of the use of ratings imposed by legislation:

- The requirement established by legislation on mortgage and asset-backed securitization funds[5], which requires that the financial risk of securities issued by the mortgage and asset-backed securitization funds be assessed by a rating entity recognised for that purpose by the CNMV.
- The Mortgage Royal Decree, 716/2009[6] allows the limit of 80% in the ratio between the mortgage loan and the value of the mortgaged dwelling to be increased if the loan has a bank guarantee provided by a credit institution with a minimum credit rating for long term exposure of A1, A+ or similar from a rating agency recognised by the Bank of Spain. The mortgage Royal Decree also requires that the counterparties to derivatives contracts linked to the issue of mortgage securities have a minimum credit rating of A1, A+ or similar from a rating agency of acknowledged prestige.
- CNMV Circular 1/2009[7] on categories of collective investment undertaking considers as monetary funds those which, amongst other conditions, lack exposure to assets with a short term credit rating of below A2 or assets with no specific credit rating, the issuer of which has a short term credit rating of less than A2.

As mentioned previously, the use of ratings by domestic legislation (which does not derive from implementation of Community legislation) falls outside the scope of application of the Regulation. Consequently, these references in Spanish legislation could be maintained, although they could not impose on agencies which issue ratings to which they refer any requirement not covered by the Regulation. Notwithstanding the foregoing, it may be appropriate to review references in Spanish legislation to the recognition of agencies by the CNMV or by the Bank of Spain, taking into account that the European Regulation already provides for registration of agencies to operate in the European Union.

5 Act 19/1992 on the regime of real estate investment funds and companies and mortgage securitization funds and implementing legislation.

6 Royal Decree 716/2009, of 24 April, implementing certain aspects of Act 2/1981, of 25 March, on regulation of the mortgage market and other rules of the mortgage and financial system.

7 Circular 1/2009, of 4 February, of the Spanish National Security Market Commission (Comisión Nacional del Mercado de Valores) on the categories of collective investment undertakings based on their investment vocation.

Finally, with respect to the CNMV, the attribution of functions of registration and supervision of rating agencies with registered office in Spain will mean the need to allocate resources to these functions and to establish close cooperation with the Bank of Spain. The clearly European dimension of this supervision will further require intense collaboration with supervisors of other Member States in the context of colleges and CESR.

8 Final considerations

The Regulation establishes for the first time in Europe a legislation of rating agencies which has, correctly, to a large extent respected the substantive principles agreed at international level and set out in the IOSCO Code. This substantive regulation should contribute to better functioning of agencies, and consequently to a better quality of ratings.

Unfortunately, the complex structure of supervision set out in the text could weaken supervision of compliance with these legislative requirements if European supervisors are unable to agree on a system in practice which ensures efficient and coordinated supervision. CESR now has the complicated task of creating an adequate functional system.

Fortunately, as previously mentioned, this complex system is already profiled, in the Regulation itself and the different political manifestations of the European Commission and ECOFIN in the debate on the future of supervision in Europe, as something temporary which will necessarily be replaced by centralised registration and supervision in a single European authority (foreseeably a "CESR" with greater functions).

With respect to the impact of the new legislation in Spain, what can most be highlighted is that as from entry into force of the Regulation (assuming that global agencies do not modify their territorial organisation), there will be a new series of entities regulated in this country. These entities will be subject to supervision of the CNMV, which will have to prepare itself to carry out these new functions and cooperate with the Bank of Spain and other European securities supervisors in order to ensure adequate global supervision of rating agencies.

IV Legislative annex

New legislation promulgated since publication of the CNMV Bulletin for the first quarter of 2009 was as follows, in chronological order:

- Circular 2/2009, of 25 March, of the Spanish Securities Market Commission on accounting standards, annual accounts, public financial statements and reserved statistical information statements of Securitization Funds.

  By means of the Circular specific rules are issued relating to the accounting, format and content of the annual accounts and management reports of securitization funds in order to enhance their regime of transparency. The Circular, which is in general adapted to the accounting principles of the Commercial Code and Spanish General Accounting Scheme (*Plan General de Contabilidad*) further takes into account the specific features of these institutions and, in particular, the fact that the net worth value of Securitization Funds is nil, as established in Act 19/1992, of 7 July, on the regime of Real Estate Investment Funds and Companies and Mortgage Securitization Funds. Consequently, the statement of changes in net worth stipulated by the Commercial Code is replaced by the statement of recognised income and expenses, which will present concepts which must be recorded in net worth in accordance with the Spanish General Accounting Scheme. In the third section the Circular includes other specific rules which take into account the legal and operating structure of securitization funds.

  With respect to the periods in which financial information must be sent, it provides that those securitization funds whose constitution requires a prospectus must submit financial information half-yearly, whilst others must do so annually. Certain statistical information is also required on a quarterly basis. The Circular also includes specific models of public financial statements, annual accounts and statistical information.

- Circular 3/2009, of 25 March, of the Spanish Securities Market Commission on the content of the half-yearly report on compliance with the oversight and supervision function of collective investment depositaries.

  This Circular implements Section 60 of the Collective Undertakings Act, 35/2003, of 4 November, which establishes amongst the obligations of depositaries that of carrying out the function for shareholders or participants of oversight of the management carried out by investment fund management companies and by the directors of investment companies. In this respect, it implements the regulation laid down in the CIU Regulations relating to the half-yearly report which must be sent to the CNMV, on compliance with this oversight and supervision function, specifying the scope of the review which must be carried out by each depositary, and the concept of anomaly of special relevance.

- Regulation (EC) no. 254/2009 of the Commission, of 25 March 2009, modifying Regulation (EC) no. 1126/2008, adopting certain International Accounting Standards in accordance with Regulation (EC) no. 1606/2002 of the European Parliament and Council, in respect of Interpretation no. 12 of the IFRS Interpretation Committee.

This Regulation incorporates into European Union Law an interpretation by the International Financial Reporting Standards Interpretation Committee, specifically Interpretation no. 12 relating to service concession agreements. It explains how to recognise the infrastructure subject to the service concession agreements in the accounts of the concessionaire along with income and expenses.

- Royal Decree-Act 3/2009, of 27 March, on urgent measures in the tax, financial and bankruptcy field on evolution of the economic situation.

  This legislation principally introduces modifications in the field of bankruptcy law in the light of legal problems which have arisen in the context of the current economic crisis from application of the Bankruptcy Act, 22/2003 of 9 July (hereinafter BA). The most important aspects of the reform in the field of bankruptcy law are indicated below:

  - **Refinancing agreements**. Refinancing agreements are protected, meaning those agreements reached by the debtor with a particular number of creditors, covered by a viability plan which permits continuity of his activity in the short and medium term and which mean a significant increase in the credit available or modification of his obligations by extension of the period initially agreed or by replacement of such obligations with new ones. These refinancing agreements will be excluded from the ambit of the rescission action provided by Section 71.1 BA in respect of acts prejudicial to the bankruptcy estate carried out by the debtor within the two years prior to the date of the declaration of bankruptcy. Nevertheless, refinancing agreements must comply with the following conditions:

    a. The agreement must be entered into by creditors whose credit rights represent at least three fifths of the liabilities of the debtor at the date of the agreement.

    b. They must be accompanied by a report from an independent expert, designated by the Commercial Registry, who must report on the sufficiency of the information provided by the debtor, the reasonableness of the viability plan and the proportionality of the security agreed in accordance with market conditions.

    c. The refinancing agreement must be formalised as a notarised public document.

  - **Subordinated credit rights**. Another aspect of importance consists of extension or redefinition of the category of subordinated credit rights, being those which merit ranking after ordinary rights. Certain credit rights will thus receive this classification in those cases in which the judge finds, on prior report from the judicial administrators, that the creditor repeatedly obstructs compliance with the contract in question to the prejudice of the interests of the bankruptcy. In relation to persons specially connected with the bankrupt, whose credit rights have the status of subordinated, it is also clarified that persons specially connected with an insolvent legal entity will include the holders at the time the credit arose of 5% or 10% of the capital of the insolvent, depending on whether it is a listed company or not, as well

as the members of companies in the group if they fulfil the same requirements.

- **Advance arrangement**. This is a question of giving further incentive for the concept of the advance arrangement. Without prejudice to the debtor having to apply for a declaration of bankruptcy within the two months following the date on which he knows or should have known of his state of insolvency, the debtor is granted an additional period of three months to negotiate the necessary adhesions for admission for processing of an advance proposal for arrangement, provided that the commencement of negotiations has been duly notified to the competent court. It also reduces the number of creditor adhesions required for processing the proposed arrangement and extends the spectrum of creditors who may join in, now permitting the adhesion of any class of creditors, including subordinated.

- **Ordinary arrangement**. The negotiation of ordinary arrangements is made less bureaucratic by provision of a written process and elimination of the non-binding involvement of the administration in the insolvencies of undertakings whose activity may be of particular importance to the economy.

- **Early liquidation**. The possibility is provided that the debtor himself submits an advance proposal for liquidation in order to realise the estate for the purpose of speeding up the process and avoiding a possible degradation of property as a result of passage of time. If the proposal is approved by the competent judge, the latter may authorise payment of credit rights without waiting for conclusion of the challenges which may have been made.

- **Publicity**. The system of publicity of the bankruptcy by formal notice is simplified (announcements in the Official State Gazette and newspapers).

- **Remuneration**. The remuneration of bankruptcy and insolvency administrators is readjusted and the government is authorised by means of regulations to establish a maximum remuneration.

- P**rocedural aspects**. The abbreviated procedure is made more widespread.

Furthermore, and outside the scope of bankruptcy law, other legislative changes are made of a financial and tax nature which have an effect on business activities:

- There is a downward adjustment of the legal interest rate and legal late payment interest rate. The legal interest rate is fixed at 4% and the late payment interest rate at 5%.

- With respect to Corporate Income Tax, the deductibility is extended of certain investments in cinematographic productions.

- The Insurance Compensation Consortium is authorised to engage in credit reinsurance and surety activities with special effect on sectors most affected by the economic crisis.

- Royal Decree-Act 4/2009, of 29 March, authorising the grant of definitive guarantees of financing which may be granted by the Bank of Spain in favour of the savings bank Caja de Ahorros de Castilla-La Mancha.

  This Royal Decree-Act is set in the context of the process of provisional replacement of the Caja de Ahorros de Castilla-La Mancha management body resolved by the Bank of Spain.

  The Royal Decree-Act permits the Bank of Spain, supported by the General State Administration, to grant extraordinary financing to the savings bank which enables it to overcome its temporary liquidity problems. In turn the Deposit Guarantee Fund must reimburse the General State Administration with a proportional part of the security enforced corresponding to the deposits guaranteed by this fund in relation to the total obligations of the bank. The amount which the General State Administration may guarantee in 2009 amounts to 9,000 million euros.

- Act 3/2009, of 3 April, on structural modifications of mercantile companies.

  This commercial legislation is of general scope in respect of structural modifications of mercantile companies, and therefore is applicable to joint stock companies (*sociedades anónimas*), limited liability companies, ordinary partnerships and partnerships limited by shares and collective. The legislation came into force on 4 July 2009.

  In the field of mergers, various novelties are introduced, which particularly include:

  - The independent expert report is only necessary when the company resulting from the merger is a joint stock company or a partnership limited by shares. Neither is the independent expert report on the merger scheme necessary when so agreed by all members with voting rights of each of the companies involved in the merger (except in cases of geared corporate acquisitions with subsequent merger).

  - In the case of geared corporate acquisitions with subsequent merger, the expert report must determine whether financial assistance exists.

  - In the case of mergers of limited liability companies, votes in favour by at least two thirds of the votes of the capital shares into which the capital of the company is divided ceases to be necessary.

  - Reference must also be made to the rules governing challenge of merger. The law on structural modification states that "no merger may be challenged after its registration provided that it has taken place in accordance with the provisions of this Act".

  - With respect to so-called "special mergers", the regulation of absorption of a company wholly owned by the absorbing company is modified, ensuring greater protection of creditors of companies which, still not merged, may see net worth prejudiced as a result of the merger of other group companies. It also regulates the absorption of a company owned 90% by the absorbing company.

- For capital companies only it introduces a new regulation on intra-Community cross-border mergers, which results from transposing Directive 2005/56/EC, the most significant aspects of which are:

  - The members of the Spanish companies participating in an intra-Community cross-border merger who vote against the resolution for merger the company resulting from which has its registered office in another Member State, may separate from the company.

  - When the company resulting from the intra-Community cross-border merger is subject to Spanish law, the Commercial Registrar must ensure correct implementation of the acts and procedures prior to the merger of all participating companies, obtaining certificates issued by the competent foreign authorities.

  - The Commercial Registry Official Gazette must, for each of the companies subject to Spanish law which are merged, publish an indication of the terms and conditions for exercise of creditor rights and those of members of the companies which merge.

  - In certain cases, the right is granted to employees to participate and their inclusion through their representatives on the corporate bodies resulting from the intra-Community cross-border merger.

In the field of demergers, the concept of segregation is regulated, which follows the legal regime of demergers, and differs from total and partial demerger in that in segregation it is the company segregated itself and not its members which receive shares, capitals shares or interests in the beneficiary companies.

There is furthermore new regulation of **general assignment of assets and liabilities** by which a company transfers *en bloc* all of its assets and liabilities to one or more others in exchange for a consideration which may not consist of shares, capital shares or interests in the assignee. The consideration may be received by the assignor company or directly by its members. Protection of members is articulated through the information provided by the general assignment scheme and through submission of the agreement to various requirements established in order to pass a merger resolution; the protection of creditors of the assignor and assignee companies is provided through the right of objection and joint and several liability of the assignee up to the limit of the net assets attributed on the assignment and of the assignor company without limit.

There is furthermore unification of legislation on **transformations**, adopting the fuller concept under the Limited Liability Companies Act compared with that of the Companies Act (*Ley de Sociedades Anónimas*), insofar as a right of separation is granted in all cases for members who have not voted in favour of the transformation resolution. The law requires, prior to passing the transformation resolution, approval of a directors' report which explains and justifies the legal and economic aspects of the transformation, although this report will not be necessary when the transformation resolution is adopted unanimously at a full meeting of all members. The transformation may not take place if there

is objection by holders of special rights other than shares, of capital shares or interests which cannot be maintained after the transformation.

There is also **regulation of international transfer of corporate domicile**, with minor substantial modifications. The directors of the company intending to transfer registered office abroad must draw up and sign a transfer scheme, along with an explanatory report which must be available to members.

The Act furthermore transposed Directive 2006/68/EC of the European Parliament and Council, of 6 September 2006, amending Directive 77/91/EEC of the Council, in relation to the creation of joint stock companies, and maintenance of and modifications to their capital. In particular, amongst other aspects it modifies the **regime of own shares under the Companies Act** –also applicable to the acquisition of shares of a parent company–, such that the nominal value of own shares acquired directly or indirectly may not exceed 20% or, if the company is listed, 10% of subscribed capital. The acquisition of own shares must not, however, place the amount of net worth below the amount of company capital and non-distributable reserves.

Modifications are also made to the **regime of increase of capital by contribution in kind of joint stock companies**: the right of preferential subscription ceases to be recognised; the exceptions are extended to the requirement of independent expert report on this type of increase, and it is prohibited for the value of the contribution recorded in the deed to exceed the value determined by the independent expert, the responsibilities of whom are also subject to regulation.

Finally, there is elimination of **the right of preferential subscription of convertible debenture holders**, both for subscribe to shares and to subscribe for new convertible debentures.

- Royal Decree 716/2009, of 24 April, implementing certain aspects of Act 2/1981, of 25 March, on regulation of the mortgage market and other mortgage and financial system legislation.

  This legislation principally implements Act 2/1981, of 25 March, on the Mortgage Market, which had been amended in 2007. The following aspects can be highlighted:

  - The Spanish branches of credit institutions authorised in another Member State are granted the possibility of issuing mortgage shares, provided that they are in respect of credits or loans secured by real estate situated in Spain, and the terms and conditions are set out which mortgages or similar rights *in rem* over real estate situated in other European Union countries to secure loans or credits granted by Spanish institutions must comply with.

  - The conditions are specified, furthermore, which mortgage loans and credits must comply with which serve as the basis for the issue of mortgage market securities. It emphasises that the relationship between the principal amount of the loan and the appraisal value of mortgaged residential real estate may exceed 80% when the credit risk is mitigated by means of other instruments (credit insurance, bank guarantees, etc.). The possibility is also

expressly acknowledged of issuing mortgage shares on wholly or partially matured loans.

- It makes clear that by issuing mortgage shares a true assignment takes place of part of the mortgage credit which is held. It further clarifies that each of the mortgage securities represents a holding in a particular credit right, not in a group of credit rights.

- The special accounting register is developed of mortgage loans and credits and replacement assets which back mortgage bonds and securities and of derivative instruments linked to them. This accounting register, which is the responsibility of issuer entities themselves, aims to increase a legal certainty in the case of insolvency of the issuer.

- Significant flexibility is given to the possibility of operating in the mortgage market with own securities, although the transparency requirements in this respect are increased.

- It establishes that those mortgage loans and credits which are susceptible to serving as basis for issues of mortgage bonds, shares and securities cannot serve as the basis for issue of mortgage transfer certificates.

- Royal Decree-Act 6/2009, of 30 April, adopting certain measures in the energy sector and approving the social bond.

  This Royal Decree-Act regulates various aspects of the electricity sector which fall outside the subject matter of this Annex.

  Mention must be made however, amongst other aspects, that the Decree-Act adopts measures to resolve the so-called electricity sector tariff deficit, i.e. the difference between the tariffs paid by consumers and the actual cost of the energy, a difference which is borne by the State by granting long term collection rights in favour of the electricity sector. With respect to the securities market, this legislation provides for assignment of the aforesaid collection rights to the Electricity System Deficit Securitization Fund, which will issue its corresponding liabilities by means of a competitive mechanism in the financial market with State guarantee.

- Order EHA/1421/2009, of 1 June, implementing Section 82 of the Securities Market Act, 24/1988 of 28 July, in the field of relevant information.

  This legislation implements the Securities Market Act regulation of relevant information, which is defined as that the knowledge of which could reasonably affect an investor in acquiring or transferring securities or financial instruments and could therefore have a substantive effect on their quotation on a secondary market. The Order also authorises the CNMV to implement various aspects by Circular.

  The Order firstly establishes criteria for assessing the degree of potential relevance of information and its possible identification as relevant information. These criteria are as follows:

- The relative magnitude of the fact, decision or series of circumstances in the activities of the issuer.

- The relevance of the information in relation to the factors determining the price of the securities issued.

- The listing conditions of securities issued.

- The fact that information of similar type was considered relevant in the past.

- The effect of variation on prices which information of the same type disseminated in the past has had.

- The importance accorded by existing external analyses of the issuer to this type of information.

- The existence of rational indications that premature, partial or distorted dissemination of the operation is taking place with an effect on prices or trading volumes.

Secondly, various general principles and duties are established for issuers of securities in relation to the dissemination of relevant information, in particular the following:

- Issuers must act with neutrality, applying the same criteria to relevant information irrespective of whether it could favourably or adversely affect the quotation of a security.

- Issuers must disseminate all relevant information as soon as the facts are known, the decision has been taken or the agreement or contracts with third parties in question signed, irrespective of whether the relevant information has originated within the issuer or not.

- With respect to determination of those cases in which, as the Securities Market Act provides, the relevant information must be notified to the CNMV prior to its publication, in order not to disrupt the normal course of operations and prevent endangering investor protection, the Order specifies that the normal course of operations is disrupted when extraordinary alterations take place in quoted prices.

The Order thirdly establishes various general criteria relating to the content of communications of relevant information, in particular regulating relevant information relating to projections, forecasts and estimates.

The Order fourthly obliges issuers to designate an authorised interlocutor, who the CNMV can consult or from whom it may request information regarding relevant information.

Finally, it is expressly provided that the legislation on relevant information is infringed in those cases in which, without simultaneous communication thereof to the CNMV, relevant information is disseminated through meetings with investors

or shareholders, presentations to investment analysts or journalists or media professionals in general.

- Royal Decree-Act 9/2009, of 26 June, on bank restructuring and strengthening of own funds of credit institutions.

  This legislation is based on the fact that the viability of various credit institutions could be compromised in forthcoming months. In this context the Royal Decree-Act provides for use of public resources to undertake, when necessary, the restructuring of various credit institutions and guarantee the solvency of the Spanish financial system as a whole. Restructuring means merger of the institution or total or partial transfer of the business by demerger or general or partial assignment of assets and liabilities.

  In relation to these credit institution restructuring processes, the Royal Decree-Act sets out three alternatives. Firstly, a search for a private solution by the credit institution or institutions affected by the problem. Secondly, the adoption of measures with participation of the Deposit Guarantee Fund in credit institutions, with prior approval of the Bank of Spain of a plan to overcome the situation. Thirdly, and this is the alternative which is regulated in the legislation as such, replacement of the directors of institutions and the use of public funds for their reorganisation through the Orderly Bank Restructuring Fund (*Fondo de Reestructuración Ordenada Bancaria* – FROB), all in accordance with the plan drawn up by the Bank of Spain. It provides in addition that the FROB, with the approval of the Bank of Spain, can contribute public funds in order that credit institutions which do not need restructuring can undertake integration processes which rationalise the structure and efficiency of institutions; "such processes may include institutional systems of protection whose objectives can be assimilated to those of a merger process in relation to manner of operating, determination and implementation of policies and strategies of the participating institutions and establishment and exercise of their internal controls and risk management".

  The investments made by the FROB will take the form of preferential holdings convertible into shares, holdings with voting rights or contributions to corporate capital. The corresponding issue resolutions must further provide for convertibility of the preferential holdings at the request of the FROB if, before five years have elapsed, the Bank of Spain considers repurchase of these assets within this period by the institution to be unlikely. These investments by the FROB are exempt from certain legal restrictions or obligations such as corporate restrictions on the right to attend general meetings, restrictions on voting rights of the shares which the FROB acquires or subscribes for, restrictions on equity holdings and the requirement for involvement of general meetings of savings banks in the issue of equity holdings.

- Act 5/2009, of 29 June, amending the Securities Market Act, 24/1988 of 28 July, Act 26/1988, of 29 July, on discipline and intervention of credit institutions, and the revised text of the Act on regulation and supervision of private insurance, promulgated by Royal Legislative Decree 6/2004, of 29 October, on the reform of significant holdings in investment services firms, credit institutions and insurance companies.

This legislation principally relates to the regime of significant holdings in financial institutions, although there is further regulation, by means of various additional provisions, of other matters relating to the financial sector.

- **Significant holdings in financial entities**: The legislation is amended on significant holdings in investment services firms, collective investment undertakings, credit institutions and insurance companies, as a result of transposition of Directive 2007/44/EC of the European Parliament and Council, of 5 September 2007.

- The new legislation considers significant, or major, holdings to be those which arise when reaching at least 10% of capital or voting rights, compared with the previous threshold of 5%. A new duty is further introduced of notifying the supervisor of holdings which, not being significant, mean reaching or exceeding the threshold of 5% of capital or voting rights; this duty does not trigger the evaluation procedure, but permits supervisors to have more information. In the insurance field the previous system of prior authorisation is also replaced by a system of non-objection, such that if the Directorate General for Insurance and Pension Funds does not object to the operation considered, it may be carried out. Furthermore, the criteria are incorporated by which supervisors can object to an acquisition or increase in significant holdings, criteria which relate to the integrity and solvency of the acquiring party, the integrity of future directors of the entity, the capacity of the entity to comply with its legislative obligations and the absence of rational indications of carrying out money laundering or terrorism financing operations.

- **Collective investment undertakings (CIUs)**: Act 35/2003, of 4 November, on collective investment undertakings is amended, not only in the field of significant holdings but also in relation to financial instruments which, as a result of exceptional circumstances, cannot be valued or sold at their reasonable value and the possibility is provided for CIU management companies to transfer them from one CIU to another CIU or newly created compartment, on the conditions determined by regulation.

- **Companies Act**: In similar terms to those established for capital increases, the possibility is regulated that in the case of quoted companies the preferential subscription rights of shareholders in relation to issues of convertible debentures is excluded, in which the shareholders general meeting has delegated power to resolve on the issue to directors.

- **Securitization Funds**: There is amendment of Act 19/1992, of 7 July, on the regime of real estate investment funds and companies and mortgage securitization funds. In particular, the possibility is regulated of altering the deed of formation of the securitization fund; modifications of deeds of formation may not alter the nature of the assets assigned to the fund nor transform a mortgage securitization fund into one of asset securitization or vice versa, nor mean *de facto* creation of a new fund. These modifications can take place either with the consent of holders of the securities issued charged to the fund, or without their consent when, after the management company has evidenced that the modification maintains or improves the

rating granted to the securities issued prior thereto, certain requirements are also fulfilled:

a. The modification is, in the view of the Spanish National Security Market Commission, of minor relevance, in accordance with certain criteria established in the Act itself;

b. That, being an open-ended fund on the liabilities side, the modification only affects the rights and obligations of holders of securities issued after the date of execution of the notarised deed of modification.

- **Guarantee Funds of Deposits in Savings Banks and Credit Cooperatives**: One aspect is modified relating to the periods for action by the Bank of Spain in the event of non-payment of deposits by a savings bank or credit cooperative.

V Statistics Annex

1 Markets

1.1 Equity

Share issues and public offerings[1]

TABLE 1.1

				2008			2009	
	2006	2007	2008	II	III	IV	I	II[2]
CASH VALUE[3] (Million euro)	5,021.7	23,757.9	7,812.8	356.6	40.8	7,405.8	4,560.5	361.4
Capital increases	2,562.9	21,689.5	7,803.3	356.6	40.8	7,405.8	4,560.5	361.4
Of which, primary offerings	644.9	8,502.7	292.0	292.0	0.0	0.0	0.0	0.0
With Spanish tranche	303.0	4,821.4	292.0	292.0	0.0	0.0	0.0	0.0
With international tranche	342.0	3,681.4	0.0	0.0	0.0	0.0	0.0	0.0
Secondary offerings	2,458.8	2,068.5	9.5	0.0	0.0	0.0	0.0	0.0
With Spanish tranche	1,568.1	1,517.1	9.5	0.0	0.0	0.0	0.0	0.0
With international tranche	890.7	551.4	0.0	0.0	0.0	0.0	0.0	0.0
NO. OF FILES[4]	30	35	11	4	2	4	5	1
Capital increases	21	26	10	4	2	4	5	1
Of which, primary offerings	8	8	2	2	0	0	0	0
Of which, bonus issues	0	0	0	0	0	0	0	0
Secondary offerings	14	12	2	1	0	0	0	0
NO. OF ISSUERS[4]	23	29	11	4	2	4	5	1
Capital increases	18	24	10	4	2	4	5	1
Of which, primary offerings	6	6	2	2	0	0	0	0
Secondary offerings	10	8	2	1	0	0	0	0

1. Total files registered at the CNMV (including supplements of initial files).
2. Available data: May 2009.
3. Does not include registered amounts that were not carried out.
4. Includes all registered offerings, including the issues that were not carried out.

Primary and secondary offerings. By type of subscriber

TABLE 1.2

				2008			2009	
Million euro	2006	2007	2008	II	III	IV	I	II[1]
PRIMARY OFFERINGS	644.9	8,502.7	292.0	292.0	0.0	0.0	0.0	0.0
Spanish tranche	303.0	4,646.2	282.0	282.0	0.0	0.0	0.0	0.0
Private subscribers	8.7	2,841.0	191.5	191.5	0.0	0.0	0.0	0.0
Institutional subscribers	294.3	1,805.2	90.5	90.5	0.0	0.0	0.0	0.0
International tranche	342.0	3,681.4	0.0	0.0	0.0	0.0	0.0	0.0
Employees	0.0	175.2	10.0	10.0	0.0	0.0	0.0	0.0
Others	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
SECONDARY OFFERINGS	2,458.8	2,068.5	9.5	0.0	0.0	0.0	0.0	0.0
Spanish tranche	1,565.0	1,505.7	9.5	0.0	0.0	0.0	0.0	0.0
Private subscribers	390.0	393.9	0.0	0.0	0.0	0.0	0.0	0.0
Institutional subscribers	1,175.0	1,111.8	9.5	0.0	0.0	0.0	0.0	0.0
International tranche	890.7	551.4	0.0	0.0	0.0	0.0	0.0	0.0
Employees	3.1	11.4	0.0	0.0	0.0	0.0	0.0	0.0
Others	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

1. Available data: May 2009.

Admission to listing. Files registered at the CNMV

TABLE 1.3

				2008			2009	
	2006	2007	2008	II	III	IV	I	II[1]
NOMINAL VALUE (Million euro)								
With issuance prospectus	963.4	5,894.3	980.9	25.5	127.4	814.7	202.4	460.3
Capital increases	575.9	5,687.2	980.9	25.5	127.4	814.7	202.4	460.3
Of which, primary offerings	145.3	5,424.4	100.0	0.0	100.0	0.0	0.0	0.0
Secondary offerings	387.5	207.1	0.0	0.0	0.0	0.0	0.0	0.0
Without issuance prospectus	564.7	8,348.6	1,109.0	448.1	223.3	163.0	139.1	6.4
NO. OF FILES								
With issuance prospectus	18	22	10	1	4	3	2	4
Capital increases	13	18	10	1	4	3	2	4
Of which, primary offerings	5	6	1	0	1	0	0	0
Secondary offerings	9	7	0	0	0	0	0	0
Without issuance prospectus	61	72	43	12	7	15	4	2

1. Available data: May 2009.

Companies listed[1]

TABLE 1.4

				2008			2009	
	2006	2007	2008	II	III	IV	I	II[2]
Total electronic market[3]	135	143	136	139	140	136	136	136
Of which, without Nuevo Mercado	124	142	136	139	140	136	136	136
Of which, Nuevo Mercado	11	1	0	0	0	0	0	0
Of which, foreign companies	6	5	5	5	5	5	5	5
Second Market	12	11	8	9	8	8	8	8
Madrid	2	2	2	2	2	2	2	2
Barcelona	9	9	6	7	6	6	6	6
Bilbao	0	0	0	0	0	0	0	0
Valencia	1	0	0	0	0	0	0	0
Open outcry ex SICAV	38	31	29	29	29	29	29	28
Madrid	16	13	13	13	13	13	13	13
Barcelona	24	20	19	19	19	19	19	18
Bilbao	10	9	8	8	8	8	8	8
Valencia	13	9	7	7	7	7	7	6
Open outcry SICAV	744	8	3	4	4	3	3	3
MAB[4]	2,405	3,287	3,347	3,362	3,364	3,347	3,322	3,300
Latibex	34	34	35	35	35	35	33	33

1. Data at the end of period.
2. Available data: May 2009.
3. Without ETF (Exchange Traded Funds).
4. Alternative Stock Market.

Capitalisation[1]

TABLE 1.5

				2008			2009	
Million euro	2006	2007	2008	II	III	IV	I	II[2]
Total electronic market[3]	813,765.1	892,053.8	531,194.2	739,386.7	634,275.0	531,194.2	435,027.6	522,121.1
Of which, without Nuevo Mercado	800,148.0	891,875.7	531,194.2	739,386.7	634,275.0	531,194.2	435,027.6	522,121.1
Of which, Nuevo Mercado	13,617.1	178.1	0.0	0.0	0.0	0.0	0.0	0.0
Of which, foreign companies[4]	105,600.9	134,768.6	61,317.5	133,614.0	94,553.7	61,317.5	52,843.4	68,910.1
Ibex 35	512,828.0	524,651.0	322,806.6	412,258.4	374,922.1	322,806.6	276,053.0	322,374.3
Second Market	392.7	286.8	109.9	167.1	112.5	109.9	76.1	81.7
Madrid	18.9	27.8	22.8	25.9	24.1	22.8	21.4	22.2
Barcelona	184.2	259.0	87.1	141.1	88.3	87.1	54.7	59.5
Bilbao	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Valencia	189.6	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Open outcry ex SICAV	7,905.3	7,444.9	5,340.7	6,672.3	5,850.5	5,340.7	4,438.8	4,272.0
Madrid	2,698.1	1,840.6	1,454.7	1,562.0	1,475.4	1,454.7	1,225.5	1,279.4
Barcelona	4,966.3	4,627.8	3,580.2	4,698.4	3,966.4	3,580.2	2,808.5	2,718.1
Bilbao	59.5	108.2	45.9	27.0	27.0	45.9	45.9	45.9
Valencia	741.9	1,206.5	760.4	971.7	885.3	760.4	792.1	467.4
Open outcry SICAV[5]	9,284.1	245.4	155.0	158.2	148.6	126.8	106.9	124.4
MAB[5]	29,866.3	41,659.8	35,520.2	28,210.7	26,952.4	24,718.6	24,020.8	24,557.7
Latibex	271,641.8	427,773.6	287,188.9	712,179.3	529,494.2	287,188.9	319,943.1	403,677.0

1. Data at the end of period.
2. Available data: May 2009.
3. Without ETF (Exchange Traded Funds).
4. Foreign companies capitalisation includes their entire shares, whether they are deposited in Spain or not.
5. It is only calculated with outstanding shares, but not with treasury shares, because they only report the capital stock at the end of the year.

Trading

TABLE 1.6

				2008			2009	
Million euro	2006	2007	2008	II	III	IV	I	II[1]
Total electronic market[2]	1,144,562.9	1,653,354.8	1,228,392.4	315,693.7	285,162.3	249,638.7	182,762.4	149,249.5
Of which, without Nuevo Mercado	1,118,546.1	1,627,369.5	1,228,380.9	315,693.7	285,162.3	249,638.7	182,762.4	149,249.5
Of which, Nuevo Mercado	26,016.8	25,985.3	11.4	0.0	0.0	0.0	0.0	0.0
Of which, foreign companies	11,550.3	7,499.3	1,407.1	382.4	206.9	265.7	418.7	576.4
Second Market	49.3	192.9	31.7	17.5	9.7	1.2	1.2	0.5
Madrid	7.2	8.9	3.4	1.7	0.1	1.1	0.3	0.2
Barcelona	41.6	182.3	28.3	15.9	9.6	0.1	0.9	0.3
Bilbao	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Valencia	0.5	1.7	0.0	0.0	0.0	0.0	0.0	0.0
Open outcry ex SICAV	737.6	792.7	182.1	22.5	58.1	63.0	12.3	13.3
Madrid	257.9	236.1	73.9	7.2	45.6	3.7	5.1	4.6
Barcelona	297.8	402.8	103.6	14.7	12.2	59.1	6.9	8.6
Bilbao	159.9	0.1	0.1	0.0	0.0	0.1	0.0	0.0
Valencia	22.0	153.8	4.5	0.6	0.4	0.1	0.3	0.2
Open outcry SICAV	4,580.6	361.6	25.3	2.7	7.2	9.6	7.2	2.3
MAB[3]	1,814.2	6,985.2	7,060.3	1,646.1	1,406.3	2,041.8	1,177.5	779.7
Latibex	723.3	868.2	757.7	199.3	136.2	116.4	89.4	69.5

1. Available data: May 2009.
2. Without ETF (Exchange Traded Funds).
3. Alternative Stock Market.

Trading on the electronic market by type of transaction[1]

TABLE 1.7

Million euro	2006	2007	2008	2008 II	2008 III	2008 IV	2009 I	2009 II[2]
Regular trading	1,080,117.5	1,577,249.5	1,180,835.9	304,979.6	279,188.2	241,955.6	178,078.6	139,974.4
Orders	658,839.2	985,087.6	774,718.1	185,997.3	183,639.9	159,841.1	117,321.9	86,790.9
Put-throughs	105,910.7	155,085.1	105,673.9	29,644.2	22,654.9	18,800.1	11,402.0	8,385.2
Block trades	315,367.7	437,076.8	300,443.9	89,338.1	72,893.4	63,314.4	49,354.7	44,798.3
Off-hours	11,651.6	18,301.5	10,175.2	2,425.3	1,341.7	2,148.1	79.9	250.2
Authorised trades	4,052.0	4,189.6	3,183.2	533.1	974.9	1,300.5	752.6	2,118.7
Art. 36.1 SML trades	6,439.7	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Tender offers	18,094.6	26,284.3	17,461.2	3,412.1	0.0	0.0	0.0	5,733.7
Public offerings for sale	3,264.0	11,177.4	292.0	0.0	292.0	0.0	0.0	0.0
Declared trades	10,347.9	2,954.4	1,066.8	20.2	33.0	177.3	594.4	0.0
Options	8,279.8	10,240.4	9,661.9	2,579.7	1,693.1	2,938.7	1,695.1	295.9
Hedge transactions	2,315.7	2,957.8	5,716.3	1,743.7	1,639.5	1,118.5	1,561.8	876.6

1. Without ETF (Exchange Traded Funds).
2. Available data: May 2009.

Margin trading for sales and securities lending

TABLE 1.8

Million euro	2006	2007	2008	2008 II	2008 III	2008 IV	2009 I	2009 II[1]
TRADING								
Securities lending[2]	550,850.4	835,326.9	583,950.8	175,820.7	138,864.1	109,281.2	82,710.3	83,433.0
Margin trading for sales of securities[3]	379.9	555.4	624.9	135.2	149.4	150.8	168.0	139.1
Margin trading for securities purchases[3]	511.9	411.3	154.7	35.1	33.6	33.2	25.2	19.4
OUTSTANDING BALANCE								
Securities lending[2]	62,058.2	79,532.9	43,647.8	66,326.8	58,394.2	43,647.8	36,825.4	42,232.5
Margin trading for sales of securities[3]	73.6	112.4	20.7	57.8	62.3	20.7	24.7	34.7
Margin trading for securities purchases[3]	70.1	59.4	7.0	28.2	31.2	7.0	3.6	5.7

1. Available data: May 2009.
2. Regulated by Article 36.7 of the Securities Market Law and Order ECO/764/2004.
3. Transactions performed in accordance with Ministerial Order dated 25 March 1991 on the margin system in spot transactions.

1.2 Fixed-income

Gross issues registered[1] at the CNMV

TABLE 1.9

				2008			2009	
	2006	2007	2008	II	III	IV	I	II[2]
NO. OF ISSUERS	159	173	179	65	48	75	62	57
Mortgage covered bonds	11	10	19	13	5	5	16	4
Territorial covered bonds	5	4	7	0	0	1	0	0
Non-convertible bonds and debentures	46	41	30	13	16	9	14	27
Convertible bonds and debentures	1	0	1	0	0	1	0	0
Backed securities	61	77	88	26	18	34	21	15
Commercial paper	68	80	77	21	11	29	20	9
Of which, asset-backed	3	3	2	1	0	1	0	0
Of which, non-asset-backed	65	77	75	20	11	28	20	9
Other fixed-income issues	0	2	0	0	0	0	0	0
Preference shares	9	5	8	1	2	1	6	9
NO. OF ISSUES	336	335	337	94	62	107	111	102
Mortgage covered bonds	37	32	47	20	8	8	31	7
Territorial covered bonds	6	8	8	0	0	1	0	0
Non-convertible bonds and debentures	115	79	76	22	18	29	31	59
Convertible bonds and debentures	1	0	1	0	0	1	0	0
Backed securities	82	101	108	30	23	37	21	16
Commercial paper	84	107	88	21	11	29	20	9
Of which, asset-backed	3	3	2	1	0	1	0	0
Of which, non-asset-backed	81	104	86	20	11	28	20	9
Other fixed-income issues	0	3	0	0	0	0	0	0
Preference shares	11	5	9	1	2	2	8	11
NOMINAL AMOUNT (Million euro)	523,131.4	648,757.0	476,275.7	134,468.4	90,553.9	133,726.6	116,426.5	86,940.0
Mortgage covered bonds	44,250.0	24,695.5	14,300.0	10,120.0	1,685.0	1,245.0	10,473.9	5,175.0
Territorial covered bonds	5,150.0	5,060.0	1,820.0	0.0	0.0	800.0	0.0	0.0
Non-convertible bonds and debentures	46,687.5	27,416.0	10,489.6	3,743.6	4,215.1	1,926.9	15,492.0	21,616.1
Convertible bonds and debentures	68.1	0.0	1,429.1	0.0	0.0	1,429.1	0.0	0.0
Backed securities	91,607.7	141,627.0	135,252.5	34,386.4	11,736.1	60,473.0	27,358.5	21,655.0
Spanish tranche	30,885.7	94,049.0	132,730.1	32,993.2	10,606.9	60,473.0	27,358.5	20,475.0
International tranche	60,722.1	47,578.0	2,522.4	1,393.2	1,129.2	0.0	0.0	1,180.0
Commercial paper[3]	334,457.0	442,433.5	311,738.5	86,118.5	72,867.7	66,852.7	61,552.2	33,000.9
Of which, asset-backed	1,992.7	464.8	2,843.1	48.0	94.0	2,568.1	1,333.9	859.8
Of which, non-asset-backed	332,464.3	441,968.7	308,895.4	86,070.5	72,773.7	64,284.6	60,218.3	32,141.1
Other fixed-income issues	0.0	7,300.0	0.0	0.0	0.0	0.0	0.0	0.0
Preference shares	911.0	225.0	1,246.0	100.0	50.0	1,000.0	1,550.0	5,493.0
Pro memoria:								
Subordinated issues	27,361.5	47,158.3	12,949.5	1,944.9	1,574.5	7,119.6	8,484.3	4,229.9
Underwritten issues	92,213.5	86,161.1	9,169.5	2,200.0	946.1	928.1	0.0	0.0

1. This Includes the volume of issues admitted to trading without register issuance prospectuses.
2. Available data: May 2009.
3. The figures for commercial paper refer to the amount placed in the year.

Issues admitted to trading on AIAF

TABLE 1.10

				2008			2009	
Nominal amount in million euro	2006	2007	2008	II	III	IV	I	II[1]
Total	507,525.3	640,096.2	476,710.4	131,470.5	102,755.3	120,809.0	126,940.2	69,702.5
Commercial paper	332,328.4	439,787.3	314,417.4	85,450.1	74,588.8	65,221.2	63,663.5	33,204.6
Bonds and debentures	45,155.4	30,006.9	10,040.3	3,164.6	4,878.2	1,490.6	15,358.6	20,380.9
Mortgage covered bonds	43,720.0	27,195.5	14,150.0	8,145.0	3,300.0	1,480.0	10,623.9	5,075.0
Territorial covered bonds	2,650.0	7,450.0	1,930.0	200.0	0.0	800.0	0.0	0.0
Backed securities	83,042.5	135,149.5	135,926.6	34,410.8	19,938.3	51,817.3	35,794.3	9,851.9
Preference shares	629.0	507.0	246.0	100.0	50.0	0.0	1,500.0	1,190.2
Matador bonds	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

1. Available data: May 2009.

AIAF. Issuers, issues and outstanding balance

TABLE 1.11

	2006	2007	2008	2008 II	III	IV	2009 I	II[1]
NO. OF ISSUERS	438	492	556	526	540	556	585	603
Commercial paper	69	73	72	73	72	72	73	73
Bonds and debentures	80	92	93	91	93	93	95	102
Mortgage covered bonds	14	14	22	22	22	22	25	26
Territorial covered bonds	5	7	11	11	11	11	11	11
Backed securities	257	316	383	352	366	383	409	418
Preference shares	46	50	52	52	52	52	53	56
Matador bonds	20	15	12	14	14	12	12	12
NO. OF ISSUES	3,681	4,314	4,639	4,694	4,767	4,639	4,487	4,359
Commercial paper	2,242	2,493	2,489	2,669	2,670	2,489	2,206	1,991
Bonds and debentures	398	445	450	452	457	450	460	510
Mortgage covered bonds	83	111	146	140	144	146	175	179
Territorial covered bonds	11	19	26	26	26	26	26	26
Backed securities	856	1157	1436	1315	1376	1436	1,528	1,557
Preference shares	65	71	78	76	78	78	78	82
Matador bonds	26	18	14	16	16	14	14	14
OUTSTANDING BALANCE[2] (Million euro)	588,942.3	758,559.8	819,637.7	809,241.1	812,631.3	819,637.7	851,854.3	868,109.7
Commercial paper	70,778.6	98,467.6	71,762.2	101,545.3	90,658.5	71,762.2	68,065.3	62,866.2
Bonds and debentures	131,107.8	139,586.3	122,001.9	131,568.3	132,099.8	122,001.9	125,691.2	140,504.5
Mortgage covered bonds	129,710.0	150,905.5	162,465.5	160,275.5	163,475.5	162,465.5	171,439.4	175,366.9
Territorial covered bonds	9,525.0	16,375.0	17,030.0	16,505.0	16,505.0	17,030.0	17,030.0	17,030.0
Backed securities	222,866.1	328,924.6	422,010.7	374,939.4	385,434.9	422,010.7	444,611.0	446,134.5
Preference shares	23,115.6	23,062.6	23,308.6	23,258.6	23,308.6	23,308.6	23,958.6	25,148.9
Matador bonds	1,839.2	1,238.2	1,058.8	1,148.9	1,148.9	1,058.8	1,058.8	1,058.8

1. Available data: May 2009.
2. Nominal amount.

AIAF. Trading

TABLE 1.12

Nominal amount in million euro	2006	2007	2008	2008 II	III	IV	2009 I	II[1]
BY TYPE OF ASSET	910,493.9	1,127,477.7	2,521,040.1	594,085.2	612,761.1	975,625.6	1,198,440.2	948,063.0
Commercial paper	489,069.5	568,009.6	591,943.8	134,918.8	158,910.1	167,322.0	166,501.8	81,381.6
Bonds and debentures	82,421.1	87,035.7	80,573.8	23,289.2	20,573.0	17,674.7	35,272.8	56,886.8
Mortgage covered bonds	70,113.5	80,811.2	129,995.3	42,302.2	47,216.7	23,439.6	52,026.3	73,833.0
Territorial covered bonds	3,659.1	7,749.8	10,142.3	1,276.3	711.3	3,484.9	3,308.9	363.9
Backed securities	257,628.9	378,005.2	1,704,341.8	391,436.8	384,574.7	762,280.4	939,895.5	734,733.8
Preference shares	4,647.8	4,492.4	4,030.0	860.0	774.5	1,419.6	1,402.7	859.6
Matador bonds	2,954.1	1,373.8	13.2	1.9	0.9	4.4	32.3	4.4
BY TYPE OF TRANSACTION	910,493.9	1,127,477.7	2,521,040.1	594,085.2	612,761.1	975,625.6	1,198,440.2	948,063.0
Outright	386,368.8	416,477.9	387,897.1	102,383.8	82,175.9	104,266.6	107,441.3	80,973.0
Repos	330,839.9	441,362.7	381,505.0	87,594.2	110,322.5	99,100.6	98,632.7	50,783.2
Sell-buybacks/Buy-sellbacks	193,285.1	269,637.1	1,751,638.0	404,107.3	420,262.6	772,258.4	992,366.3	816,306.8

1. Available data: May 2009.

AIAF. Third-party trading. By purchaser sector

TABLE 1.13

Nominal amount in million euro	2006	2007	2008	2008 II	III	IV	2009 I	II[1]
Total	702,608.8	837,308.5	744,652.5	182,988.0	188,252.8	194,739.0	188,606.5	119,189.2
Non-financial companies	260,108.1	364,490.6	285,044.4	74,341.5	73,146.1	64,374.3	73,863.1	44,025.1
Financial institutions	247,876.4	282,816.9	334,851.6	76,965.1	89,107.4	97,617.7	85,291.5	50,301.7
Credit institutions	83,999.1	99,492.0	130,056.0	31,458.1	31,066.3	41,816.2	37,039.8	29,609.4
IIC[2], insurance and pension funds	145,911.5	152,429.2	154,709.8	40,498.2	38,242.3	36,255.0	31,537.7	14,864.0
Other financial institutions	17,965.8	30,895.6	50,085.8	5,008.8	19,798.7	19,546.5	16,714.0	5,828.2
General government	7,058.9	7,762.4	6,331.2	1,965.7	907.8	2,233.1	2,622.8	773.4
Households and NPISHs[3]	23,675.9	28,534.8	13,344.0	3,609.7	2,951.3	3,126.5	4,089.4	1,674.2
Rest of the world	163,889.4	153,703.8	105,081.2	26,106.1	22,140.3	27,387.4	22,739.6	22,414.9

1. Available data: May 2009.
2. IIC: Instituciones de Inversión Colectiva / CIS: Collective Investment Schemes.
3. Non-profit institutions serving households.

Issues admitted to trading on equity markets [1]

TABLE 1.14

	2006	2007	2008	2008 II	III	IV	2009 I	II[2]
NOMINAL AMOUNTS (Million euro)	1,928.1	9,020.3	3,390.6	0.0	2,402.6	738.0	1,310.8	0.0
Non-convertible bonds and debentures	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Convertible bonds and debentures	68.1	0.0	0.0	0.0	0.0	0.0	1,310.8	0.0
Backed securities	1,860.0	2,020.3	3,390.6	0.0	2,402.6	738.0	0.0	0.0
Others	0.0	7,000.0	0.0	0.0	0.0	0.0	0.0	0.0
NO. OF ISSUES	22	16	33	0	20	9	1	0
Non-convertible bonds and debentures	0	0	0	0	0	0	0	0
Convertible bonds and debentures	1	0	0	0	0	0	1	0
Backed securities	21	15	33	0	20	9	1	0
Others	0	1	0	0	0	0	0	0

1. Private issuers. This includes the volume of issues admitted to trading with issuance prospectuses. In previous quarterly bulletins, this table contained only the volumes of issues with trading prospectuses.
2. Available data: May 2009

Equity markets. Issuers, issues and outstanding balances

TABLE 1.15

	2006	2007	2008	2008 II	III	IV	2009 I	II[1]
NO. OF ISSUERS	57	53	58	52	56	58	59	58
Private issuers	40	40	45	40	44	45	46	45
Non-financial companies	10	6	5	6	6	5	7	7
Financial institutions	30	34	40	34	38	40	39	38
General government[3]	17	13	13	12	12	13	13	13
Regional governments	3	3	3	3	3	3	3	3
NO. OF ISSUES	264	249	271	248	262	271	273	268
Private issuers	131	133	157	133	151	157	155	153
Non-financial companies	18	12	9	10	10	9	11	11
Financial institutions	113	121	148	123	141	148	144	142
General government[3]	133	116	114	115	111	114	118	115
Regional governments	89	83	82	84	80	82	87	84
OUTSTANDING BALANCES[2] (Million euro)	17,105.4	25,654.7	29,092.6	26,027.7	27,916.8	29,142.6	30,804.3	31,753.3
Private issuers	6,784.3	14,958.1	17,237.9	14,609.4	16,764.9	17,237.9	18,299.1	18,042.5
Non-financial companies	492.1	452.5	381.0	381.2	381.2	381.0	1,691.7	1,691.7
Financial institutions	6,292.2	14,505.6	16,856.9	14,228.2	16,383.7	16,856.9	16,607.4	16,350.8
General government[3]	10,321.1	10,696.6	11,854.7	11,418.3	11,151.9	11,904.7	12,505.1	13,710.9
Regional governments	8,319.8	8,862.6	9,972.5	9,535.4	9,269.6	9,972.5	10,573.6	11,779.4

1. Available data: May 2009.
2. Nominal amount.
3. Without public book-entry debt.

Trading on equity markets

TABLE 1.16

Nominal amounts in million euro	2006	2007	2008	2008 II	III	IV	2009 I	II[1]
Electronic market	257.3	444.8	1,580.1	366.0	189.3	487.0	64.8	110.0
Open outcry	5,009.9	7,154.3	7,842.1	123.2	4,656.8	1,188.8	182.1	134.2
Madrid	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Barcelona	4,879.6	7,040.1	7,674.9	87.6	4,626.3	1,131.9	146.9	114.5
Bilbao	24.8	7.5	6.1	1.0	2.8	0.8	2.6	0.4
Valencia	105.5	106.7	161.1	34.7	27.6	56.1	32.7	19.3
Public book-entry debt	35.6	33.6	46.2	11.7	6.7	18.9	14.3	8.7
Regional governments debt	84,443.6	84,178.3	71,045.0	19,324.8	16,948.8	17,798.7	18,666.5	13,802.4

1. Available data: May 2009.

Organised trading systems: SENAF y MTS. Public debt trading by type

TABLE 1.17

Nominal amounts in million euro	2006	2007	2008	2008 II	III	IV	2009 I	II[1]
Total	175.1	95.8	81.6	21.2	20.2	12.9	35.5	19.8
Outright	94.3	58.6	38.3	6.1	8.5	4.2	5.2	5.0
Sell-buybacks/Buy-sellbacks	80.2	37.2	43.3	15.1	11.7	8.7	30.2	14.8
Others	0.6	0.0	0.0	0.0	0.0	0.0	0.0	0.0

1. Available data: May 2009.

1.3 Derivatives and other products

1.3.1. Financial derivatives markets: MEFF

Trading on MEFF TABLE 1.18

Number of contracts	2006	2007	2008	2008 II	2008 III	2008 IV	2009 I	2009 II[1]
Debt products	15	13	12	4	2	2	6	0
Debt futures[2]	15	13	12	4	2	2	6	0
Ibex 35 products[3, 4]	7,119,853	9,288,909	8,433,963	1,894,015	2,256,855	1,936,368	1,520,980	1,085,662
Ibex 35 plus futures	6,408,961	8,435,258	7,275,299	1,654,458	1,934,608	1,643,742	1,330,851	960,023
Ibex 35 mini futures	159,830	286,574	330,042	71,975	84,677	88,747	70,698	59,283
Call mini options	288,542	227,535	323,874	60,052	106,673	80,383	56,410	35,057
Put mini options	262,521	339,542	504,749	107,529	130,897	123,497	63,021	31,299
Stock products[5]	33,655,790	34,887,808	64,554,817	19,168,497	15,788,553	17,297,456	21,082,892	10,059,265
Futures	21,229,811	21,294,315	46,237,568	14,797,445	11,983,940	10,936,605	13,024,306	6,061,731
Call options	7,664,125	6,775,525	7,809,423	1,571,132	1,673,144	2,979,971	3,689,989	2,044,147
Put options	4,761,854	6,817,968	10,507,826	2,799,920	2,131,469	3,380,880	4,368,597	1,953,387
Pro-memoria: MEFF trading on Eurex								
Debt products[6]	1,117,956	1,059,113	869,105	220,077	132,608	173,444	157,746	105,599
Index products[7]	1,423,441	1,371,250	1,169,059	268,663	275,658	276,397	286,512	149,536

1. Available data: May 2009.
2. Contract size: 100 thousand euros.
3. The number of Ibex 35 mini futures (multiples of 1 euro) was standardised to the size of the Ibex 35 plus futures (multiples of 10 euro).
4. Contract size: Ibex 35 , 10 euros.
5. Contract size: 100 Stocks.
6. Bund, Bobl and Schatz futures.
7. Dax 30, DJ EuroStoxx 50 and DJ Stoxx 50 futures.

1.3.2. Warrants, option buying and selling contracts, and ETF (Exchange Traded Funds)

Issues registered at the CNMV TABLE 1.19

	2006	2007	2008	2008 II	2008 III	2008 IV	2009 I	2009 II[1]
WARRANTS[2]								
Premium amount (Million euro)	5,143.1	8,920.3	12,234.4	3,153.2	3,087.6	2,820.6	1,950.5	256.5
On stocks	3,697.6	6,215.1	6,914.1	1,663.2	1,576.8	1,417.0	1,074.8	113.4
On indexes	1,064.9	2,311.2	4,542.8	1,270.1	1,385.3	1,160.6	628.4	94.5
Other underlyings[3]	380.6	394.0	777.5	219.9	125.5	243.0	247.3	48.7
Number of issues	4,063	7,005	9,790	1,928	2,523	2,548	2,516	642
Number of issuers	8	7	8	7	6	6	6	4
OPTION BUYING AND SELLING CONTRACTS								
Nominal amounts (Million euro)	206.8	151.0	77.0	45.0	20.0	0.0	0.0	0.0
On stocks	196.2	145.0	77.0	45.0	20.0	0.0	0.0	0.0
On indexes	0.6	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Other underlyings[3]	10.0	6.0	0.0	0.0	0.0	0.0	0.0	0.0
Number of issues	12	9	4	2	1	0	0	0
Number of issuers	4	3	1	1	1	0	0	0

1. Available data: May 2009.
2. Includes issues not requiring a prospectus by application of the new regulations.
3. Includes the following underlying: baskets of stocks, exchange rates, interest rates and commodities.

Equity markets. Warrants and ETF trading

TABLE 1.20

	2006	2007	2008	2008 II	2008 III	2008 IV	2009 I	2009 II[1]
WARRANTS								
Trading (Million euro)	2,907.4	5,129.6	2,943.7	684.1	701.7	665.1	491.3	330.0
On Spanish stocks	1,805.3	3,200.7	1,581.9	362.8	333.5	364.1	222.7	149.2
On foreign stocks	293.3	474.2	145.7	50.4	30.9	17.5	22.3	15.4
On indexes	695.6	1,376.6	1,063.3	231.0	295.7	233.4	208.7	153.3
Other underlyings[2]	113.1	78.1	152.8	39.9	41.6	50.1	37.6	12.1
Number of issues[3]	4,284	7,837	9,770	4,214	4,219	4,151	3,655	3,006
Number of issuers[3]	9	9	10	8	8	9	9	9
CERTIFICATES								
Trading (Million euro)	58.8	49.8	16.8	5.0	2.8	3.9	7.6	6.5
Number of issues[3]	15	14	26	21	17	20	21	16
Number of issuers[3]	5	5	4	4	4	4	4	2
ETF								
Trading (Million euro)	-	4,664.5	6,938.1	1,357.4	900.6	1,643.0	604.3	425.7
Number of funds	-	21	30	32	29	30	30	30
Assets[4] (Million euro)	-	885.8	1,630.3	2,212.6	2,111.2	1,630.3	n.a.	n.a.

1. Available data: May 2009.
2. Includes the following underlying: baskets of stocks, exchange rates, interest rates and commodities.
3. Issues or issuers which were traded in each period.
4. Foreign collective investment schemes including the investment volume marketed in Spain.

n.a.: No available data.

1.3.3. Non-financial derivatives

Trading on MFAO[1]

TABLE 1.21

Number of contracts	2006	2007	2008	2008 II	2008 III	2008 IV	2009 I	2009 II[2]
On olive oil								
Extra-virgin olive oil futures[3]	35,079	46,405	48,091	14,610	7,530	12,365	29,615	23,815

1. Olive oil futures market.
2. Available data: May 2009.
3. Nominal amount of the contract: 1,000 kg.

2 Investment services

Investment services. Spanish firms, branches and agents

TABLE 2.1

	2006	2007	2008	2008 II	2008 III	2008 IV	2009 I	2009 II[1]
Broker-dealers								
Spanish firms	47	46	51	51	50	51	50	50
Branches	108	102	83	80	85	83	85	79
Agents	6,610	6,657	6,041	6,526	6,546	6,041	6,038	5,846
Brokers								
Spanish firms	57	53	50	52	53	50	49	48
Branches	11	12	9	10	10	9	8	8
Agents	589	625	638	625	631	638	690	641
Portfolio management companies								
Spanish firms	15	11	10	11	10	10	10	10
Branches	4	4	4	4	4	4	5	5
Agents	5	6	6	5	5	6	6	6
Credit institutions[2]								
Spanish firms	204	201	195	200	200	195	196	196

1. Available data: May 2009.
2. Source: Banco de España.

Investment services. Foreign firms

TABLE 2.2

	2006	2007	2008	2008 II	2008 III	2008 IV	2009 I	2009 II[1]
Total	1,321	1,766	2,222	2,054	2,156	2,222	2,270	2,290
European Economic Area investment services	973	1,394	1,808	1,676	1,760	1,808	1,849	1,868
Branches	22	29	36	33	33	36	35	35
Free provision of services	951	1,365	1,772	1,643	1,727	1,772	1,814	1,833
Credit institutions[2]	348	372	414	378	396	414	421	422
From EU member states	339	363	405	369	387	405	411	412
Branches	44	52	56	56	56	56	54	54
Free provision of services	294	310	348	312	330	348	356	357
Subsidiaries of free provision of services	1	1	1	1	1	1	1	1
From non-EU states	9	9	9	9	9	9	10	10
Branches	8	8	8	8	8	8	8	8
Free provision of services	1	1	1	1	1	1	2	2

1. Available data: May 2009.
2. Source: Banco de España and CNMV.

Intermediation of spot transactions[1]

TABLE 2.3

Million euro	I 2008 Spanish Stock Exchange	I 2008 Other Spanish markets	I 2008 Foreign markets	I 2008 Total	I 2009 Spanish Stock Exchange	I 2009 Other Spanish markets	I 2009 Foreign markets	I 2009 Total
FIXED-INCOME								
Total	6,545	2,239,006	353,893	2,599,444	84,720	2,429,843	238,248	2,752,811
Broker-dealers	5,964	250,715	40,640	297,319	76,038	147,241	45,375	268,654
Brokers	581	1,988,291	313,253	2,302,125	8,682	2,282,602	192,873	2,484,157
EQUITY								
Total	493,870	1,749	27,005	522,624	205,749	144	19,857	225,750
Broker-dealers	458,343	1,116	23,428	482,887	184,959	142	18,847	203,948
Brokers	35,527	633	3,577	39,737	20,790	2	1,010	21,802

1. Period accumulated data.

Intermediation of derivative transactions[1,2]

TABLE 2.4

Million euro	I 2008 Spanish organised markets	I 2008 Foreign organised markets	I 2008 Non-organised markets	I 2008 Total	I 2009 Spanish organised markets	I 2009 Foreign organised markets	I 2009 Non-organised markets	I 2009 Total
Total	227,979	2,310,399	1,034,114	3,572,492	305,999	975,567	776,502	2,058,068
Broker-dealers	192,132	1,888,310	17,385	2,097,827	295,044	806,015	27,886	1,128,945
Brokers	35,847	422,089	1,016,729	1,474,665	10,955	169,552	748,616	929,123

1. The amount of the buy and sell transactions of financial assets, financial futures on values and interest rates, and other transactions on interest rates will be the securities nominal or notional value or the principal to which the contract reaches. The amount of the transactions on options will be the strike price of the underlying asset multiplied by the number of instruments committed.
2. Period accumulated data.

Portfolio management. Number of portfolios and assets under management[1]

TABLE 2.5

	I 2008 Total	I 2008 IIC[2]	I 2008 Other[3]	I 2009 Total	I 2009 IIC[2]	I 2009 Other[3]
NUMBER OF PORTFOLIOS						
Total	17,130	122	17,008	12,805	199	12,606
Broker-dealers	10,087	41	10,046	6,855	11	6,844
Brokers	3,383	31	3,352	3,158	156	3,002
Portfolio management companies	3,660	50	3,610	2,792	32	2,760
ASSETS UNDER MANAGEMENT (Thousand euro)						
Total	12,792,680	1,859,859	10,932,821	7,897,438	872,183	7,025,255
Broker-dealers	5,939,710	1,020,851	4,918,859	3,153,451	42,314	3,111,137
Brokers	2,740,542	587,009	2,153,533	2,075,636	664,071	1,411,565
Portfolio management companies	4,112,428	251,999	3,860,429	2,668,351	165,798	2,502,553

1. Data at the end of period.
2. IIC: Instituciones de Inversión Colectiva / CIS: Collective Investment Schemes.
3. Includes the rest of clients, both covered and not covered by the Investment Guarantee Fund, an investor compensation scheme regulated by R.D. 948/2001.

Aggregated income statement. Broker-dealers[1]

TABLE 2.6

Thousand euro[2]	2006	2007	2008	2008 I	II	III	IV	2009 I
I. Financial income	17,325	-29,968	117,783	-10,488	22,373	53,300	117,783	54,459
II. Net commission	775,377	893,803	674,542	195,164	368,472	502,553	674,542	133,007
Commission revenues	1,009,089	1,181,772	943,619	270,711	501,817	693,140	943,619	187,315
Brokering	629,952	775,418	648,036	186,711	343,910	484,674	648,036	130,572
Placement and underwriting	73,278	62,145	42,502	10,560	25,112	28,263	42,502	12,301
Securities deposit and recording	22,367	25,351	21,555	5,861	11,477	16,421	21,555	4,224
Portfolio management	23,883	29,649	16,949	5,946	9,893	13,886	16,949	2,673
Design and advising	55,918	65,083	56,671	7,729	12,781	17,039	56,671	9,528
Stocks search and placement	0	9	12	7	9	11	12	6
Market credit transactions	33	23	19	5	7	9	19	4
IIC subscription and redemption	141,312	138,481	91,167	30,202	55,621	74,113	91,167	13,970
Other	62,346	85,613	66,708	23,690	43,007	58,724	66,708	14,036
Commission expenses	233,712	287,969	269,077	75,547	133,345	190,587	269,077	54,308
III. Net income from securities trading[3]	92,719	-239,572	792,084	471,632	973,352	1,140,505	792,084	36,458
IV. Net exchange differences and other	109,130	486,643	-625,826	13,125	-252,335	-511,353	-625,826	-38,324
V. Gross income	994,551	1,110,906	958,583	669,433	1,111,862	1,185,005	958,583	185,600
VI. Operating income	490,336	587,354	434,601	144,345	277,389	325,196	434,601	79,283
VII. Earnings from continuous activities	430,651	540,390	365,287	151,025	301,711	361,479	365,287	88,318
VIII. Net earnings of the period	430,651	540,390	367,579	151,025	301,711	361,479	367,579	88,318

1. From IV quarter 2008 on data come from information sent to the CNMV by investment services companies (ESIs) according to the new accounting regulation CR CNMV 7/2008. With the aim of keeping the continuity of time series, some changes have been introduced in previous quarters.
2. Accumulated data from the beginning of the year to the last day of every quarter. It includes companies removed throughout the year.
3. This does not include provisions for losses in value of securities portfolio, nor their recovering and application. These items are included in "Operating income".

Results of proprietary trading. Broker-dealers[1]

TABLE 2.7

Thousand euro[3]	Total I 2008	Total I 2009	Financial income I 2008	Financial income I 2009	Securities portfolio[2] I 2008	Securities portfolio[2] I 2009	Other charges I 2008	Other charges I 2009
Total	451,838	90,359	-10,488	54,459	471,632	36,458	-9,306	-558
Money market assets and public debt	-2,043	3,716	846	331	-2,889	3,385	-	-
Other fixed-income securities	19,220	-161,171	15,287	45,749	3,933	-206,920	-	-
Domestic portfolio	17,494	-174,405	14,818	44,783	2,676	-219,188	-	-
Foreign portfolio	1,726	13,234	469	966	1,257	12,268	-	-
Equities	-232,106	55,216	13,213	14,581	-245,319	40,635	-	-
Domestic portfolio	-146,821	394	11,020	9,008	-157,841	-8,614	-	-
Foreign portfolio	-85,285	54,822	2,193	5,573	-87,478	49,249	-	-
Derivatives	725,248	200,597	-	-	725,248	200,597	-	-
Repurchase agreements	-283	-13,496	-283	-13,496	-	-	-	-
Market credit transactions	0	0	0	0	-	-	-	-
Deposits and other transactions with financial Intermediaries	-48,002	2,034	-48,002	2,034	-	-	-	-
Other transactions	-10,196	3,462	8,451	5,260	-9,341	-1,240	-9,306	-558

1. From IV quarter 2009 on data come from information sent to the CNMV by investment services companies (ESIs) according to the new accounting regulation CR CNMV 7/2008. With the aim of keeping the continuity of time series, some changes have been introduced in previous quarters.
2. Securities portfolio income does not include provisions for losses in value of securities portfolio, nor their recovering and application.
3. Accumulated data from the beginning of the year to the last day of every quarter. It includes companies removed throughout the year.

Aggregated income statement. Brokers[1]

TABLE 2.8

Thousand euro[2]	2006	2007	2008	2008 I	II	III	IV	2009 I
I. Financial income	12,934	14,395	7,977	2,434	6,039	7,822	7,977	1,059
II. Net commission	233,447	237,403	149,873	41,507	82,530	115,919	149,873	30,688
Commission revenues	297,030	310,892	172,343	48,935	95,111	133,583	172,343	34,647
Brokering	114,111	131,976	62,344	19,349	33,728	47,825	62,344	15,099
Placement and underwriting	3,183	2,501	4,847	994	3,010	4,354	4,847	341
Securities deposit and recording	1,520	1,680	676	314	394	512	676	73
Portfolio management	28,672	27,457	21,137	5,847	11,966	16,783	21,137	3,956
Design and advising	2,360	2,224	4,962	252	1,550	2,181	4,962	486
Stocks search and placement	0	0	0	0	0	0	0	0
Market credit transactions	0	0	10	0	0	0	10	0
IIC subscription and redemption	68,513	74,918	31,287	9,679	17,156	24,309	31,287	5,041
Other	78,671	70,136	47,081	12,500	27,307	37,619	47,081	9,651
Commission expenses	63,583	73,489	22,470	7,428	12,581	17,664	22,470	3,959
III. Net income from securities trading[3]	3,841	2,212	-734	-859	-926	-1,204	-734	-364
IV. Net exchange differences and other operating products and expenses	-282	-407	4,173	-138	-230	-83	4,173	90
V. Gross income	249,940	253,603	161,289	42,944	87,413	122,454	161,289	31,473
VI. Operating income	85,744	85,423	20,906	8,077	9,545	14,596	20,906	-1,250
VII. Earnings from continuous activities	62,449	86,017	14,519	9,427	15,919	25,623	14,519	-1,774
VIII. Net earnings of the period	62,449	86,017	14,519	9,427	15,919	25,623	14,519	-1,774

1. From IV quarter 2008 on data come from information sent to the CNMV by investment services companies (ESIs) according to the new accounting regulation CR CNMV 7/2008. With the aim of keeping the continuity of time series, some changes have been introduced in previous quarters.
2. Accumulated data from the beginning of the year to the last day of every quarter. It includes companies removed throughout the year.
3. This does not include provisions for losses in value of securities portfolio, nor their recovering and application. These items are included in "Operating income".

Aggregated income statement. Portfolio management companies[1]

TABLE 2.9

Thousand euro[2]	2006	2007	2008	2008 I	2008 II	2008 III	2008 IV	2009 I
I. Financial income	895	1,442	1,482	376	789	1,210	1,482	163
II. Net commission	15,195	15,501	12,044	3,459	6,583	9,382	12,044	2,632
Commission revenues	27,625	27,340	23,877	6,308	12,392	18,138	23,877	5,416
Portfolio management	22,068	24,239	21,347	5,555	10,886	16,044	20,683	4,683
Design and advising	4,951	2,614	1,820	637	1,226	1,677	2,484	595
IIC subscription and redemption	261	34	66	16	32	49	66	5
Other	345	453	644	100	248	368	644	133
Commission expenses	12,430	11,839	11,833	2,849	5,809	8,756	11,833	2,784
III. Net income from securities trading[3]	15	96	-108	7	12	24	-108	-53
IV. Net exchange differences and other operating products and expenses	-14	-37	-424	-1	-4	-2	-424	-119
V. Gross income	16,091	17,002	12,994	3,841	7,380	10,614	12,994	2,623
VI. Operating income	5,937	6,896	1,156	805	1,125	1,540	1,156	277
VII. Earnings from continuous activities	4,112	4,837	764	730	1,009	1,428	764	111
VIII. Net earnings of the period	4,112	4,837	764	730	1,009	1,428	764	111

1. From IV quarter 2008 on data come from information sent to the CNMV by investment services companies (ESIs) according to the new accounting regulation CR CNMV 7/2008. With the aim of keeping the continuity of time series, some changes have been introduced in previous quarters.
2. Accumulated data from the beginning of the year to the last day of every quarter. It includes companies removed throughout the year.
3. This does not include provisions for losses in value of securities portfolio, nor their recovering and application. These items are included in "Operating income".

Surplus equity over capital adequacy requirements[1]

TABLE 2.10

	Surplus		Number of companies according to its surplus percentage									
Thousand euro	Total amount	%[2]	< 50[3]	<100	<150	<200	<300	<400	<500	<750	<1000	>1000
Total	1,410,672	474.66	15	13	6	13	16	7	7	13	3	16
Broker-dealers	1,314,408	535.67	2	1	1	4	9	6	5	7	3	12
Brokers	73,241	190.91	12	11	3	7	5	1	1	6	0	3
Portfolio management companies	23,023	171.06	1	1	2	2	2	0	1	0	0	1

1. Available data: March 2009
2. Average percentage is weighted by the required equity of each company. It is an indicator of the number of times, in percentage terms, that the surplus contains the required equity in an average company.
3. Includes companies which have not sent information.

Return on equity (ROE) before taxes[1]

TABLE 2.11

		Number of companies according to its annualized return								
	Average[2]	Losses	0-5%	6-15%	16-30%	31-45%	46-60%	61-75%	76-100%	>100%
Total	17.38	44	14	22	12	5	5	2	3	2
Broker-dealers	19.00	12	8	11	8	3	4	1	1	2
Brokers	-3.83	27	6	7	3	2	1	1	2	0
Portfolio management companies	2.78	5	0	4	1	0	0	0	0	0

1. Available data: March 2009.
2. Average weighted by equity, %.

3 Collective investment schemes (IIC)[a,b,c,d]

Number, management companies and depositories of collective investment schemes registered at the CNMV

TABLE 3.1

				2008			2009	
	2006	2007	2008	II	III	IV	I	II[1]
Total financial IIC	6,006	6,296	6,354	6,395	6,389	6,354	6,294	6,207
Mutual funds	2,850	2,954	2,943	2,968	2,954	2,943	2,898	2,842
Investment companies	3,149	3,290	3,347	3,365	3,369	3,347	3,330	3,299
Funds of hedge funds	2	31	40	39	41	40	40	40
Hedge funds	5	21	24	23	25	24	26	26
Total real estate IIC	17	18	18	17	17	18	18	17
Real estate investment funds	9	9	9	9	9	9	9	8
Real estate investment companies	8	9	9	8	8	9	9	9
Total foreign IIC marketed in Spain	340	440	563	490	535	563	562	568
Foreign funds marketed in Spain	164	225	312	253	290	312	311	313
Foreign companies marketed in Spain	176	215	251	237	245	251	251	255
Management companies	114	120	120	120	120	120	120	120
IIC depositories	132	126	125	126	126	125	124	124

1. Available data: May 2009.

Number of IIC investors and shareholders

TABLE 3.2

				2008				2009
	2006	2007	2008	I	II	III	IV	I
Total financial IIC	9,048,207	8,492,282	6,328,637	7,861,369	7,466,954	6,970,806	6,328,637	6,126,478
Mutual funds	8,637,781	8,053,049	5,892,984	7,420,379	7,023,292	6,520,089	5,892,984	5,626,865
Investment companies	410,403	434,156	435,653	434,167	433,651	439,395	435,653	427,413
Total real estate IIC	151,053	146,353	98,327	145,036	141,876	136,245	98,327	78,711
Real estate investment funds	150,304	145,510	97,390	144,197	141,037	135,307	97,390	95,284
Real estate investment companies	749	843	937	839	839	938	937	938
Total foreign IIC marketed in Spain	779,165	850,931	587,032	729,321	697,732	648,457	587,032	463,757
Foreign funds marketed in Spain	144,139	142,782	99,873	137,933	124,446	112,064	99,873	66,647
Foreign companies marketed in Spain	635,026	708,149	487,159	591,388	573,286	536,393	487,159	397,110

IIC total net assets

TABLE 3.3

				2008				2009
Million euro	2006	2007	2008	I	II	III	IV	I
Total financial IIC	300,584.0	287,968.7	200,506.9	264,775.7	244,660.6	226,473.9	200,506.9	192,775.5
Mutual funds[1]	270,406.3	255,040.9	175,865.3	234,043.9	214,251.8	197,305.6	175,865.3	168,829.4
Investment companies	30,152.7	31,481.5	24,641.6	29,055.9	28,415.3	27,143.2	24,641.6	23,946.1
Total real estate IIC	9,052.0	9,121.4	7,778.8	8,912.8	8,753.1	8,530.6	7,778.8	6,688.6
Real estate investment funds	8,595.9	8,608.5	7,406.9	8,563.8	8,394.0	8,166.7	7,406.9	6,319.4
Real estate investment companies	456.1	512.9	371.9	349.0	359.2	363.8	371.9	369.2
Total foreign IIC marketed in Spain	44,102.9	37,092.7	18,181.3	30,184.5	28,581.0	22,046.4	18,181.3	13,059.9
Foreign funds marketed in Spain	12,099.3	7,010.3	2,245.5	5,004.9	4,313.5	3,064.6	2,245.5	1,410.6
Foreign companies marketed in Spain	32,003.5	30,082.4	15,935.8	25,179.6	24,267.5	18,981.8	15,935.8	11,649.3

1. For March 2009, mutual funds investments in financial IIC reached 10.5 billion euro.

Mutual funds asset allocation[1]

TABLE 3.4

Million euro	2006	2007	2008	2008 I	II	III	IV	2009 I
Asset	270,300.0	255,040.9	175,865.3	234,043.9	214,258.1	197,305.6	175,865.3	168,829.4
Cash[2]	10,458.3	15,413.5	19,374.1	15,659.2	17,565.2	20,578.7	19,374.1	18,374.5
Portfolio investment	259,900.5	239,266.6	155,838.7	218,051.3	196,545.9	176,239.7	155,838.7	150,067.7
Domestic securities	127,333.5	134,564.1	96,628.7	128,544.1	115,695.7	105,007.9	96,628.7	92,939.4
Shares	13,806.8	11,550.1	4,022.0	8,137.3	6,802.7	5,501.0	4,022.0	3,264.8
Mutual funds units	17,322.8	18,662.1	10,134.3	17,702.0	15,651.3	13,587.1	10,134.3	9,037.4
Public money market assets	2,885.7	2,206.6	7,670.9	3,493.5	4,618.6	4,488.8	7,670.9	10,145.9
Other public fixed-income	9,887.9	8,708.7	5,430.3	6,608.3	6,299.7	6,334.9	5,430.3	7,428.2
Private money market assets	28,481.0	37,486.9	16,276.4	35,309.7	35,514.6	30,277.3	16,276.4	14,273.4
Other private fixed-income	23,103.8	24,251.5	24,489.7	23,039.2	22,873.3	20,884.5	24,489.7	22,855.9
Spanish warrants and options	603.3	553.2	541.6	344.0	414.4	309.7	541.6	490.5
Repos	31,216.8	31,144.9	28,062.7	33,909.8	23,520.9	23,623.7	28,062.7	25,441.4
Unlisted securities	25.4	0.2	1.0	0.2	0.2	0.9	1.0	1.8
Foreign securities	132,567.0	104,702.5	59,210.0	89,507.2	80,850.2	71,231.8	59,210.0	57,128.3
Euros	118,583.7	94,085.1	56,192.2	82,615.8	74,458.1	66,423.8	56,192.2	54,579.5
Shares	11,418.0	10,771.3	3,287.2	6,969.6	5,859.1	4,588.6	3,287.2	2,627.4
Mutual fund units	23,414.2	13,029.8	2,783.9	8,533.7	6,922.6	5,021.6	2,783.9	2,479.3
Fixed-income	78,852.9	65,972.8	49,263.9	64,362.8	59,592.5	55,157.3	49,263.9	48,719.3
Foreign warrants and options	4,898.7	4,311.2	857.1	2,749.7	2,083.0	1,654.6	857.1	723.4
Unlisted securities	0.0	0.0	30.4	0.0	0.8	1.6	30.4	30.1
Other	13,983.3	10,617.4	3,017.8	6,891.4	6,392.1	4,808.0	3,017.8	2,548.8
Shares	7,343.0	5,960.3	1,918.2	3,972.9	3,823.6	3,104.1	1,918.2	1,746.9
Mutual fund units	5,491.5	3,894.6	740.5	2,418.5	2,153.8	1,337.3	740.5	674.4
Fixed-income	1,011.7	631.1	342.8	413.5	386.2	335.7	342.8	126.9
Foreign warrants and options	136.0	130.5	15.6	85.8	27.7	30.2	15.6	0.0
Unlisted securities	1.2	0.9	0.6	0.8	0.8	0.7	0.6	0.6
Net balance (Debtors - Creditors)	-58.8	360.8	652.5	333.4	147.0	487.2	652.5	387.3

1. Hedge funds and funds of hedge funds are not included in these figures due to the entry into force, on 31 December 2008, of Circular CR CNMV 3/2008 which esta blishes a different deadline in reporting accounting information to CNMV.
2. Includes portfolio deposits.

Investment companies asset allocation

TABLE 3.5

Million euro	2006	2007	2008	2008 I	II	III	IV	2009 I
Asset	30,152.7	31,481.5	24,656.3	29,055.9	28,415.2	27,143.2	24,656.3	23,946.1
Cash[1]	802.2	1,182.2	2,437.1	1,457.3	1,938.4	2,759.1	2,433.6	2,426.3
Portfolio investment	29,294.1	30,037.4	22,009.9	27,440.2	26,306.3	24,131.2	21,965.7	21,313.2
Domestic securities	15,553.8	17,075.3	14,765.3	17,080.2	16,012.2	15,391.9	14,763.4	13,779.7
Shares	6,727.3	6,173.6	3,213.1	5,073.8	4,372.0	3,756.4	3,213.1	2,582.9
Mutual funds units	1,095.0	1,362.3	1,108.7	1,370.6	1,311.4	1,216.1	1,108.7	1,125.6
Public money market assets	463.4	382.8	336.4	386.6	348.3	403.9	336.4	655.4
Other public fixed-income	678.2	710.2	703.7	536.7	523.1	559.9	703.7	420.3
Private money market assets	555.4	1,568.6	1,149.1	1,854.6	2,199.0	2,102.8	1,149.1	890.4
Other private fixed-income	554.8	620.8	1,385.8	702.0	930.2	943.7	1,383.9	1,421.2
Spanish warrants and options	19.7	22.1	4.0	19.5	12.9	23.0	4.0	9.6
Repos	5,459.1	6,234.1	6,862.1	7,132.6	6,311.6	6,382.2	6,862.1	6,671.0
Unlisted securities	0.8	0.8	2.2	3.7	3.6	4.1	2.2	3.3
Foreign securities	13,740.3	12,962.2	7,244.7	10,360.0	10,294.1	8,739.3	7,202.4	7,533.5
Euros	9,847.7	9,413.7	5,695.9	7,768.0	7,711.5	6,568.0	5,697.6	6,190.3
Shares	3,379.9	3,367.7	1,254.2	2,319.8	2,083.2	1,633.1	1,254.2	1,069.3
Mutual fund units	4,169.1	3,826.1	1,858.2	3,252.4	3,148.5	2,419.5	1,858.2	1,767.4
Fixed-income	2,041.5	2,006.7	2,498.1	2,017.6	2,308.5	2,369.1	2,499.8	3,283.8
Foreign warrants and options	257.2	213.1	81.5	178.3	171.2	146.2	81.5	61.7
Unlisted securities	0.0	0.0	3.8	0.0	0.0	0.0	3.8	8.2
Other	3,892.6	3,548.5	1,548.8	2,592.0	2,582.6	2,171.3	1,504.8	1,343.2
Shares	2,104.7	1,752.2	766.4	1,304.0	1,298.7	1,101.1	766.4	724.8
Mutual fund units	1,517.7	1,600.6	628.3	1,139.2	1,148.1	945.6	628.3	474.5
Fixed-income	234.8	183.2	146.7	138.9	123.4	111.9	102.6	138.2
Foreign warrants and options	11.3	12.5	7.1	9.9	12.3	12.7	7.1	5.4
Unlisted securities	24.1	0.0	0.3	0.0	0.0	0.0	0.3	0.3
Net balance (Debtors - Creditors)	56.4	261.8	209.3	158.5	170.6	252.9	257.0	206.5

1. Includes portfolio deposits.

Financial mutual funds: number, investors and total net assets by category[1]

TABLE 3.6

	2006	2007	2008	2008 I	II	III	IV	2009 I
NO. OF FUNDS								
Total financial mutual funds	2,822	2,926	2,912	2,942	2,950	2,932	2,912	2,830
Fixed-income[2]	606	600	629	609	614	616	629	631
Mixed fixed-income[3]	212	204	195	203	197	195	195	193
Mixed equity[4]	222	207	202	206	205	204	202	191
Spanish equity	118	123	116	123	122	117	116	116
Foreign equity[5]	467	481	451	477	482	469	451	424
Guaranteed fixed-income	220	251	259	256	251	255	259	249
Guaranteed equity	559	590	591	592	601	600	591	586
Global funds	418	470	469	476	478	476	469	440
INVESTORS								
Total financial mutual funds	8,637,781	8,053,049	5,892,995	7,420,379	7,023,292	6,520,089	5,892,995	5,626,865
Fixed-income[2]	2,960,879	2,763,442	2,177,989	2,620,712	2,498,451	2,389,795	2,177,989	2,145,648
Mixed fixed-income[3]	524,827	493,786	276,914	434,935	359,904	319,445	276,914	247,835
Mixed equity[4]	357,013	331,214	209,765	289,184	263,926	236,645	209,765	194,064
Spanish equity	317,386	288,210	168,520	219,842	204,259	180,472	168,520	158,609
Foreign equity[5]	1,258,426	1,089,868	674,973	942,733	907,345	758,463	674,973	612,625
Guaranteed fixed-income	497,540	549,108	534,196	552,116	542,500	552,515	534,196	525,404
Guaranteed equity	1,783,867	1,715,144	1,406,333	1,639,760	1,575,766	1,513,064	1,406,333	1,339,366
Global funds	937,843	822,277	444,305	721,097	671,141	569,690	444,305	403,314
TOTAL NET ASSETS (Million euro)								
Total financial mutual funds	270,406.3	255,040.9	175,865.3	234,043.9	214,251.8	197,305.6	175,865.3	168,829.4
Fixed-income[2]	116,511.9	113,234.1	92,813.1	116,544.0	107,349.4	100,931.9	92,813.1	91,473.0
Mixed fixed-income[3]	15,314.5	13,011.9	5,803.0	10,551.0	8,488.5	7,175.8	5,803.0	5,282.6
Mixed equity[4]	10,149.2	8,848.0	3,958.8	6,811.6	5,990.9	5,092.8	3,958.8	3,301.8
Spanish equity	10,416.4	7,839.4	2,755.5	5,369.9	4,584.1	3,612.5	2,755.5	2,224.5
Foreign equity[5]	24,799.6	22,698.4	7,438.1	14,962.8	13,433.5	10,472.7	7,438.1	6,364.3
Guaranteed fixed-income	14,484.8	17,674.4	21,150.3	19,253.8	19,841.0	20,968.0	21,150.3	20,952.0
Guaranteed equity	44,796.6	42,042.1	30,873.7	38,521.4	35,633.2	33,782.8	30,873.7	29,433.3
Global funds	33,933.3	29,692.6	11,072.8	22,029.4	18,931.4	15,269.2	11,072.8	9,797.9

1. Mutual funds that have sent reports to the CNMV (therefore mutual funds in a process of dissolution or liquidation are not included).
2. This category includes: Short-term fixed income, Long-term fixed income, Foreign fixed-income and Monetary market funds.
3. This category includes: Mixed fixed-income and Foreign mixed fixed-income.
4. This category includes: Mixed equity and Foreign mixed equity.
5. This category includes: Euro equity, Foreign equity Europe, Foreign equity Japan, Foreign equity USA, Foreign equity emerging countries and Other foreign equity.

Financial mutual funds: Detail of investors and total net assets by type of investors[1]

TABLE 3.7

	2006	2007	2008	2008 I	II	III	IV	2009 I
INVESTORS	8,637,782	8,053,049	5,892,995	7,420,489	7,023,319	6,520,089	5,892,995	5,626,865
Individuals	8,389,302	7,814,633	5,724,298	7,201,336	6,818,656	6,330,948	5,724,298	5,465,952
Residents	8,292,252	7,721,427	5,648,811	7,111,256	6,732,350	6,249,631	5,648,811	5,391,982
Non-residents	97,050	93,206	75,487	90,080	86,306	81,317	75,487	73,970
Legal entities	248,480	238,416	168,697	219,153	204,663	189,141	168,697	160,913
Credit Institutions	1,603	2,235	1,712	1,085	1,109	1,093	1,712	705
Other resident Institutions	244,977	234,376	165,447	216,303	201,889	186,459	165,447	158,816
Non-resident Institutions	1,900	1,805	1,538	1,765	1,665	1,589	1,538	1,392
TOTAL NET ASSETS (Million euro)	270,406.3	255,041.0	175,865.3	234,051.2	214,258.2	197,305.6	175,865.3	168,829.4
Individuals	201,408.2	190,512.2	135,513.3	175,034.3	161,393.3	150,212.4	135,513.3	132,447.8
Residents	198,328.1	187,746.8	133,651.8	172,531.8	159,079.3	148,112.4	133,651.8	130,481.8
Non-residents	3,080.1	2,765.4	1,861.5	2,502.4	2,314.0	2,100.0	1,861.5	1,966.0
Legal entities	68,998.1	64,528.7	40,352.0	59,017.0	52,864.9	47,093.2	40,352.0	36,381.5
Credit Institutions	5,296.2	5,721.0	4,193.2	3,555.9	3,281.4	3,357.3	4,193.2	2,339.4
Other resident Institutions	61,646.2	56,974.4	34,982.0	54,022.0	47,928.5	42,195.4	34,982.0	33,151.6
Non-resident Institutions	2,055.7	1,833.3	1,176.9	1,439.0	1,655.0	1,540.6	1,176.9	890.5

1. Hedge funds and funds of hedge funds are not included.

Subscriptions and redemptions of financial mutual funds by category[1]

TABLE 3.8

Million euro	2006	2007	2008	2008 I	II	III	IV	2009 I
SUBSCRIPTIONS								
Total financial mutual funds	194,787.4	180,943.6	150,635.5	47,016.2	33,450.6	23,895.9	n.a.	n.a.
Fixed-income	118,705.9	116,323.9	116,056.4	37,510.5	22,581.5	17,342.5	n.a.	n.a.
Mixed fixed-income	8,476.6	5,859.4	1,849.2	620.2	315.9	239.0	n.a.	n.a.
Mixed equity	2,783.6	2,749.8	1,350.4	278.9	606.0	250.9	n.a.	n.a.
Spanish equity	5,590.4	4,402.4	1,143.4	414.5	344.4	157.1	n.a.	n.a.
Foreign equity	17,662.3	16,631.5	5,328.9	1,867.3	1,545.7	926.3	n.a.	n.a.
Guaranteed fixed-income	6,126.2	9,161.3	12,069.6	3,286.2	2,983.5	2,692.4	n.a.	n.a.
Guaranteed equity	8,914.1	8,070.6	7,234.6	1,089.4	3,120.4	1,549.5	n.a.	n.a.
Global funds	26,528.3	17,744.2	5,602.8	1,949.1	1,953.1	738.3	n.a.	n.a.
REDEMPTIONS								
Total financial mutual funds	198,600.1	202,827.4	217,891.8	62,032.7	52,061.9	39,354.3	n.a.	n.a.
Fixed-income	127,469.1	122,178.3	138,304.0	35,049.1	32,357.6	24,503.3	n.a.	n.a.
Mixed fixed-income	7,048.4	7,809.6	8,102.9	2,861.9	1,891.3	1,437.2	n.a.	n.a.
Mixed equity	3,644.7	4,023.0	4,655.7	1,675.7	1,245.2	882.7	n.a.	n.a.
Spanish equity	7,824.6	6,723.3	4,098.3	1,979.7	733.9	868.4	n.a.	n.a.
Foreign equity	16,490.9	20,073.1	13,490.3	6,456.5	2,735.1	2,383.1	n.a.	n.a.
Guaranteed fixed-income	5,029.3	6,430.6	9,514.7	2,085.8	1,867.5	1,785.4	n.a.	n.a.
Guaranteed equity	11,830.1	11,602.6	18,681.2	3,647.6	5,929.2	3,924.0	n.a.	n.a.
Global funds	19,263.1	23,986.6	21,044.7	8,276.4	5,302.1	3,570.2	n.a.	n.a.

1. Estimated data.

n.a.: not available data.

Financial mutual funds asset change by category: Net subscriptions/redemptions and return on assets

TABLE 3.9

Million euro	2006	2007	2008	2008 I	II	III	IV	2009 I
NET SUBSCRIPTIONS/REDEMPTIONS								
Total financial mutual funds	-4,524.5	-21,877.7	-66,880.5	-14,950.1	-18,602.1	-15,158.3	n.a.	n.a.
Fixed-income	-9,423.4	-5,852.4	-21,985.8	2,480.0	-9,672.7	-7,021.1	n.a.	n.a.
Mixed fixed-income	1,539.2	-1,942.0	-6,437.6	-2,238.2	-1,739.2	-1,221.8	n.a.	n.a.
Mixed equity	-854.7	-1,277.0	-3,313.5	-1,391.2	-648.4	-636.4	n.a.	n.a.
Spanish equity	-2,219.4	-2,314.4	-2,869.5	-1,561.2	-412.4	-606.9	n.a.	n.a.
Foreign equity	1,133.8	-3,342.6	-8,099.3	-4,553.7	-1,156.9	-1,462.7	n.a.	n.a.
Guaranteed fixed-income	1,018.9	2,714.6	2,543.3	1,190.9	1,041.5	979.4	n.a.	n.a.
Guaranteed equity	-3,021.1	-3,604.9	-11,644.5	-2,564.4	-2,830.0	-2,545.1	n.a.	n.a.
Global funds	7,302.1	-6,258.9	-15,073.6	-6,312.3	-3,183.9	-2,643.7	n.a.	n.a.
RETURN ON ASSETS								
Total financial mutual funds	12,733.7	6,517.0	-12,624.1	-6,045.6	-1,188.8	-1,808.9	n.a.	n.a.
Fixed-income	2,260.2	3,073.5	1,291.6	599.0	618.0	483.4	n.a.	n.a.
Mixed fixed-income	606.6	271.8	-716.8	-287.1	-111.9	-98.4	n.a.	n.a.
Mixed equity	984.2	261.5	-1,589.0	-645.2	-172.3	-265.3	n.a.	n.a.
Spanish equity	2,882.9	768.3	-2,290.6	-908.3	-373.4	-394.2	n.a.	n.a.
Foreign equity	2,736.1	251.5	-6,974.5	-3,191.1	-372.4	-1,463.8	n.a.	n.a.
Guaranteed fixed-income	112.3	334.7	592.7	188.7	-11.8	156.2	n.a.	n.a.
Guaranteed equity	1,995.2	1,105.8	-1,305.5	-1,075.9	-719.8	140.2	n.a.	n.a.
Global funds	1,156.2	450.2	-1,632.1	-725.7	-45.1	-366.8	n.a.	n.a.

n.a.: not available data.

Financial mutual funds return on assets. Detail by category

TABLE 3.10

% of daily average total net assets	2006	2007	2008	2008 I	II	III	IV	2009 I
MANAGEMENT YIELDS								
Total financial mutual funds	5.73	3.45	-4.20	-2.24	-0.30	-0.66	-0.7	-0.13
Fixed-income	2.51	3.32	2.61	0.68	0.71	0.63	0.6	0.39
Mixed fixed-income	5.30	2.98	-6.06	-2.17	-0.84	-0.94	-1.9	-0.91
Mixed equity	11.31	4.25	-23.39	-8.18	-2.18	-4.36	-9.3	-5.60
Spanish equity	30.10	9.14	-44.89	-15.02	-6.58	-9.21	-14.1	-14.44
Foreign equity	13.82	2.78	-50.07	-18.34	-2.00	-11.67	-20.9	-9.83
Guaranteed fixed-income	1.67	3.25	3.45	1.16	0.09	0.91	1.5	1.64
Guaranteed equity	5.86	3.65	-2.02	-2.32	-1.71	0.78	1.6	1.48
Global funds	4.84	2.57	-8.05	-2.64	0.09	-1.90	-4.0	-1.16
EXPENSES. MANAGEMENT FEE								
Total financial mutual funds	1.04	1.00	0.90	0.23	0.22	0.22	0.22	0.21
Fixed-income	0.63	0.61	0.60	0.15	0.14	0.15	0.17	0.15
Mixed fixed-income	1.21	1.13	1.20	0.29	0.29	0.30	0.29	0.29
Mixed equity	1.63	1.54	1.54	0.38	0.38	0.39	0.39	0.38
Spanish equity	1.83	1.59	1.67	0.42	0.41	0.39	0.42	0.40
Foreign equity	1.78	1.70	1.66	0.42	0.41	0.41	0.42	0.39
Guaranteed fixed-income	0.75	0.62	0.52	0.14	0.13	0.13	0.14	0.13
Guaranteed equity	1.34	1.30	1.36	0.34	0.33	0.33	0.35	0.33
Global funds	1.26	1.16	1.08	0.28	0.27	0.27	0.28	0.27
EXPENSES. DEPOSITORY FEE								
Total financial mutual funds	0.09	0.09	0.09	0.02	0.02	0.02	0.02	0.02
Fixed-income	0.08	0.08	0.08	0.02	0.02	0.02	0.02	0.02
Mixed fixed-income	0.10	0.09	0.09	0.02	0.02	0.02	0.02	0.02
Mixed equity	0.11	0.10	0.11	0.03	0.03	0.03	0.03	0.03
Spanish equity	0.11	0.11	0.12	0.03	0.03	0.03	0.03	0.03
Foreign equity	0.11	0.11	0.11	0.03	0.03	0.03	0.03	0.03
Guaranteed fixed-income	0.09	0.08	0.07	0.02	0.02	0.02	0.02	0.02
Guaranteed equity	0.11	0.10	0.11	0.03	0.03	0.03	0.03	0.03
Global funds	0.10	0.10	0.09	0.02	0.02	0.02	0.02	0.02

Mutual fund quarterly returns. Detail by category

TABLE 3.11

In %	2006	2007	2008	2008 I	II	III	IV	2009 I
Total financial mutual funds	5.59	2.73	-4.15	-1.96	-0.56	-0.79	-1.05	-0.97
Fixed-income	1.95	2.71	1.91	0.54	0.57	0.48	0.37	0.20
Mixed fixed-income	4.18	1.93	-7.30	-2.32	-1.29	-1.29	-2.45	-1.48
Mixed equity	10.34	2.69	-22.21	-7.56	-2.91	-4.73	-9.08	-5.64
Spanish equity	33.25	8.02	-38.18	-12.01	-7.66	-9.73	-15.58	-13.34
Foreign equity	14.98	2.13	-41.53	-15.06	-2.73	-11.31	-20.07	-8.85
Guaranteed fixed-income	0.83	2.78	3.46	1.02	-0.01	0.80	1.47	-0.88
Guaranteed equity	4.66	2.44	-2.70	-2.56	-1.94	0.42	1.51	1.08
Global funds	4.01	1.47	-8.84	-2.56	-0.29	-2.17	-4.03	-1.26

Hedge funds and funds of hedge funds

CUADRO 3.12

				2008				2009
				I	II	III	IV	I[1]
Hedge funds	**2006**	**2007**	**2008**					
Investors/shareholders	21	1,127	1,589	1,335	1,429	1,583	1,589	1,549
Total net assets (million euro)	24.4	445.8	539.4	546.3	603.9	597.7	539.4	482.2
Subscriptions (million euro)	24.4	380.8	390.4	164.1	77.8	8.2	140.3	n.a.
Redemptions (million euro)	0.1	2.6	256.7	50.9	26.5	14.5	164.8	n.a.
Net subscriptions/redemptions (million euro)	24.3	164.7	134.3	113.3	51.4	-5.9	-24.5	n.a.
Return on assets (million euro)	0.1	0.2	-39.1	-12.4	7.0	-2.8	-30.9	n.a.
Returns (%)	n.s.	0.84	-4.82	-1.95	1.48	-0.29	-4.09	0.39
Management yields (%)[2]	n.s.	0.57	-2.51	-2.38	2.58	-0.31	-6.29	n.a.
Management fee (%)[2]	n.s.	1.39	2.50	0.56	0.61	0.57	0.78	n.a.
Financial expenses (%)[2]	n.s.	0.33	0.16	0.04	0.05	0.05	0.02	n.a.
Funds of hedge funds								
Investors/shareholders	2	3,950	8,151	5,488	8,582	9,739	8,151	7,230
Total net assets (million euro)	0.6	1,000.6	1,021.3	1,129.6	1,389.6	1,427.5	1,021.3	849.8
Subscriptions (million euro)	0.6	1,071.2	967.3	200.1	447.3	165.9	154.0	n.a.
Redemptions (million euro)	0.0	65.9	616.6	98.7	234.5	101.5	181.9	n.a.
Net subscriptions/redemptions (million euro)	0.6	1,005.5	350.7	107.9	215.5	66.1	-27.9	n.a.
Return on assets (million euro)	0.0	-9.6	-245.7	5.5	23.3	-29.6	-244.9	n.a.
Returns (%)	n.s.	-0.43	-17.80	-2.31	2.20	-7.56	-9.84	1.82
Management yields (%)[3]	n.s.	-1.36	-17.84	0.38	2.86	-1.88	-18.14	n.a.
Management fee (%)[3]	n.s.	1.15	1.63	0.47	0.42	0.36	0.45	n.a.
Depository fee (%)[3]	n.s.	0.06	0.11	0.02	0.03	0.02	0.03	n.a.

1. Available data: february 2009.
2. % of monthly average total net assets.
3. % of daily average total net assets.

n.s.: not significant.
n.a.: not available.

Management companies. Number of portfolios and assets under management

TABLE 3.13

				2008				2009
	2006	**2007**	**2008**	**I**	**II**	**III**	**IV**	**I**
NUMBER OF PORTFOLIOS								
Mutual funds	2,850	2,954	2,943	2,956	2,968	2,954	2,943	2,898
Investment companies	3,049	3,181	3,284	3,217	3,256	3,261	3,284	3,267
Funds of hedge funds	2	31	40	38	39	41	40	40
Hedge funds	5	21	24	25	23	25	24	26
Real estate investment fund	9	9	9	9	9	9	9	9
Real estate investment companies	8	9	9	8	8	8	9	9
ASSETS UNDER MANAGEMENT (Million euro)								
Mutual funds	270,406.3	255,040.9	175,850.2	234,043.9	214,251.8	197,305.6	175,850.2	168,829.6
Investment companies	28,992.7	30,300.0	24,038.8	27,984.8	27,394.2	26,149.4	24,038.8	23,357.7
Funds of hedge funds	0.6	1,000.6	1,021.3	1,129.6	1,389.6	1,427.5	1,021.3	240.2
Hedge funds	24.4	445.8	539.4	546.3	603.9	597.7	539.4	394.5
Real estate investment fund	8,595.9	8,608.5	7406.9	8,563.8	8,394.0	8,166.7	7,406.9	6,758.1
Real estate investment companies	456.1	512.9	371.9	349.0	359.2	363.8	371.9	369.2

Foreign Collective Investment schemes marketed in Spain[1]

TABLE 3.14

				2008				2009
	2006	2007	2008	I	II	III	IV	I
INVESTMENT VOLUME[2] (Million euro)	44,102.9	37,092.7	18,181.3	30,184.5	28,581.0	22,046.4	18,181.3	13,059.9
Mutual funds	12,099.3	7,010.3	2,245.5	5,004.9	4,313.5	3,064.6	2,245.5	1,410.6
Investment companies	32,003.5	30,082.4	15,935.8	25,179.6	24,267.5	18,981.8	15,935.8	11,649.3
INVESTORS/SHAREHOLDERS	779,165	850,931	587,032	729,321	697,732	648,457	587,032	463,757
Mutual funds	144,139	142,782	99,873	137,933	124,446	112,064	99,873	66,647
Investment companies	635,026	708,149	487,159	591,388	573,286	536,393	487,159	397,110
NUMBER OF SCHEMES	340	440	563	465	490	535	563	566
Mutual funds	164	225	312	241	253	290	312	313
Investment companies	176	215	251	224	237	245	251	253
COUNTRY								
Luxembourg	189	229	274	241	253	265	274	275
France	83	122	161	127	138	148	161	161
Ireland	46	52	63	59	59	63	63	64
Germany	12	15	16	15	15	16	16	17
UK	6	12	14	13	13	14	14	14
The Netherlands	1	1	1	1	1	1	1	1
Austria	1	5	28	5	5	22	28	28
Belgium	1	3	5	3	5	5	5	5
Malta	1	1	1	1	1	1	1	1

1. From December 2008 on, foreign collective investments schemes shareholders and total net assets data do not include exchange traded funds (ETF).
2. Investment volume: participations or shares owned by the investors/shareholders at the end of the period valued at that moment of time.

Real estate investment schemes

TABLE 3.15

				2008				2009
	2006	2007	2008	I	II	III	IV	I
REAL ESTATE MUTUAL FUNDS								
Number	9	9	9	9	9	9	9	9
Investors	150,304	145,510	92,158	144,197	141,037	135,307	96,361	95,284
Asset (Million euro)	8,595.9	8,608.5	7,406.93	8,563.8	8,394.0	8,166.7	7,406.93	6,758.06
Return on assets (%)	6.12	1.27	0.69	1.16	0.89	0.35	-1.70	-4.39
REAL ESTATE INVESTMENT COMPANIES								
Number	8	9	9	8	8	8	9	9
Shareholders	749	843	937	839	839	938	937	938
Asset (Million euro)	456.1	512.9	371.9	349.0	359.2	363.8	371.9	369.2