



Annual report
regarding its actions
and the securities markets
2009



**CNMV annual report regarding
its actions and the securities markets
2009**

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Abbreviations

ABS	Asset Backed Securities
AIAF	Asociación de Intermediarios de Activos Financieros (Spanish market in fixed-income securities)
ANCV	Agencia Nacional de Codificación de Valores (Spain's national numbering agency)
ASCRI	Asociación española de entidades de capital-riesgo (Association of Spanish venture capital firms)
AV	Agencia de valores (broker)
AVB	Agencia de valores y bolsa (broker and market member)
BME	Bolsas y Mercados Españoles
BTA	Bono de titulización de activos (asset-backed bond)
BTH	Bono de titulización hipotecaria (mortgage-backed bond)
CADE	Central de Anotaciones de Deuda del Estado (public debt book-entry trading system)
CDS	Credit Default Swap
CEBS	Committee of European Banking Supervisors
CEIOPS	Committee of European Insurance and Occupational Pensions Supervisors
CESFI	Comité de Estabilidad Financiera (Spanish government committee for financial stability)
CESR	Committee of European Securities Regulators
CMVM	Comissão do Mercado de Valores Mobiliários (Portugal's National Securities Market Commission)
CNMV	Comisión Nacional del Mercado de Valores (Spain's National Securities Market Commission)
CSD	Central Securities Depository
EAFI	Empresa de Asesoramiento Financiero (financial advisory firm)
EC	European Commission
ECB	European Central Bank
ECLAC	Economic Commission for Latin America and the Caribbean
ECR	Entidad de capital-riesgo (venture capital firm)
EMU	Economic and Monetary Union (euro area)
ETF	Exchange traded fund
EU	European Union
FI	Fondo de inversión de carácter financiero (mutual fund)
FIAMM	Fondo de inversión en activos del mercado monetario (money-market fund)
FII	Fondo de Inversión Inmobiliaria (real estate investment fund)
FIICIL	Fondo de instituciones de inversión colectiva de inversión libre (fund of hedge funds)
FIL	Fondo de inversión libre (hedge fund)
FIM	Fondo de inversión mobiliaria (securities investment fund)
FTA	Fondo de titulización de activos (asset securitisation trust)
FTH	Fondo de titulización hipotecaria (mortgage securitisation trust)
IAASB	International Auditing and Assurance Standards Board
IAS	International Accounting Standards
IASB	International Accounting Standards Board
IFRS	International Financial Reporting Standards
IIC	Institución de inversión colectiva (UCITS)
IICIL	Institución de inversión colectiva de inversión libre (hedge fund)
IIMV	Instituto Iberoamericano del Mercado De Valores
IOSCO	International Organization of Securities Commissions
ISIN	International Securities Identification Number
LATIBEX	Market in Latin American securities, based in Madrid
MAB	Mercado Alternativo Bursátil (alternative stock market)
MEFF	Spanish financial futures and options market
MFAO	Mercado de Futuros del Aceite de Oliva (olive oil futures market)
MIBEL	Mercado Ibérico de Electricidad (Iberian electricity market)
MiFID	Markets in Financial Instruments Directive

MMU	CNMV Market Monitoring Unit
MoU	Memorandum of Understanding
OECD	Organisation for Economic Co-operation and Development
OICVM	Organismo de inversión colectiva en valores mobiliarios (UCITS)
OMIP	Operator of the Iberian energy derivatives market (Operador do Mercado Ibérico de Energía)
P/E	Price/earnings ratio
RENADE	Registro Nacional de los Derechos de Emisión de Gases de Efectos Invernadero (Spain's national register of greenhouse gas emission permits)
ROE	Return on Equity
SCLV	Servicio de Compensación y Liquidación de Valores (Spain's securities clearing and settlement system)
SCR	Sociedad de capital-riesgo (Venture capital company)
SENAF	Sistema Electrónico de Negociación de Activos Financieros (electronic trading platform in Spanish government bonds)
SEPBLAC	Servicio Ejecutivo de la Comisión de Prevención del Blanqueo de Capitales e infracciones monetarias (Bank of Spain unit to combat money laundering)
SGC	Sociedad Gestora de Carteras (portfolio management company)
SGEGR	Sociedad gestora de entidades de capital-riesgo (venture capital firm management company)
SGFT	Sociedad Gestora de Fondo de Titulización (asset securitisation trust management company)
SGIIC	Sociedad gestora de instituciones de inversión colectiva (UCITS management company)
SIBE	Sistema de Interconexión Bursátil Español (Spain's electronic market in securities)
SICAV	Sociedad de Inversión de Carácter Financiero (open-end investment company)
SII	Sociedad de Inversión Inmobiliaria (real estate investment company)
SIL	Sociedad de Inversión Libre (hedge fund in the form of a company)
SIM	Sociedad de Inversión Mobiliaria (securities investment company)
SME	Small and medium-sized enterprise
SON	Sistema Organizado de Negociación (multilateral trading facility)
SV	Sociedad de Valores (broker-dealer)
SVB	Sociedad de Valores y Bolsa (broker-dealer and market member)
TER	Total expense ratio
UCITS	Undertaking for Collective Investment in Tradable Securities

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I Economic and financial framework

1 Economic and financial situation

With a 0.6% fall in world GDP, in 2009 the world economy suffered its first contraction since the Second World War. However, the majority of the most relevant macro-economic and financial variables of the world economy passed a turning point at the end of the first quarter of 2009. Up to then, the serious deterioration in economic activity which had begun in the third quarter of 2008 had intensified, leading to the highest rates of falls in production, job losses and contraction in world trade since the start of the crisis. From that point on, the reduction in aggregate uncertainty, helped by the public support programmes for the financial sector, the extensive fiscal stimulus packages and the extraordinary measures applied by the main central banks allowed most of the advanced economies to stabilise and gradually recover.

Some important financial figures, such as corporate debt spreads, which were accompanied by a recovery in volumes issued, and the level of liquidity and volatility in equity markets, began to show signs of returning to normality. At the same time, the main stock market indexes rose significantly (greater than 55% between March and December 2009). Similarly, as of the first quarter of the year, world trade flows began to recover (see figure 1.1), which allowed a relatively favourable performance of a wide set of emerging economies, which had had little exposure to the financial problems that triggered the crisis.

The signs of recovery in the world economy extended until the end of 2009. In fact, almost all the major economies had technically come out of recession by the end of the year. However, the last quarter saw another rise in aggregate uncertainty associated with the following areas of vulnerability: i) problems associated with the sustainability of public finances in some advanced economies (especially following the serious problems in Greece in this respect), ii) the doubts about the strength of the budding recovery faced with the withdrawal of the main extraordinary stimulus packages, iii) the increasingly clear possibility that many advanced economies will suffer high levels of unemployment over a relatively prolonged period, and iv) the clear difficulties in returning to a balance in world demand, with a greater weighting of demand in those economies with a greater tendency to generate substantial external surpluses.

In this context, the Spanish GDP contracted 3.6%, which was relatively less than that observed in other benchmark economies, but which had a major impact on the job market, with the year closing with an unemployment rate of 18.8%. The intense adjustment in domestic demand led to a sharp reduction in the need for external funding (which fell to 4.7% of GDP in 2009, compared with 9.1% in 2008), a considerable increase in the rate of household savings, reaching 18.8% of disposable income, and a substantial fall in inflation, which closed the year at 0.8% and which, over a major part of the year, led to a negative spread compared with the eurozone.

The sharp fall in tax revenue and the increase in public spending led to a deficit of 11.2% of GDP, which raised the level of public debt from 39.7% of GDP in 2008 up to 55.2% in 2009.

In the finance sector, national credit institutions continued operating in an extremely complex environment in which the fall in business volume and the impairment of credit assets had a highly negative impact on income statements. However, the public sector was able to obtain funds under relatively comfortable conditions last year. This was possible as a result of the support measures adopted by the Government, mainly through the granting of guarantees for financial debt issues, and the monetary policy strategy followed by the ECB. In general terms, national financial markets performed at a similar level to international markets in 2009. Consequently, equity markets underwent sharp appreciations as of March, together with significant falls in volatility, while fixed income markets saw a clear fall in credit risk premiums for financial and non-financial issuers.

However, the recent upturn in uncertainty which has followed the serious fiscal problems in Greece and, more generally, the sharp tightening of public debt markets in several European economies, such as Portugal, Spain and Ireland may represent an obstacle to the gradual normalisation of financial markets, as well as recovery in countries with the weakest fiscal positions.¹ In these economies, the application of ambitious fiscal adjustment plans currently represent an economic policy challenge of vital importance, with little margin for delay.

1.1 International economic and financial situation

1.1.1 The world economy

Economic activity starts to recover as of the second quarter of 2009

As of the second quarter of 2009, the extraordinary fiscal and monetary measures adopted by the main world economies as a result of the intensification of the crisis in the third quarter of 2008 began to take effect.² At the same time, the extensive support packages for the financial sector, mainly implemented through capital injections and guarantees, contributed towards a significant reduction in the risk of the international financial system collapsing, compared with the risk perceived in September 2008 following the collapse of Lehman Brothers.

As a result, France, Germany and Japan already showed positive quarter-on-quarter GDP growth in the second quarter, followed by the USA in the third quarter and the United Kingdom in the fourth quarter (see figure 1.2). The emerging economies, with less direct exposure to the financial turmoil which triggered the crisis, performed more dynamically than the developed economies, although major differences remain between different areas. Asia, led by China, which grew 8.7% in 2009, was the most

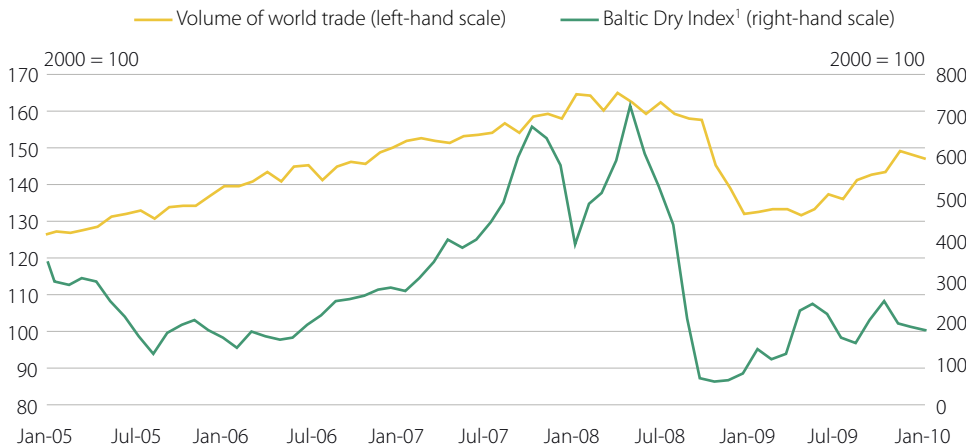
1. On 2 May 2010, the European Union and the IMF agreed to activate a support plan for Greece amounting to 110 billions of euros over three years. Subsequently, on 9 May, ECOFIN agreed to implement a financial support mechanism to help the countries with the greatest financial difficulties. Specifically, the new mechanism provides for a system of guarantees of up to 750 billions of euros, provided by the EU states, the EU budget and the International Monetary Fund.

2. The IMF estimates that for G-20 countries, the cost of the expansive measures reached 2% of GDP in 2009 and 1.5% in 2010. The impact of these measures on GDP growth, which largely depends on estimates of fiscal multipliers, is estimated at between 1% and 5% in 2009, and between zero and 1% in 2010. *World Economic Outlook*, IMF, October 2009.

dynamic emerging area. The next was Latin America, where Brazil once again showed positive quarter-on-quarter GDP growth as of the second quarter, finishing the year in the fourth quarter with growth of 4.3% compared with the same quarter in 2008. The eastern European economies showed a slight improvement in the second half of the year, although their development was slower.

World trade

FIGURE 1.1

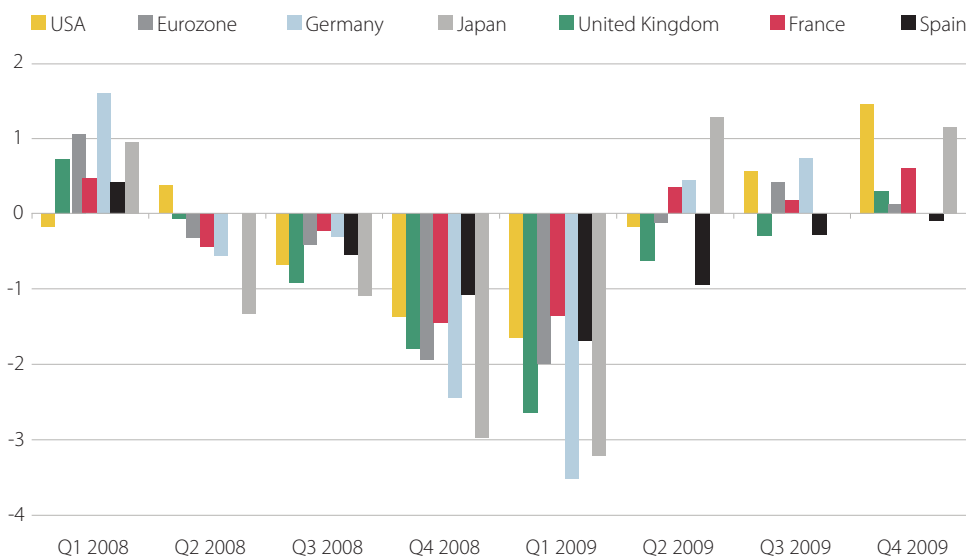


Source: Netherlands Bureau for Economic Policy Analysis and Bloomberg. (1) The Baltic Dry Index is an index of the hiring of fleets for the commercial transport of raw materials of the 26 main shipping routes and is commonly interpreted as an advance indicator of world demand. The data for this variable correspond to the last day of each month. The data for the volume of world trade are monthly. Data up to 31 December 2009.

The recovery in the developed economies has not yet resulted in a substantial change in the job market, which continued to worsen in 2009. The number of jobs continued to fall over the year and the unemployment rate continued to rise,³ although at an increasingly lower rate.

GDP: quarterly variations, %

FIGURE 1.2



Source: Thomson Datastream.

3. The unemployment rate grew in the USA from 7.4% of the active population in December 2008 to 10% in December 2009. In the eurozone, it rose from 8.2% to 9.9% in the same period.

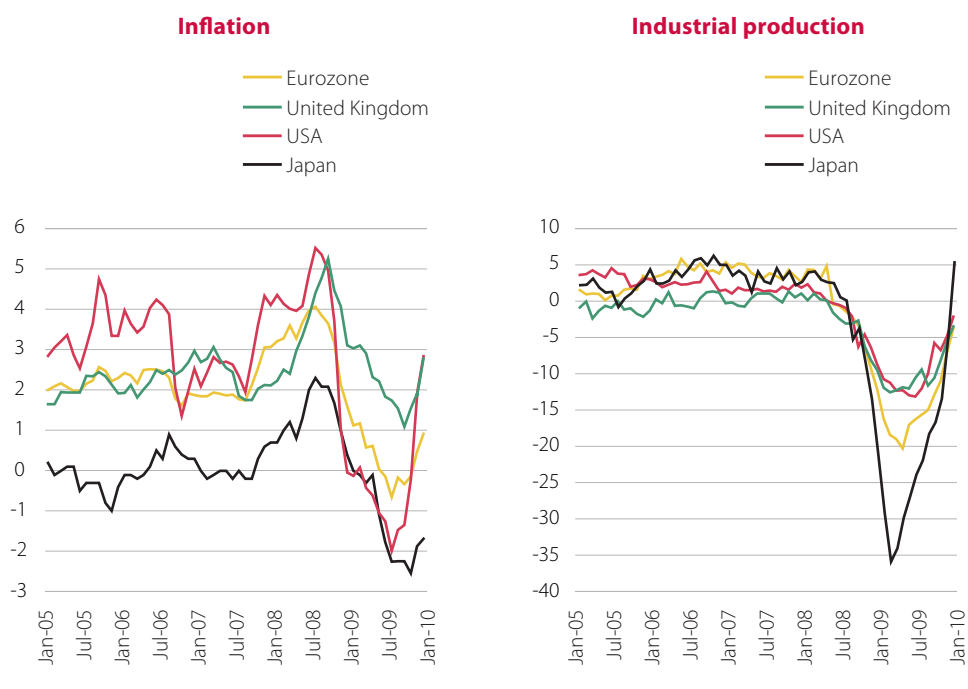
The absence of inflationary tensions allowed official interest rates to remain at historic lows

Inflationary pressures fell in 2009 in most countries, although there are certain differences between areas. In general terms, inflation rates in the main economies reached lows in the middle months of the year but later grew during the second half of the year, although with different intensities in different areas, as shown in figure 1.3. The most volatile components of price indexes, mainly those associated with raw materials, were responsible for the high level of variability. Underlying rates remained at very low levels over the year in line with sluggish demand. Although in the USA and in the United Kingdom the upturns in prices were comparatively greater over the last few months of the year, as shown in figure 1.3, inflation forecasts generally remain anchored around moderate values over the medium term.

The main central banks, with few exceptions,⁴ decided to maintain or reduce their official interest rates in 2009, down to historic lows (see figure 1.4). Interest rates in the USA and Japan were lowered for the last time in December 2008 and over 2009 remained at rates between 0% and 0.25% for the USA and 0.1% for Japan. In Europe, the Bank of England reduced rates three times in 2009, down to as low as 0.5% in March, while the ECB reduced rates four times down to 1% in May, with no subsequent modifications in either case.

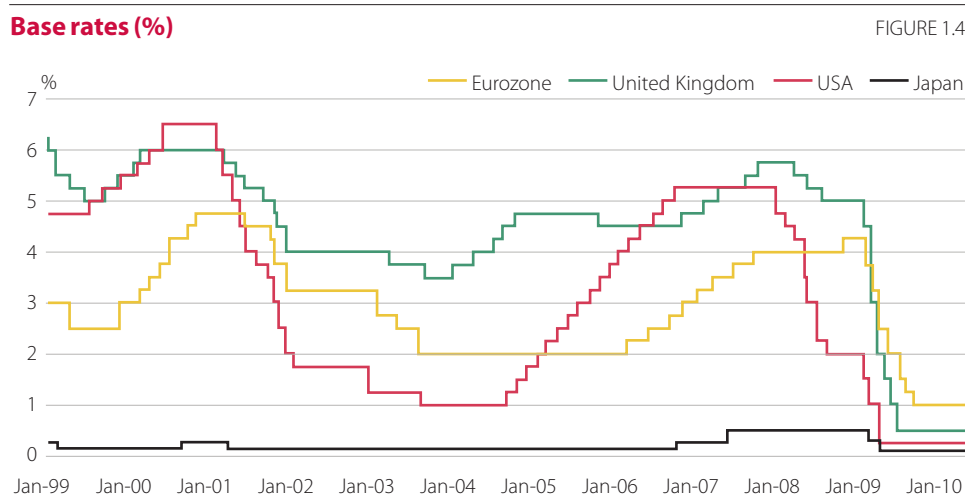
Inflation and industrial production (annual change, %)

FIGURE 1.3



Source: Thomson Datastream.

4. The central banks of Australia and Norway increased their interest rates in the last quarter of 2009 as a consequence of the clear signs of economic recovery and above-expected inflation.

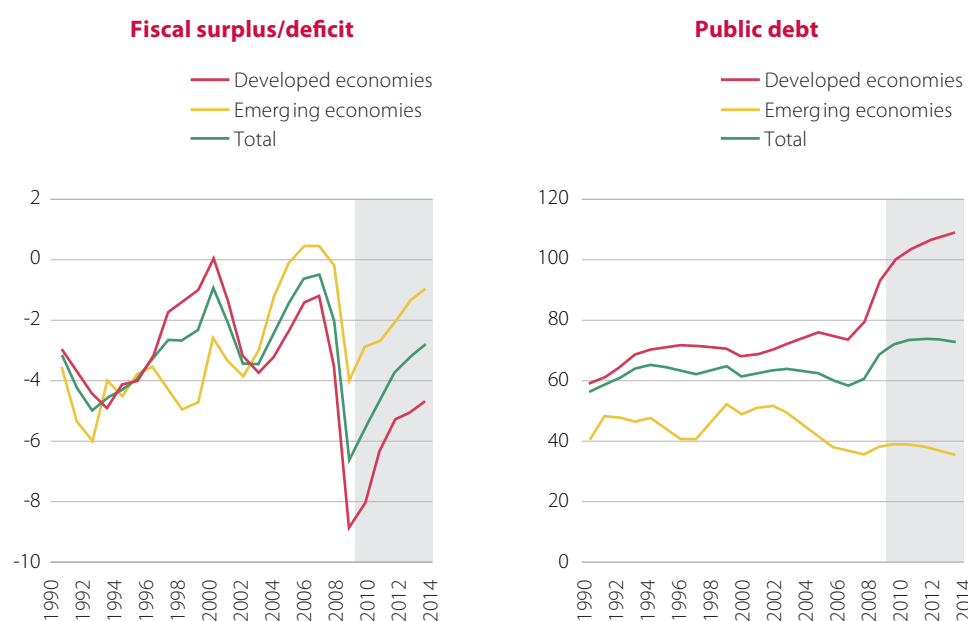


Source: Thomson Datastream.

Intense deterioration in public finances

The fall in activity and the measures for fiscal stimulus and support for the financial system adopted by Governments significantly raised deficit and public debt levels in 2009, both in developed economies and, to a lesser extent, in emerging economies. According to IMF estimates, the joint public deficit of developed economies rose from 3.5% of GDP in 2008 to 8.9% of GDP in 2009. This increase in deficit meant that public debt grew from 79% of GDP at the end of 2008 up to almost 92% in 2009. In the case of emerging and developing economies, between 2008 and 2009 the public deficit grew from 0.2% of GDP up to 4%, with an increase in debt from 35.1% of GDP in 2008 to 37.7% in 2009. As shown in figure 1.5, the IMF forecasts that fiscal deficits will generally remain over the coming years, above all in developed economies.

Public fiscal surpluses/deficits and public debt (% GDP) FIGURE 1.5



Source: FMI.

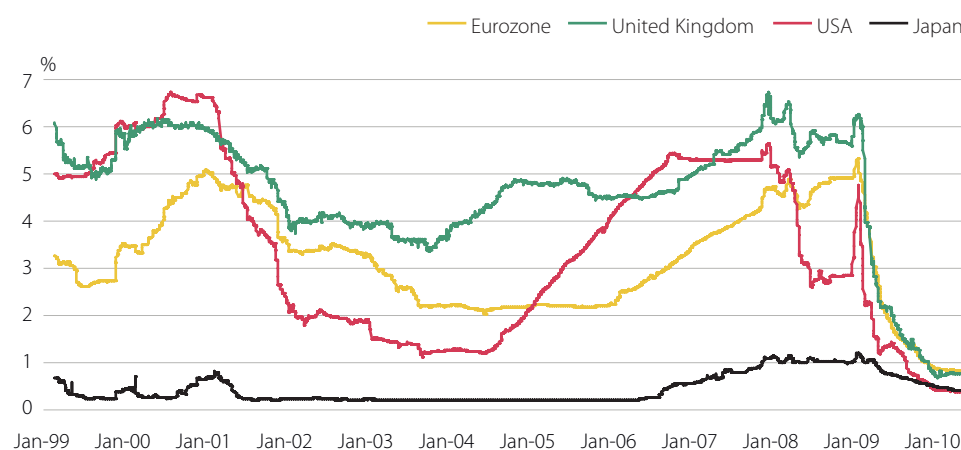
1.1.2 The international financial markets

Fall in short-term interest rates in line with monetary policy

Within a context of low official interest rates, inter-bank market rates at different terms fell sharply over the year down to historic lows (see figure 1.6). At the same time, the spread between depo and repo transactions in inter-bank markets, which had increased significantly following the financial turmoil which began in the summer of 2007, continued to narrow and, in the USA, even practically disappeared.

Short-term interest rates¹ (3 months)

FIGURE 1.6



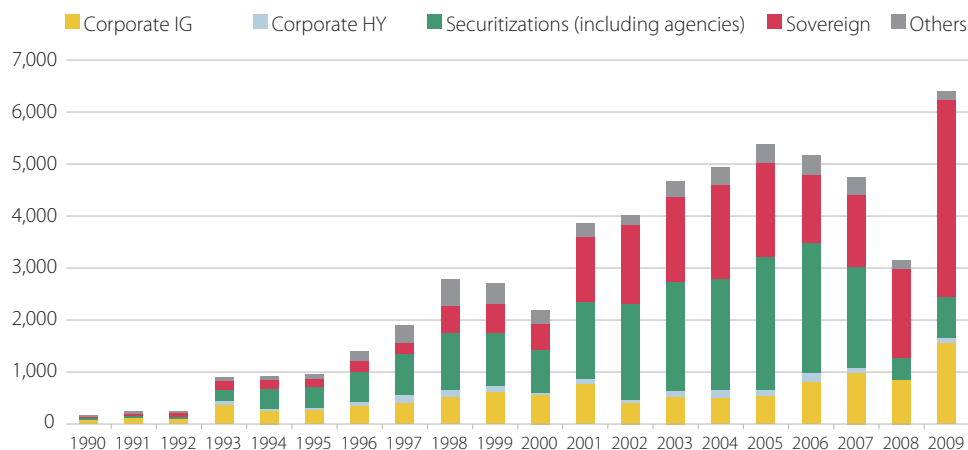
Source: Thomson Datastream. (1) 3 month Libor.

Sharp increase in public debt issues worldwide and in sovereign risk

The aforementioned significant public deficits triggered a marked increase in Governments going to debt markets. Consequently, net sovereign issues increased from 1,700 billions of dollars in 2008 to 3,700 billions of dollars in 2009, accounting for 60% of total net issues of fixed-income instruments over the course of the year (see figure 1.7).

Issues of international fixed income by type of financial instrument (billions of dollars)

FIGURE 1.7



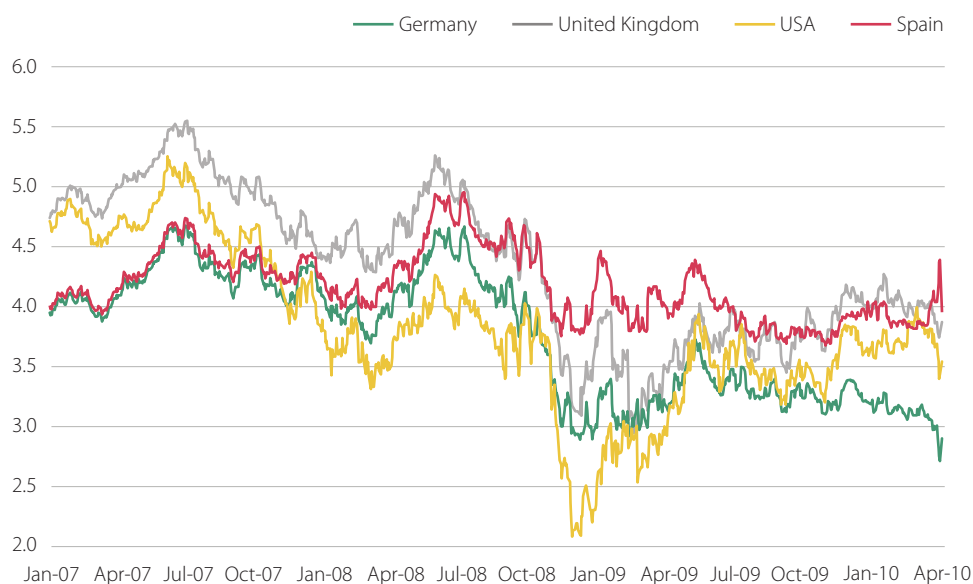
Source: Dealogic.

Long-term public debt yields continued to rise in the main geographical areas in the first half of 2009. This effect was especially felt in the USA and Germany, which basically reflected the sharp fall from the high prices reached at the end of 2008 for debt in these countries –considered as “safe-haven assets”–, following the improvement in economic forecasts as of the second quarter of 2009 (see figure 1.8). Over the second-half of the year, in an environment of lower aggregate uncertainty, these yields performed more erratically. At the end of the year, US 10-year bond yields were 3.8%, while those in Germany were 3.1%, i.e. 158 and 44 basis points less than in December 2008, respectively.

It is important to point out the increase in yields demanded in the case of some European sovereign debts, as of the final weeks of 2009 up to the highs of the first days of May 2010,⁵ as a result of the clearly contagious effect which followed verification of Greece’s serious fiscal problems. Consequently, the implicit public debt risk premiums in five-year CDS rose significantly in several countries, such as Greece, Portugal, Spain, Ireland and Italy. Within this context, although public deficits are generally high in all developed economies, the different starting position of each of them in terms of the level of public indebtedness and structural fiscal deficit, together with the different levels of ambition perceived in their respective fiscal adjustment programmes have led to clear differences in sovereign risk indicators since the end of 2009 (see figures 1.8 and 1.9). As can be seen in figure 1.9, the European Union’s approval in May 2010 of a financial support mechanism immediately led to a substantial fall in sovereign risk premiums in those countries whose public debt was under greatest pressure.

Yields on 10-year public debt (%)

FIGURE 1.8

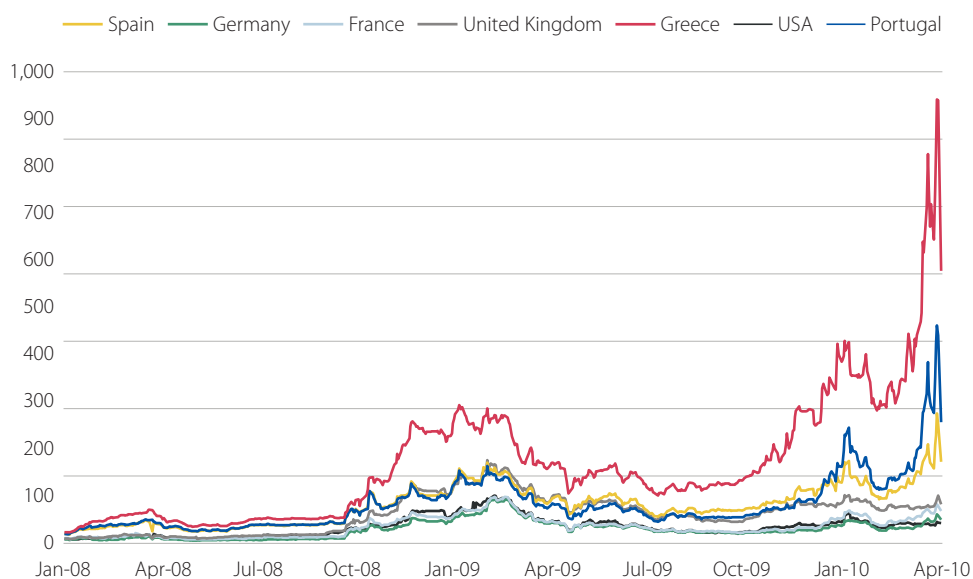


Source: Thomson Datastream. Data up to 10 May 2010.

5. The report date is 10th May.

Credit risk premiums of sovereign bond CDS (bp)

FIGURE 1.9



Source: Thomson Datastream. Data up to 10 May 2010.

Fall in risk premiums and increase in non-financial corporate issues in international private fixed-income markets

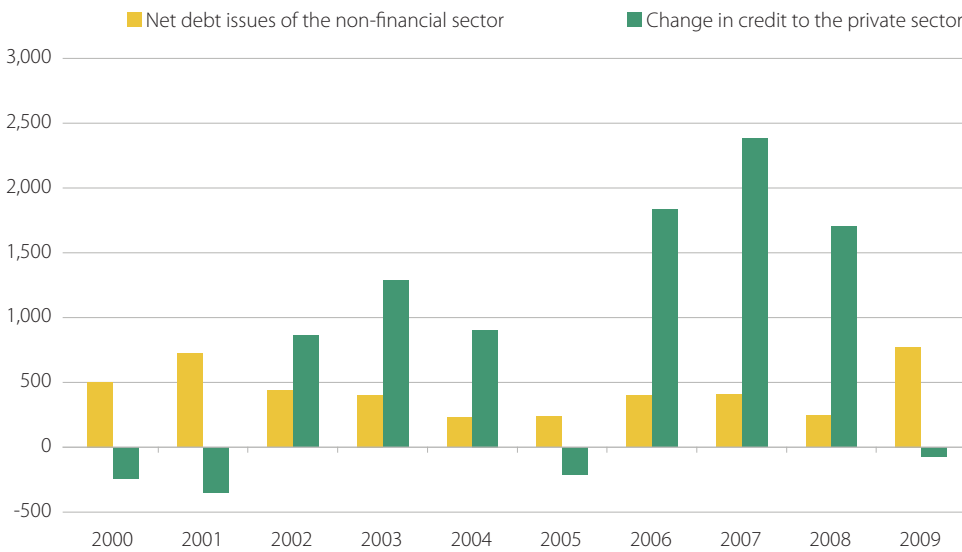
The financial crisis had a significant impact on international fixed income markets which, in the first stage up to the end of 2008, led to a substantial fall in the volume of private debt issues and a historic increase in their cost (see the increase in credit spreads by instrument in figure 1.11). However, the risk premiums demanded by investors normalised to a certain extent over 2009, accompanied by a recovery in issued volumes.

As can be seen in figure 1.7, the increase in net private debt issues was mainly concentrated in bonds with a higher credit rating, mainly carried out by non-financial companies. In fact, in 2009 these companies substituted their funding sources in favour of debt instruments to the detriment of bank loans as access to these loans became stricter (see figure 1.10). Issues by financial institutions remained at practically the same levels as in 2008, below 500 billions of dollars, despite different public guarantee programmes for bank debt issues. The volume of issued asset-backed securities remained at very low levels for the second consecutive year.

With regard to prices, the risk premiums for companies issuing in the USA and Europe fell substantially in 2009. In fact, the levels of risk premiums at the end of the year were often similar to those before the crisis (see figure 1.11). However, in the first few months of 2010, the tightening of public debt markets in some European countries has led to an increase, substantial in some cases, in private risk premiums (see figure 1.16 for the case of Spain).

Funding of the non-financial private sector (billions of dollars)

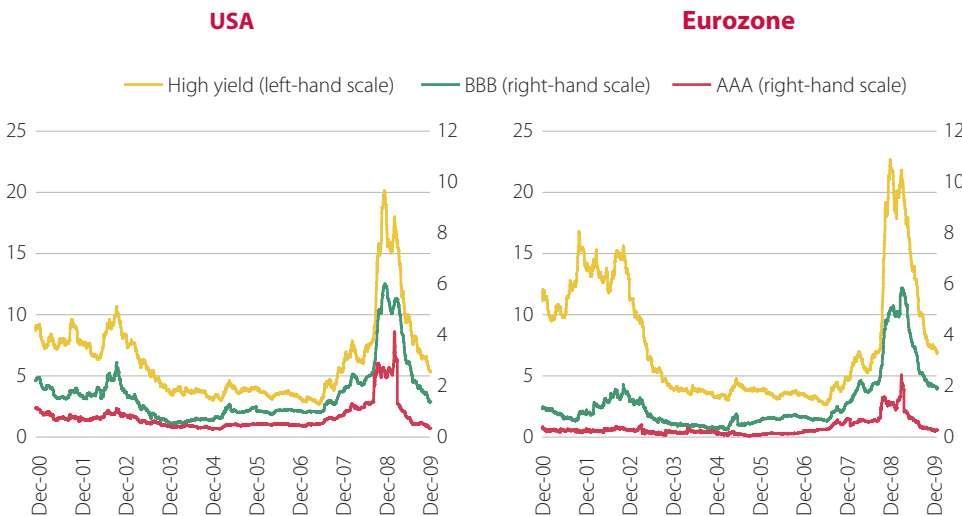
FIGURE 1.10



Source: Dealogic and Thomson Datastream. In order to obtain the credit series, the credit series to non-financial companies in the eurozone and the United Kingdom have been added to the credit to the residential sector in the USA and Japan.

Credit risk premiums for corporate debt¹ (basis points)

FIGURE 1.11



Source: Thomson Datastream (Merrill Lynch, IBOXX indexes). (1) Expressed as the difference between the IRR of the set of bonds belonging to a determined maturity and credit rating index and that of ten-year government bonds (a synthetic bond is used in the case of the eurozone).

Strong recovery in equity markets since March

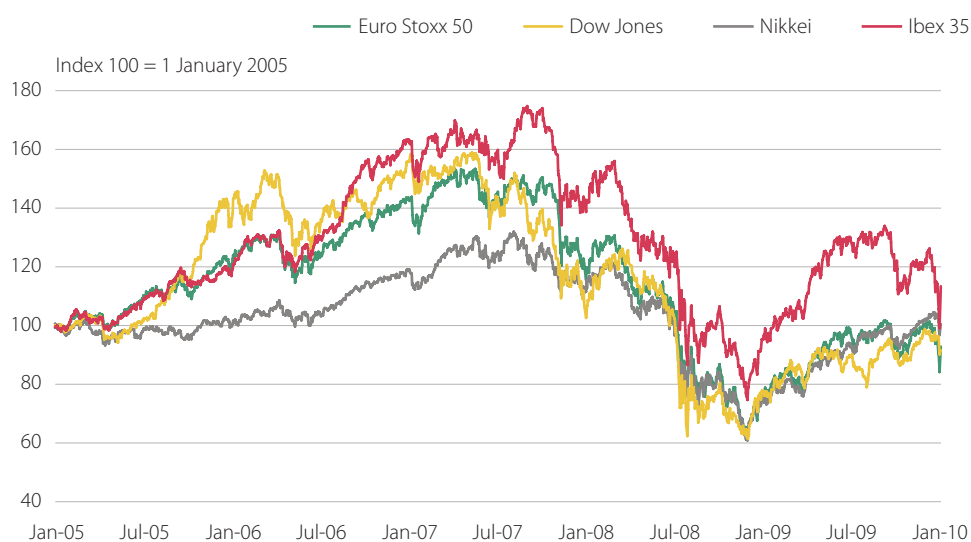
Following a first quarter with noticeable generalised falls in equity indexes, the second and third quarters of 2009 saw substantial growth in prices and significant falls in volatility (see figures 1.12 and 1.13). The last quarter of the year was characterised by uncertainty in price movements as markets waited for a wider set of indicators in order to assess the strength of the budding recovery.

In the year overall, the main stock market indexes rose significantly. In the main developed economies, indexes grew between 19% for the Dow Jones and 44% for the NASDAQ (see figure 1.1). The increases in European indexes varied between 20.7% for the Italian Mib index and 29.8% for the Spanish Ibex 35. In Latin American markets, the Argentinean (Merval), Peruvian (IGBL) and Brazilian (Bovespa) indexes performed well, increasing by 115%, 99% and 83% respectively over the year. In Asia, the benchmark Chinese equity index (Shanghai Composite) rose 80%.

In the first months of 2010, there has been an unequal performance between North American stock markets, whose indexes as of the report date have risen between 3% and 5%, and most European markets, whose benchmark indexes have fallen rather sharply as a result of the uncertainty associated with the deteriorating public finances in some economies.

Performance by the world's main stock indexes

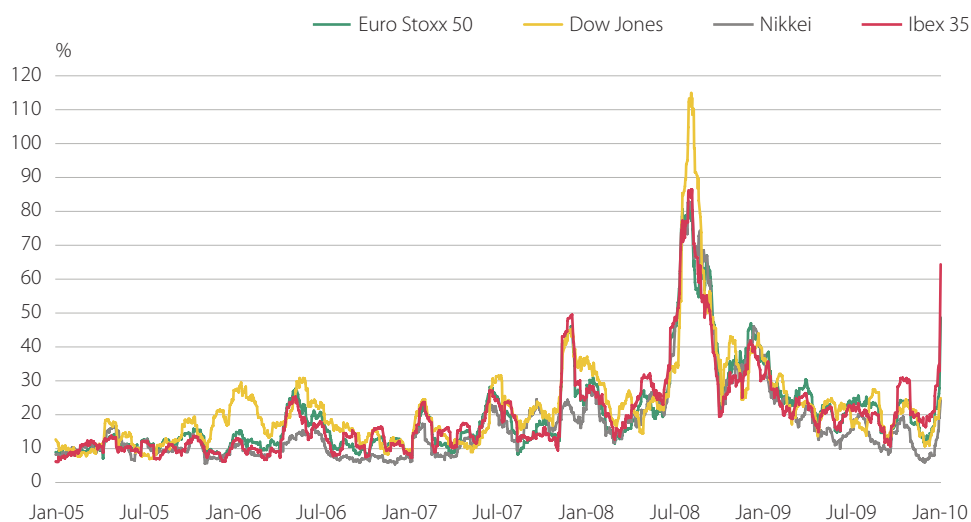
FIGURE 1.12



Source: Thomson Datastream. Data up to 10 May 2010.

Historic volatility¹ in the main stock indexes

FIGURE 1.13



Source: Thomson Datastream. (1) The index's historic volatility on day t is calculated as the typical deviation from the index's daily yields of the 20 sessions prior to t. Data up to 10 May 2010.

Equity markets: yield TABLE 1.1

Stock market	Index	Var ¹ (%)				
		2005	2006	2007	2008	2009
Developed countries						
USA	Dow Jones Ind. A.	-0.6	16.3	6.4	-33.8	18.8
USA	Nasdaq Composite	1.4	9.5	9.8	-40.5	43.9
Japan	Nikkei	40.2	6.9	-11.1	-42.1	19.0
United Kingdom	FTSE 100	16.7	10.7	3.8	-31.3	22.1
Eurozone	Euro Stoxx 50	21.3	15.1	6.8	-44.4	21.1
Euronext	Euronext 100	23.2	18.8	3.4	-45.2	25.5
Germany	Dax 30	27.1	22.0	22.3	-40.4	23.8
Italy	Mib 30	13.9	19.0	-8.0	-48.7	20.7
Spain	Ibex 35	18.2	31.8	7.3	-39.4	29.8
Latin America and Asia						
Argentina	Merval	12.2	35.5	2.9	-49.8	115.0
Brazil	Bovespa	27.7	32.9	43.7	-41.2	82.7
Chile	IGPA	2.7	34.4	13.8	-19.6	46.9
Mexico	IPC	37.8	48.6	11.7	-24.2	43.5
Peru	IGBL	29.4	168.3	36.0	-59.8	99.2
South Korea	Korea Cmp Ex	54.0	4.0	32.3	-40.7	49.7
Hong Kong	Hang Seng	4.5	34.2	39.3	-48.3	52.0
China	Shanghai Composite	-8.3	130.4	96.7	-65.4	80.0

Source: Thomson Datastream. (1) In local currency.

Following the fall which began in March, towards the end of the year the historic volatilities of the main indexes varied around 15%, in line with the averages over the last decade. Trading on stock markets continued to fall in 2009. Specifically, the fall in trading was greater than 20% on US stock markets and 30% on European stock markets. Only certain Asian stock markets showed positive variations.

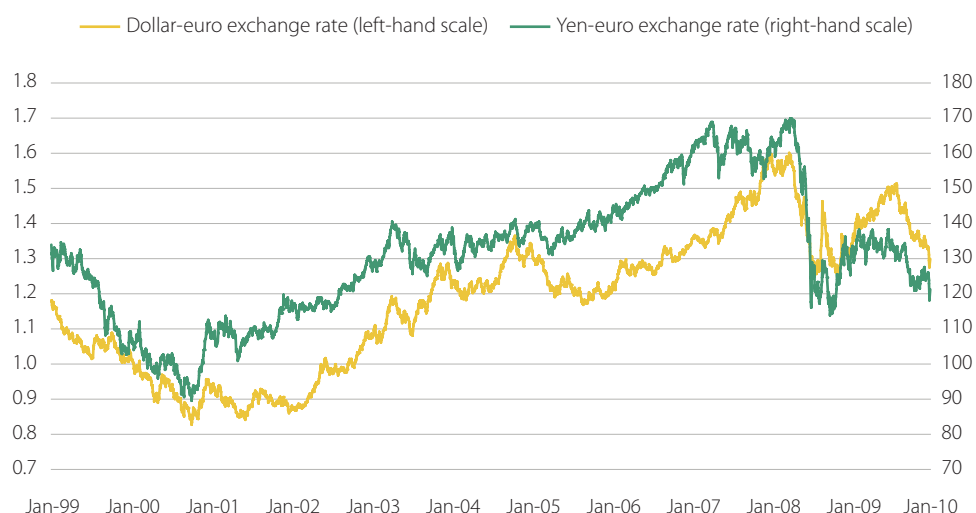
Finally, it is important to point out some recovery in capital increases and IPOs over the last year. Consequently, according to the data provided by Dealogic, the volume of these transactions on international markets stood at 1,100 billions of dollars in 2009, which was substantially greater than the 800 billions of dollars in 2009 and relatively close to the 1,200 billions of dollars in 2007.

Depreciation of the dollar, attenuated in the last few weeks of the year

The most noteworthy event in foreign exchange markets was the depreciation of the dollar against the euro over most of the year, followed by a significant appreciation in the last few weeks of the year. In the first half of 2009, the weakness of the dollar was attributed to the deterioration in US public finances and its clearly expansive monetary policy strategy. With regard to the yen/euro exchange rate, the Japanese currency tended to depreciate over the first three months of the year and then stabilised. However, since the last few weeks of 2009, the dollar has appreciated substantially compared with the Euro due to improved forecasts for the US economy and, basically, the uncertainty associated with the deterioration of European public finances.

Euro exchange rate vs. the dollar and yen

FIGURE 1.14



Source: Thomson Datastream. Data up to 10 May 2010.

1.2 The economic and financial situation in Spain

The rate of deterioration in the Spanish economy slows down

The Spanish economy continued contracting over the last year, though at increasingly lower rates (see figure 1.2). Over the year as a whole, the fall in GDP (-3.6%) was slightly lower than that recorded by the set of eurozone countries (-3.9%). As can be seen in table 1.2, the fall in GDP was mainly due to the fall in private consumer spending and gross capital formation, which could not be offset by the increase in public spending or by the net positive contribution of external demand. However, as the year went on, there was a progressive reduction in the contribution of negative domestic demand to aggregate growth, together with a parallel reduction in the positive contribution from external demand. GDP fell 14.7% in the industrial sector, 6.3% in the construction sector and 1% in the services sector.

Spain's economic indicators

TABLE 1.2

	2005	2006	2007	2008	2009
GDP	3.6	4.0	3.6	0.9	-3.6
Private consumer spending	4.2	3.8	3.7	-0.6	-5.0
Government spending	5.5	4.6	5.5	5.5	3.8
Gross fixed capital formation, of which:	7.0	7.2	4.6	-4.4	-15.3
Capital goods	9.2	9.9	9.0	-1.8	-23.1
Exports	2.5	6.7	6.6	-1.0	-11.5
Imports	7.7	10.2	8.0	-4.9	-17.9
External demand (contribution to growth, pp)	-1.7	-1.4	-0.9	1.4	2.8
Employment growth	3.2	3.2	2.9	-0.6	-6.7
Unemployment rate ¹	9.2	8.5	8.3	11.4	18.1
Harmonised CPI	3.4	3.6	2.8	4.1	-0.3
Current-account balance (% GDP)	-7.5	-9.0	-10.0	-9.6	-5.1
Government lending/borrowing (% GDP)	1.0	2.0	2.2	-4.1	-11.4

Source: Ministry of Economy and Finance, INE (national statistics institute) and the European Commission.
(1) Eurostat definition.

In the context of the fall in consumer spending, the rate of change in the CPI fell from 1.4% in December 2008 down to -1.4% in July 2009, while underlying inflation fell from 2.4% to 0.6% over the same period. In the second half of the year, the most volatile components of the index reverted this trend, and inflation ended the year at 0.8%. The inflation spread with the eurozone, which became negative in December 2008 and reached a minimum of -0.9 pp in May 2009, narrowed progressively in the second half of 2009, and finished the year at -0.1pp.

The adjustment in economic activity prolonged the sharp deterioration in the job market over 2009, although this was less intense in the second half of the year. According to data from the EPA (active population survey), the number of employees fell by 6.1% compared with the previous year and, at the end of the year, the unemployment rate stood at 18.8% of the active population, compared with 13.9% at the end of 2008.

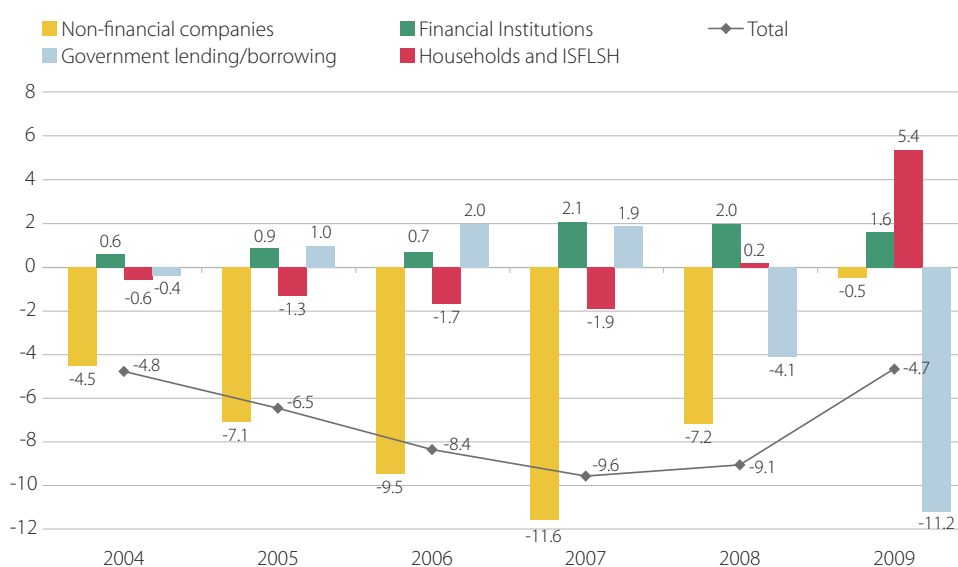
It is also important to point out the significant increase in the public deficit, which reached 11.2% of GDP in 2009, compared with 4.1% in 2008. The three most important factors which explain this increase in the deficit (temporary measures to combat the crisis, the cyclical reduction in economic activity and the increase in the structural deficit) would have had a very similar impact, estimated at between 2.2 and 2.5 percentage points of GDP.⁶

Reduction in the need for external funding for the Spanish economy

The fall in consumer spending and private sector investment led to a significant reduction in the Spanish economy's need for external funding from the rest of the world, which went from 9.1% of GDP in 2008 to 4.7% in 2009. The capacity of household funding, which had become positive in 2008, increased from 0.2% of GDP up to 5.4%, fuelled by the strong increase in the savings rate. A decrease in investment by non-financial companies reduced this sector's funding needs from 7.2% of GDP in 2008 to 0.5% in 2009. In contrast to these two sectors, the funding needs of the public sector increased sharply over the last year, as can be seen in figure 1.15.

Surplus (+)/borrowing (-) by the Spanish economy (% of GDP)

FIGURE 1.15



Source: Bank of Spain.

6. Breakdown of the deficit estimated by the Ministry of Economy and Finance.

The fall in economic activity impacts negatively on banking and the quality of its assets

National credit institutions continued operating in an extremely complex environment. The weakness of the economy had a negative impact on their income statements in such a way that aggregate profits of credit institutions as a whole fell 29.7% in 2009 due to the fall in business volume and the impairment of credit assets. The net credit flow to companies and households continued to fall over 2009 at a slightly lower rate than in the eurozone, while the default rates continued to rise. At the end of 2009, the default rate reached 5.1% of credit volume, compared with 3.4% in the same month of 2008 and 0.9% in the same month of 2007. Despite major differences in the different institutions' financial strength, funding in the sector was relatively comfortable thanks to the support measures adopted by national authorities and by the ECB.

The fall in profits of listed non-financial companies eases

Total profits of listed non-financial companies grew 14.7% in 2009, and stood at 24,334 millions of euros. This increase reflects the sector's better performance compared with construction and real estate companies, following the extensive losses which these sectors suffered in 2008 (see figure 1.3). Results in other sectors continued worsening, especially in the industrial and energy sectors, but at a lower rate than in 2008. Total indebtedness of listed companies grew 4.6% up to 323 billions of euros, and the gearing ratio increased from 1.6 in 2008 to 1.7 in 2009. On the other hand, the fall in interest rates allowed a slight reduction in financial costs for companies.

Results by sector¹: listed non-financial companies

TABLE 1.3

Millions of euros

	EBITDA ²		EBIT ³		Profit/loss Year	
	2008	2009	2008	2009	2008	2009
Energy	26,899	29,043	18,174	18,385	16,118	11,797
Industry	3,309	2,797	1,828	1,274	912	303
Commerce and services	30,390	29,022	18,867	17,454	11,449	11,042
Construction and real estate	1,920	4,749	-1,101	1,634	-7,127	1,168
Adjustments	-439	-270	-251	-94	-137	+24
Aggregate Total	62,079	65,341	37,517	38,653	21,215	24,334

Source: CNMV. (1) Accumulated profits/losses in the year. (2) Gross operating profit/loss. (3) Profits/losses before interest and tax.

Considerable increase in household savings rate

Household wealth indicators relating to the third quarter of 2009 indicate that the household savings rate continued to increase, exceeding 18% of available income in that quarter. This increase in the savings rate has come together with a fall in the household indebtedness ratio down to around 125% of gross available income. Furthermore, following falls in 2008 and in the first half of 2009, household wealth stabilised over the second half of 2009 as a result of the appreciation of financial assets, which offset a new fall in the value of real estate assets.

Sharp increase in public debt issues and rise in sovereign risk

Gross debt issues by public administrations amounted to 248 billions of euros, more than double the 2008 figure. The extensive gap between revenue and expenditure led to a net debt issue greater than 127 billions of euros (see section 4 of this report for more details). Public debt increased from 39.7% of GDP in 2008 to 55.2% in 2009.

The perception of greater sovereign risk was reflected in increases in the yield demanded by the market for State bonds, which were especially intense in the first quarter of 2009. In the second and third quarters, sovereign risk, measured through CDS and the yield spread compared with German debt, moderated and then subsequently rose again in the last part of the year (see figure 1.16). Since then, the perception of risk associated with Spanish public debt has increased to levels not seen since the adoption of the euro.⁷

Recomposition of private fixed-income issues and fall in risk premiums

Unlike public debt, private issues, in which financial institutions play a major role, fell significantly with a marked change in the composition of issued assets. Gross private fixed-income issues carried out by Spanish issuers amounted to around 538 billions of euros in 2009, down 8.7% on 2008.

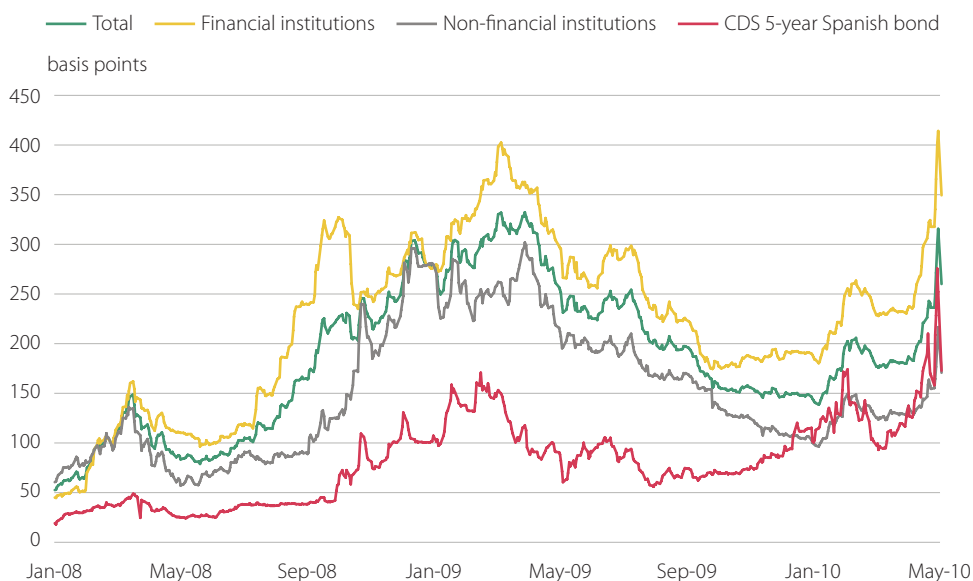
With regard to the composition of issues carried out in Spain, it is important to note the increase in the relative importance of simple bonds and debentures, mainly boosted by issues guaranteed by the State. As explained in more detail in section 4, the weighting of mortgage bonds and, to a lesser extent, preferred shares, increased. On the other hand, the relative weighting of commercial paper issues fell. However, they continued as the main segment of private fixed-income issues in terms of volume. The relative importance of asset-backed securities also fell significantly.

The risk premium of Spanish private debt, assessed by the CDS spread of Spanish issuers, increased until March 2009, when it began to fall. The year finished with premium levels similar to those which existed shortly before the collapse of Lehman Brothers in September 2008. Since then, the increase in the perception of risk associated with Spanish public debt has been gradually transferred to both the financial and non-financial private sector. Consequently, the credit risk premiums of Spanish issuers at the beginning of May 2010 again reached the highs registered at the start of March 2009 (see figure 1.16).

7. As of the report date, the CDS of the Spanish five-year bond stood at 172 bp, while the spread with the five-year German bond was 105 bp.

Risk premium of Spanish issuers¹

FIGURE 1.16



Source: Thomson Datastream. (1) Credit derivatives market. 5-year maturity. Simple average, except for Spanish bond CDS. Data up to 10 May 2010.

Recovery of stock market prices since March

As with the international situation mentioned above, 2009 had two notably different periods for Spanish markets. In the first period, share prices continued the trend of the previous year, falling to an annual low on 9 March. Share prices then grew significantly from that date on. In the year as a whole, the Ibex 35 rose 29.8%, above the rises seen in other benchmark European stock markets (see table 1.1). The upward trend in equity prices reverted again in the first months of 2010 as a consequence of the turmoil associated with European public debt markets. Within a context of high volatility, the Ibex 35 has lost over 24% at certain times so far this year. As of the Report date, these losses were corrected to 13% compared with the end of 2009. This represents a greater decrease than that of other benchmark European stock markets.

As can be seen in table 1.4, the indexes representing listed companies with small (Ibex Small Cap) and medium (Ibex Medium Cap) capitalisation showed more modest progress, of 17.6% and 13.8% respectively. The sectors with the largest appreciations were the banking sector (46%), discretionary consumer spending (37%) and industrial goods and services (29%). As indicated in section 3 of this report, the Spanish market for Latin American securities (Latibex) recorded significantly higher price gains than those of the Ibex 35.

In this context, the volatility of contracts on the Ibex 35 traded on MEF, which increased in the first two months of the year, at times reaching values of 60%, followed a downward trend in the following months, ending the year at rates of around 20% (see figure 1.17). Liquidity, measured by the bid-ask spread of the Ibex 35 also worsened during the first few weeks of 2009, and subsequently improved significantly, reaching values similar to those observed before the start of the crisis (see figure 3.1).

Trading fell for the second consecutive year, standing at a little over 877 billions of euros, thus falling back to 2005 levels. Unlike the previous year, in which the reduction in trading mainly reflected the fall in prices, the fall in 2009 reflected the reduction in the number of trades. In this regard, the fall in trading was similar to that observed in other benchmark stock markets.

As explained in detail in section 3, despite the improvement in the secondary market in terms of prices, volatility and liquidity, capital increases and IPOs were limited, in the same way as in 2008.

Economic and financial framework
Economic and financial situation

Yields of the Spanish market's equity indices and sectors (%)

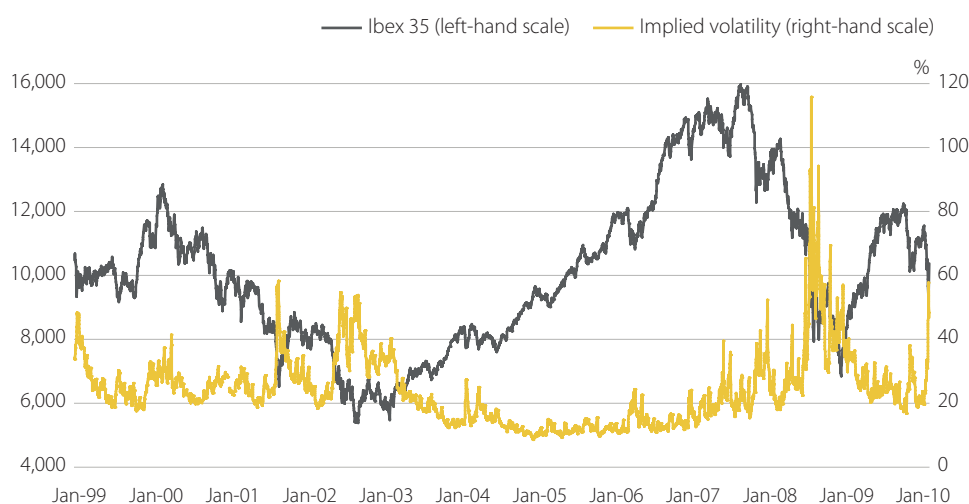
TABLE 1.4

Indexes	2005	2006	2007	2008	2009
Ibex 35	18.2	31.8	7.3	-39.4	29.8
Madrid	20.6	34.5	5.6	-40.6	27.2
Ibex Medium Cap	37.1	42.1	-10.4	-46.5	13.8
Ibex Small Cap	42.5	54.4	-5.4	-57.3	17.6
FTSE Latibex All-Share	83.9	23.8	57.8	-51.8	97.2
FTSE Latibex Top	77.9	18.2	33.7	-44.7	79.3
Sectors¹					
Oil and gas	29.1	18.3	1.8	-30.8	-20.1
Chemical	176.1	-20.4	-58.4	-67.8	3.4
Basic materials	20.0	69.3	-17.2	-45.4	23.1
Construction and construction materials	50.4	61.6	-12.0	-51.0	25.5
Industrial goods and services	18.4	28.4	6.9	-41.9	29.3
Health care	19.0	40.7	19.2	-45.0	17.7
Utilities	27.2	42.0	18.5	-31.0	-7.8
Banking	19.2	27.6	-4.5	-47.9	46.3
Insurance	39.9	44.7	-13.3	-25.0	19.8
Real estate	58.9	100.4	-42.6	-58.6	-43.8
Financial services	58.6	91.1	-35.6	-44.3	20.8
Telecommunications and media	-0.7	29.4	26.3	-31.4	23.5
Consumer discretionary	24.8	21.2	-7.7	-39.2	37.0
Consumer staples	19.0	12.9	6.9	-22.5	-8.4

Source: Thomson Datastream. (1) Thomson Datastream classification.

Ibex 35 performance and implied volatility¹

FIGURE 1.17



Source: Thomson Datastream and MEFF. (1) Implied volatility published by MEFF for the derivative with closest maturity date. Data up to 10 May 2010.

1.3 Economic and financial outlook

The most recent forecasts from the IMF and the OECD suggest a recovery in the world economy which, if met, would lead to growth rates close to 4% in 2010, and a slightly higher rate of 4.3% in 2011. According to these forecasts, the recovery in the world economy would be driven by strong growth in emerging economies and particularly in Asian economies, as well as consolidation in the recovery in developed economies, especially the USA. However, to the extent that a substantial part of the recovery so far in the world economy has been due to the extraordinary stimulus measures adopted by the authorities, uncertainty is still high regarding the intensity and above all, the sustainability of growth as these measures are withdrawn.

The risks which may affect the macro-financial scenarios envisaged by the main international agencies mainly include those related to the sustainability of public finances in some advanced economies, the persistence of the high level of deterioration in job markets and the difficulties to correct the imbalances in world demand. In addition, specific periods of instability in certain financial markets or institutions cannot be ruled out. From the point of view of economic policy, the greatest short-term risk would be associated with the implementation of strategies to withdraw the extraordinary stimulus plans.

With regard to the Spanish economy, the forecast of international agencies are somewhat less optimistic than for the other main advanced economies. Consequently, according to the latest forecasts from the IMF, corresponding to January 2010, Spain would still remain in recession in 2010, with a forecast fall in GDP of 0.6% for the year. According to available forecasts, the Spanish economy would start to improve gradually as of 2011. In all, the Spanish economy ended 2009 with several significant challenges for the near future, such as (i) the need to implement an ambitious fiscal adjustment plan which makes it possible to gradually reduce the high public deficit within the framework of the Stability and Growth Agreement, (ii) the possibility of achieving a new balance in the composition of its productive structure which is less dependent on construction and with the capacity to absorb the high number of unemployed, and (iii) the need to satisfactorily complete the process of reorganising the domestic financial system, so that this sector may again take on its role as a key growth factor. Recent turmoil in the sovereign debt market, which is having a significant impact on domestic securities markets, requires an early and decisive response on the three above-mentioned fronts.

2 Financial markets through the crisis: Challenges and initiatives for their recovery

The intensification of the world crisis after September 2008 triggered a swift mobilisation of the international community in order to provide joint solutions to the serious problems suffered by the world financial system. One of the most visible results of this unprecedented mobilisation is the intense activity that has been deployed since then by national and supranational agencies responsible for regulating, supervising and setting standards in the financial sector. Recent months have witnessed multiple debates, proposals and specific measures to remedy the defects and those areas of vulnerability in the operations of financial markets which have been highlighted by the crisis.

This chapter of the report gives a description of the main regulatory initiatives that have been put forward recently from different areas, with special emphasis on those issues which directly affect Spanish stock markets (section 2.3). In order to place these new regulations within the special economic and financial context in which they have been formulated, the first part of the section analyses the macro-financial conditions which triggered the crisis (section 2.1), and the role played by the main financial instruments and markets specialised in transferring and managing credit risk worldwide (section 2.2). The initiatives referred to in this chapter are only some of the measures put forward to strengthen the financial system following the crisis. This chapter only makes a brief mention of some of the recent proposals and measures relating to prudential regulation and supervision.¹

2.1 The dual nature of the crisis (I): macro-financial imbalances

The current crisis was triggered by several factors which make it different from other crises in recent decades. On the one hand, unlike the situations recorded during the 1980s in several Latin American economies and, in the second half of the 1990s in Southeast Asia, Brazil and Russia, the current crisis has its epicentre at the heart of the world financial system, that is, in the US. In fact, beyond the logical impact caused by the size of the current crisis, the financial systems in most emerging economies have weathered the worst moments of the current crisis. Furthermore, this crisis broke out in a context of low inflation and stable growth in industrialised economies and significant economic growth in most emerging areas.

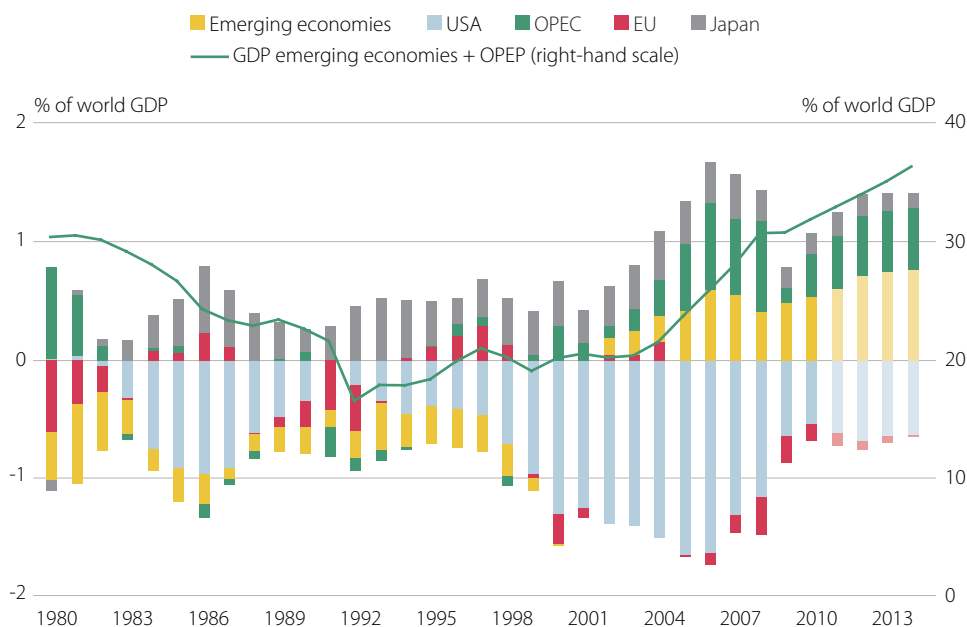
The current crisis is also somewhat atypical with regard to the response of international capital flows which, unlike in previous crises, have moved from the periphery (emerging and oil-exporting economies) towards the epicentre (industrialised econo-

1. Martínez and Rodríguez (2009) offer a detailed description of the main new aspects relating to supervision worldwide, which includes a thorough analysis of the new structure of European supervision. (The "Bibliography" section at the end of this report includes details of all the publications referred to herein).

mies). In fact, as shown by the data relating to the current account balance in figure 2.1, despite the fact that the outlook for growth over the medium term is clearly better in the emerging and oil-exporting economies, in general terms, the industrialised economies have retained their ability to maintain significant external deficits throughout this crisis.

Growth of emerging economies and current account balance by geographical area

FIGURE 2.1



Source: IMF

The combination of the above circumstances, different from those in previous crises, has led to several hypotheses regarding the macro-financial causes of this crisis. They all underline the central role of various imbalances accumulated over the decade preceding the crisis.² The most tangible dimension of these imbalances is the enormous need for funding required in the last years of the 20th century by certain developed economies, mainly, although not exclusively, the US.³ As shown in figure 2.1, the substantial current account deficits of the US economy have mainly been covered through a parallel increase in the funding capacity of emerging and oil exporting economies.

The most important aspect of world savings flows which can explain this pattern is the extraordinary growth of emerging economies, which since the end of the last century have grown at historically high rates. Secondly, the rapid growth in the income of these economies, together with other economies which have directly benefited from the increase in commodity and oil prices, has generally been accompanied by very high domestic savings rates. This last effect has led to a positive and significant movement in the world savings supply curve,⁴ with the consequent downward pressure on real interest rates.

2. See, for example, Caballero *et al.* (2008a and 2008b), Blanchard and Milesi-Ferretti (2009), Obstfeld and Rogoff (2009), Caballero (2010) and Brender and Pisani (2010).

3. The US's current account deficit in terms of GDP reached a high in the last decade in 2006 (6%). Other countries, such as Ireland and Spain, also recorded significant external deficits over these years, reaching 5.3% and 10% of GDP respectively in 2007.

4. Bernanke (2005) was one of the first authors to comment on the increase in savings volume worldwide.

In a context of abundant savings and lower interest rates, some assets underwent a period of rapid appreciation, followed by sudden adjustments in their prices. This was the case of the sharp share price rises in several markets at the end of the last century, which ended with the dramatic fall in the prices of technology companies which began in 2000. This speculative period was followed by another which affected the real estate market in several developed countries, including the US, the United Kingdom, Australia, France, Spain and Ireland, and which brought historically high growth rates in property prices and private sector credit, especially linked to real estate activities. In this scenario, the sudden withdrawal of investor confidence in the sub-prime segment of the US mortgage market in the summer of 2007 led to the beginning of the greatest world financial crisis in recent times.

However, although the accumulation of the aforementioned macro-financial imbalances may well have been a necessary cause of the crisis, it was not in itself a sufficient source of the crisis. In fact, the fragility observed over this period in some important financial markets, such as those of asset-backed securities and the inter-bank market, reflected the poor functioning of credit risk control and management mechanisms worldwide. The failures in these mechanisms are analysed in the following section.

2.2 The dual nature of the crisis (II): failures in credit risk management

Following on from the argument developed in the previous point, based on the increase in the *volume* of world savings in the decade that preceded the crisis, this section analyses the changes in its *composition*, according to the risk profile of the different savings instruments. Emphasis is given to the role played by the large-scale development of asset-backed securities and credit derivatives as key instruments in aggregate credit risk management. Likewise, we shall indicate the main areas of vulnerability in the global credit risk management structure which have been highlighted by the crisis.

2.2.1 Global imbalances and the demand for safe assets

The fact that emerging countries, which generally enjoy domestic investment opportunities with higher rates of return, have financed the high external deficits of the US and other industrialised economies is a clear symptom of the lower level of development in their institutional framework and, in particular, their financial sector. Figure 2.2, which compares the level of financial depth (measured as the weight of the main financial assets in the economy) between different areas, provides direct evidence in this respect.

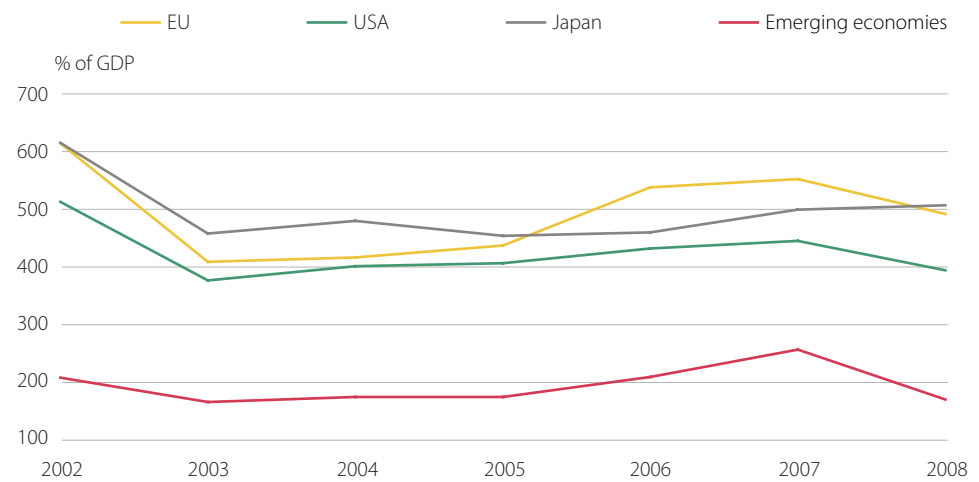
The comparative disadvantage of emerging economies in their ability to offer savings instruments has been especially intense in the area of savings products with low risk and high liquidity, which in many cases has led to them accumulating large volumes of assets issued in developed countries⁵. Figure 2.3 shows the rapid growth

5. Aside from the difficulties of the financial systems themselves in emerging economies to produce safe liquid assets, past experiences of exchange-rate crises may have led to a structural increase in their demand for foreign assets as a means of precaution. However, the high rates of reserve accumulation shown in figure 2.3 are difficult to explain based solely on that reason, as argued by Brender and Pisani (2010).

in the world volume of international reserves over recent years, which is mainly explained by the high levels of accumulation in periphery economies.⁶ However, the increase in demand for low risk assets has not been limited to these countries. In fact, some factors present in many industrialised economies, including the growth in funds managed by insurance companies and pension schemes, together with the introduction of some prudential standards, have also led to an increase in the demand for safer assets.⁷

Level of financial depth¹

FIGURE 2.2



Source: IMF (*Global Financial Stability Report*). (1) For each country, the indicator aggregates the capitalisation of their stock markets, the outstanding balance of their public and private debt and their bank assets.

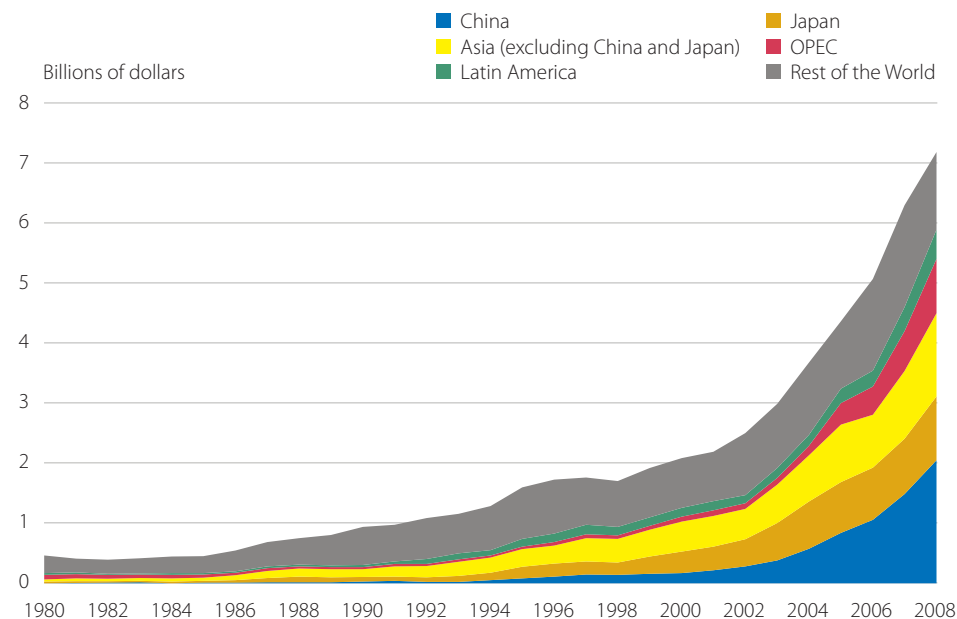
These changes in the composition of world demand for financial assets towards safer, more liquid assets, are crucial for understanding some of the key events in world finance in recent years. Thus, the pressure on the supply of these types of assets did not take long to transfer, firstly to their prices, which led to a fall in interest rates, and secondly, to the incentives for the financial industry to produce new safe assets, which is analysed below.

6. With regard to the composition of international reserves, according to estimates by Brender and Pisani (2010), for the middle of 2007, monetary bonds and assets accounted for 76% and 22% respectively of all reserves, compared with 2% corresponding to equity securities.

7. For a detailed analysis of these changes in the composition of demand for savings instruments, including additional evidence, see Caballero (2010).

International reserves

FIGURE 2.3



Source: Thomson Reuters Datastream.

Economic and financial framework

Financial markets through the crisis: Challenges and initiatives for their recovery

2.2.2 Increase in the world supply of safe financial assets

In a context of a relative lack of savings instruments considered as safe, securitisation emerged as one of the most effective mechanisms to generate new assets with high credit quality. At the same time, credit derivatives, specifically credit default swaps –CDS–, made it possible to transfer high volumes of risk from debt holders to other agents specialised in managing these risks. Consequently, the enormous boom in these two types of financial products, which took place as of the second half of the 1990s, facilitated the supply of assets considered as safe, thus maintaining the strong growth rate in demand.

In hindsight, the origin and development of the current crisis, as well as a significant proportion of the responses given by authorities regulating securities markets, are difficult to understand without referring to the role played by these financial innovations. The rest of this section firstly analyses the main basic aspects of asset-backed securities and CDS. The aim of this analysis is to provide an overview which highlights the close connection between the macro-financial phenomena described above and the microeconomic vulnerabilities underlying failures in the market, and in regulation and supervision that were made evident by the crisis, which will be covered later on.

Asset securitisation

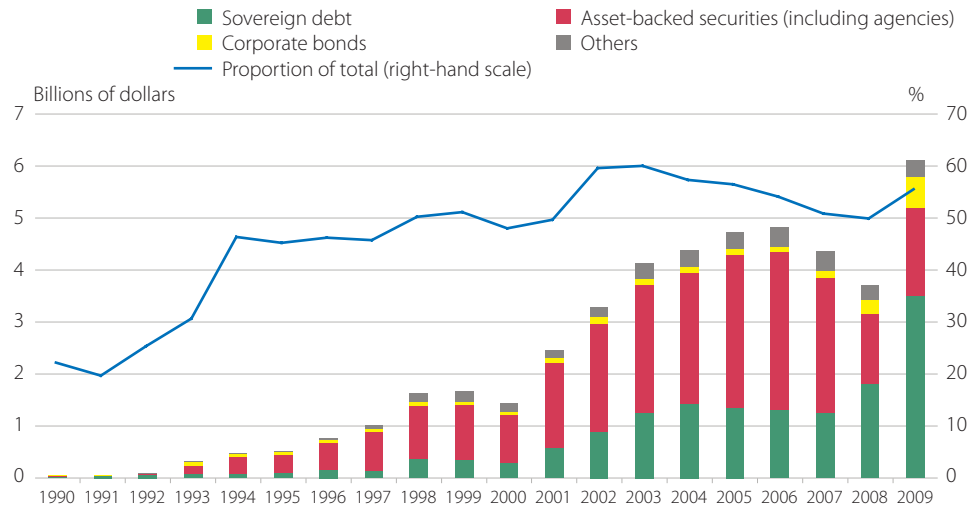
By pooling a high number of loans into one fund, securitisation makes it possible to reduce the specific risks associated with each individual loan. The senior tranches in which these funds are normally structured often received the highest credit rating from rating agencies in the years prior to the crisis.⁸

8. For a detailed description of the different types of asset-backed securities, as well as their structuring process, see Losada (2006).

Consequently, securitisation constituted an extremely useful mechanism for closing the gap between the growing demand for safe assets and their supply, which in their traditional types – mainly sovereign debt and high quality corporate debt – seemed to have low growth potential at the end of the last century.

Gross world issue of AAA fixed-income¹

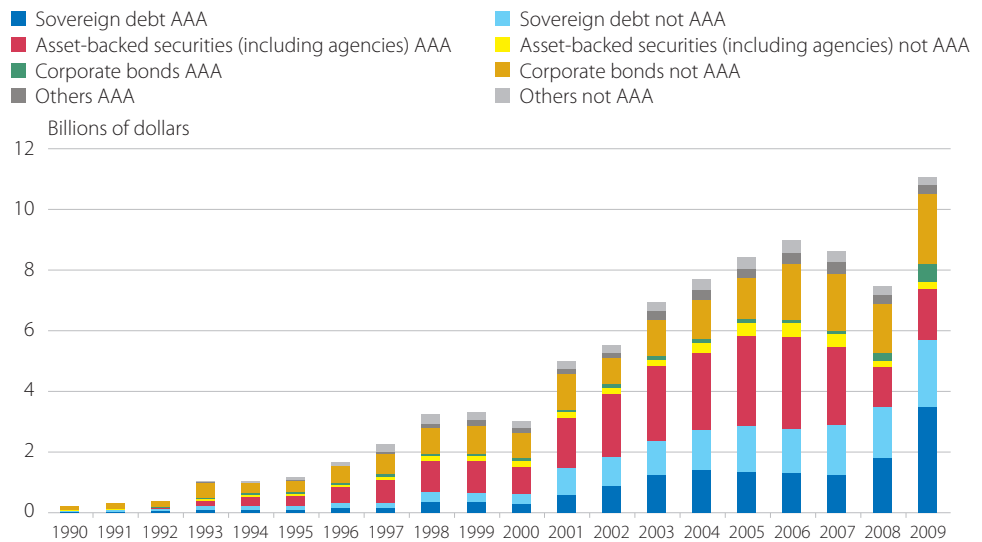
FIGURE 2.4



Source: Dealogic. (1) The category “others” includes mortgage bonds, preferred shares and other long-term fixed-income instruments.

Gross world issue of fixed-income

FIGURE 2.5



Source: Dealogic. (1) The category “others” includes mortgage bonds, preferred shares and other long-term fixed-income instruments.

Figures 2.4 and 2.5 illustrate the main developments worldwide described above. Figure 2.4 firstly shows the extraordinary growth in relative terms of assets with a triple A rating from the start of the 1990s up to 2009. Between 1990 and 2006, the year with the highest number in the series of gross asset-backed security issues, assets with the highest credit rating went from a little over 20% of total rated fixed-income issues to almost 55%. Secondly the contribution of the different assets under consideration to the total growth of assets with a triple A rating between 1990 and 2006 clearly shows the importance of securitisation in producing assets

considered as safe. Specifically, during this period, asset-backed securities accounted for 64% of the growth in gross issues of long-term fixed-income instruments with the highest credit rating, compared with 27% attributable to the growth in public debt, 2% to corporate debt and 8% to other products.

Furthermore, figure 2.5 highlights the role of securitisation as an instrument with significant potential for creating assets with a high credit rating. While between 1990 and 2006, the average percentage of corporate issues with a triple A rating, compared with total corporate issues, was 9%, this proportion reached 48% for sovereign issues, and 75% in the case of asset-backed securities.

Credit derivatives

Together with asset-backed securities, in recent years credit derivatives have been another major pillar supporting the large scale transfer of credit risk. In its most simple form, the most common credit derivative (CDS) is an insurance contract against the default of an underlying asset which represents a right to payment from a third party. These derivative products thus allow a separation between the financing functions, on the one hand, and the assumption and management of default risks, on the other. This separation, when appropriately put into practice, has the theoretical virtue of allowing risk to be assigned more efficiently, as it offers the possibility for agents with risk profiles, time frameworks for planning or information different to those corresponding to the originators of the underlying credit to cover risks for which they have another competitive advantage.⁹

Figure 2.6 shows the rapid growth in the gross notional outstanding balance of these instruments,¹⁰ especially during the five years preceding the crisis. The outstanding balance of CDS thus rose from only 2% of world GDP in 1999 to 105% at the end of 2007, when it reached its historic high.¹¹

Accordingly, the development of CDS markets contributed to strengthening the theoretical capacity of the world financial system to redistribute the risk of some of the most important fixed-income products, thus acting in the same direction as asset-backed securities. In fact, the serious problems which affected the US insurance company AIG in the summer of 2008 revealed significant volumes of CDS contracts which this institution held open, as hedge provider, against holders of tranches of asset-backed securities.¹² This suggests that the two main mechanisms used in the years prior to the crisis to transfer credit risks –asset-backed securities and CDS– have often been used together.

9. A recent survey conducted by the Eurosystem Banking Supervision Committee (European Central Bank, 2009) revealed that for 47% of banks in the European Union, CDS were an “important” tool for protecting against default risk when granting loans, while for 23% these instruments were “very important”. For the group of the larger European banks, the above percentages rose up to 50% in both cases.

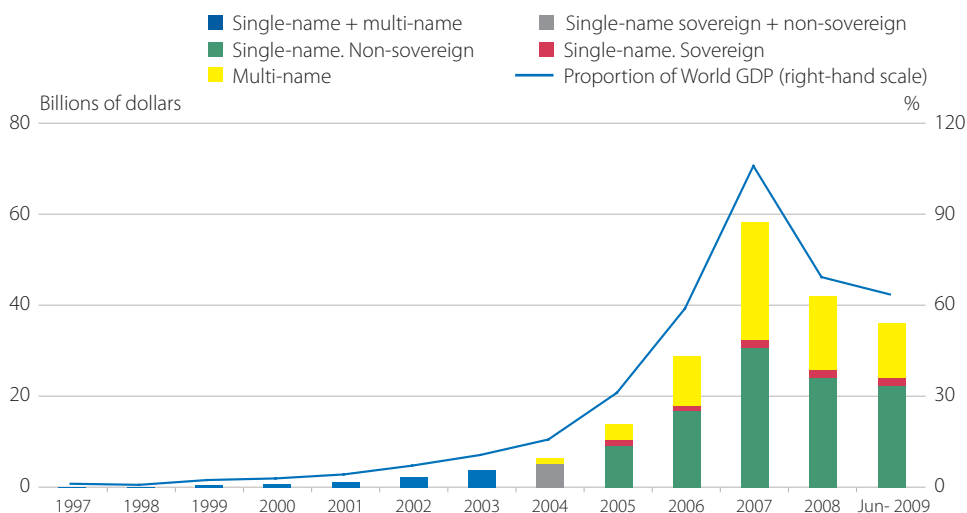
10. The gross notional value of a CDS is the maximum possible exposure of the seller of protection in the event of default. The net notional value (after taking into account contract compensation) is much lower (close to 10% of the gross outstanding balance in the first half of 2009).

11. Despite their rapid expansion, the notional balances of outstanding CDS at the end of June 2009 only accounted for 6% of the total volume of derivatives traded on OTC markets, whereas interest rate swaps accounted for over 70% of the total.

12. See Brunnermeier (2009) and Stulz (2010).

Gross notional outstanding balance of CDS¹

FIGURE 2.6



Source: BIS and IMF. (1) The distinction between *single-name* and *multi-name* refers to whether the underlying asset is made up of debt instruments issued by one agent (for example, a government or a company) or whether it is a basket of loans or an index respectively.

2.2.3 The main failures in risk transfer mechanisms

The current paralysis in the issue of asset-backed securities is a clear sign that risk transfer through this mechanism, as implemented in their years of greatest use, suffered from significant failures.¹³ Furthermore, some specific episodes of high default risk by CDS providers have led to doubts about the reliability of these derivatives. The rest of this point analyses the main areas of vulnerability relating to asset-backed securities and CDS which have become clear as a result of the crisis.¹⁴

Failures in the risk rating mechanism

The apparent high productivity of asset-backed securities for generating net credit improvements has largely been shown to be temporary as it was based on certain fragile elements. These deficiencies include the role of rating agencies because of their central role in certifying the solvency of asset-backed securities. Specifically, deficiencies in the valuation methodology, the margin for discretion in the originator's choice of rating agency and conflicts of interest within the agencies have proved to be determining factors in the generalised overestimate of the ratings of these products during the last expansive cycle.¹⁵

With regard to the reliability of the valuation techniques used by rating agencies, it has been shown that the lack of historical records relating to the yields on asset-

13. Figure 2.4 shows apparently high levels of activity in the issue of asset-backed securities during the most intense stages of the crisis. However, this situation is due to the fact that originators are using these assets to obtain financing through ordinary and extraordinary mechanisms, in accordance with different jurisdictions made available by some central banks (see IMF 2009, sec. 1).

14. Restoy (2008) provides one of the first diagnoses of the deficiencies in the world financial system in the context of the current crisis.

15. See, for example, Bolton, Freixas and Shapiro (2009), Ashcraft, Goldsmith-Pinkham and Vickrey (2009) and Losada (2009).

backed securities and, in particular, the practical lack of recessive periods in these records made it difficult for the valuation models to correctly rate the securities, leading to an upward bias in ratings. In turn, the effects of these errors might have been amplified as a result of the growing level of complexity of some types of asset-backed securities, especially in recent years.¹⁶ Furthermore, the fact that originators autonomously decide which rating agency and, therefore, which rating they accept for their products, has fuelled cherry picking.¹⁷

Conflicts of interest within the agencies themselves have also been identified as a possible factor for bias in the ratings of asset-backed securities.¹⁸ The fact that the revenue received for rating these products accounted for 40 or 50% of the total revenue of these agencies (according to estimates by CESR, 2008) gives an idea of the size of these incentive problems in practice.

The aforementioned problems in the operations of rating agencies might have been amplified by a defect in due diligence by some investors. In this regard, it is important to underline that ratings are not only used for their information relating to the risk of the product in question, but they are also often used for certification and regulation purposes. Consequently, on the one hand, the ratings given by agencies are in effect automatically used by some institutional investors to restrict the type of assets which can make up their portfolios. In fact, these restrictions sometimes have a regulatory origin.¹⁹ On the other hand, prudential regulation itself might have contributed to reducing the level of diligence followed by investors. This is the case of the Basel II bank capital framework, agreed in 2004, which under its standardised risk assessment approach allows banking institutions to use external credit ratings for their assets in order to determine their regulatory capital needs. In this way, by directly linking the asset's cost, in terms of maintaining regulatory capital, with its rating, the incentives for investment institutions to directly supervise the real quality of their assets may be weakened.²⁰

The aforesaid factors have generally contributed to converting the ratings of asset-backed securities into biased estimates of their true risk. The most visible result of this last effect is the generalised collapse in the ratings of many of these products which took place following the sub-prime mortgage crisis in 2007, as shown in figure 2.7 for the cases of the US and Spain.

16. The link between the level of complexity in the structures of asset-backed securities and the quantitative importance of errors in the rating parameters used by rating models has been analysed by Coval, Jurek and Stafford (2009), who show how the size of the bias in the rating increases at a growing rate as the structure of the asset-backed security becomes more complex. Specifically, as these authors underline, the weight of CDO (collateralized debt obligations) which included in their structure other asset-backed securities in the total notional value of asset-backed securities in the US rose from 2.6% in 1998 up to 55% in 2006, which gives an idea of the progressive increase in the level of complexity of these products.

17. In a recent study, Becker and Milbourn (2009) document how an increase in competition among rating agencies, which they attribute to cherry picking strategies by issuers, tends to significantly increase the average level of ratings. Skreta and Veldkamp (2009) find similar results and, in addition, provide evidence which shows how the increase in ratings caused by cherry picking strategies is magnified as the products become more complex.

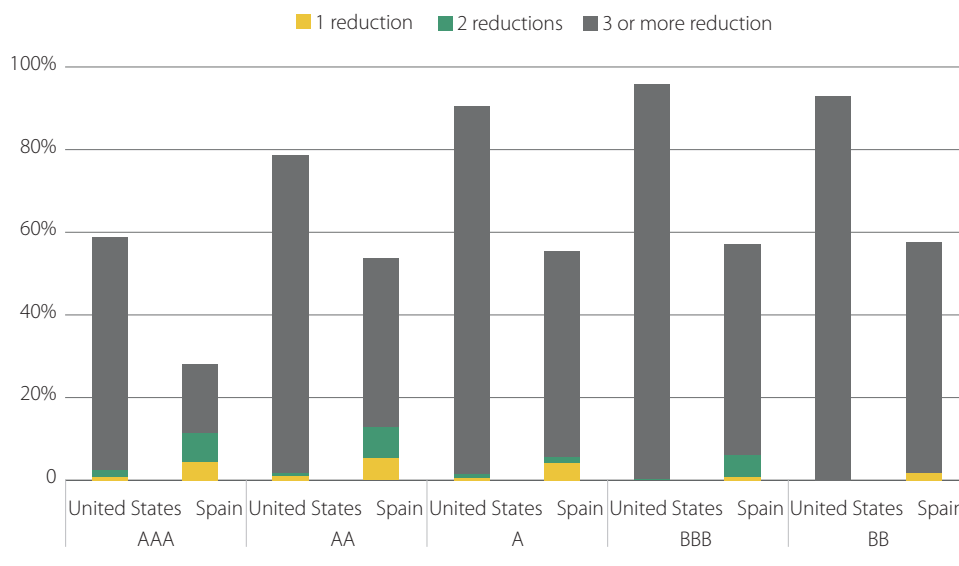
18. See, for example, IMF (2009, chap. 2).

19. Villanueva (2009) offers evidence of the use of ratings for regulatory reasons in the context of monetary investment funds.

20. Sy (2009) analyses in detail other channels through which the use of ratings for regulatory purposes may lead to a relaxing of due diligence by investors.

Downgrades of mortgage bonds by issue rating¹

FIGURE 2.7



Source: Standard and Poor's and CNMV. (1) Percentage of securities which have undergone 1, 2, 3 or more downgrades in their credit rating following their issue, between the first quarter of 2005 and the third quarter of 2007. Each category on the horizontal axis includes the + and - signs which accompany the ratings (for example, AA includes AA +, AA and AA -).

Failures in credit risk insurance mechanisms

The exponential growth in the volume of CDS up to 2007 was also not exempt from significant risks. In some specific events of the crisis, such as the collapse of Lehman Brothers or the serious problems suffered by AIG, only intervention by the US Government prevented a possible collapse of the contractual relations woven around these products. Nevertheless, once the most critical moments passed, and unlike the asset-backed securities markets, the issue and trading of CDS has continued with relative normality.

In general terms, the most significant risk relating to CDS which has arisen over the crisis is that of counterparty risk, that is, the possibility that the provider of protection does not fulfil the terms agreed in the event of default. As an example, this type of risk can present two different levels of intensity, which are examined below.

Firstly, there is a counterparty risk, conceptually similar to insolvency, which is exemplified in the case of AIG. In 2008, AIG was unable to meet the total amount of the risks taken on through the sale of CDS, many of which had complex structured products as underlying assets, such as CDO. At the end of September of that year, AIG had sold CDS for a net value of over 370 billions of dollars,²¹ for which it had hardly mobilised any guarantees. However, on seeing its rating fall dramatically,²² AIG's counterparties requested additional guarantees. The Company's inability to mobilise the necessary resources led to its collapse.

Secondly, counterparty risk in CDS contracts can appear as a transitory liquidity problem, which would correspond to the situation that led to the collapse of Lehman. This bank appeared among the most active counterparty institutions of CDS worldwide, and provided liquidity to multiple counterparties. However, unlike AIG,

21. See European Central Bank (2009).

22. Standard & Poor's downgraded AIG's debt rating three steps in one revision on 15 September 2008.

Lehman acted above all as a dealer and not as a net insurance provider, holding much more modest net open positions than in the case of AIG and with better guarantees.²³ Even so, the fact that many counterparties continued the practice of offsetting opposing positions with Lehman by executing new contracts, and not through cancelling pre-existing positions, over years contributed to the increase in the stock of these contracts linked to this investment bank. Finally, although the settlement of the high volume of these contracts following the collapse of Lehman was reasonably efficient,²⁴ this episode clearly showed the potential scope of this type of risk.

Counterparty risk can, in turn, be amplified in the case of CDS by two factors present in these markets. On the one hand, the fact that the immense majority of CDS transactions are carried out over-the-counter, with a relatively low number of institutions acting as dealers,²⁵ has led to complex contractual networks which have sharply increased the risk of contagion worldwide. On the other hand, the lack of post-trade transparency in these assets has made it difficult for both market participants and supervisors to know the overall amount of risk accumulated in these assets, as well as how the risk is spread.

Finally, it is important to point out the operational risk associated with CDS markets. In general, the infrastructures used for processing transactions and managing the risks associated with these markets have not been able to keep up with the high trading volumes. Consequently, despite recent improvements in this area which, among other advances, have allowed 90% of trades to be confirmed electronically (compared with 75% in 2004),²⁶ there are still problems related to verification difficulties and delays in contract confirmation, which increased counterparty risk.

Underestimation of systemic risk

The *intensity* of the economic and financial damage caused, and the speed with which this has spread, highlights the existence of a high-level systemic risk at the start of the current crisis. Thus, the strength of the world financial system in relation to specific failures in any of its parts has fallen as the system channelled and distributed growing volumes of risk.

In the case of mortgage-backed securities, which account for over 60% of the total volume of asset-backed securities²⁷ in both the US and Europe, with hindsight we can see that aggregate risk has generally been underestimated. In fact, the high correlation in the yield of individual loans shown by many securitisation trusts during the crisis highlights two types of problems relating to the structuring and certification of their credit quality. Firstly, the criteria for diversification of asset-backed securities

23. See Stulz (2010) for a more detailed analysis of the differences and similarities between the case of Lehman and AIG.

24. According to information compiled by the ECB (2009), of the 6 billions of dollars in net CDS positions held by Lehman at the time of its collapse, 5.2 billions were settled by the different counterparties at the price set in the auction which took place on 10 October of that year.

25. According to data from the Depository Trust and Clearing Corporation (DTCC), in April 2009 the five largest offerors of CDS worldwide accounted for 49% of the total supply of these instruments, while the ten largest offerors accounted for 72%.

26. See Kiff *et al.* (2009).

27. According to data from the AFME (Association for Financial Markets in Europe), the percentage of the outstanding balance of mortgage-backed securities over the total amount of asset-backed securities at the end of 2008 was 71% in Spain, 62% in Europe and 64% in the US.

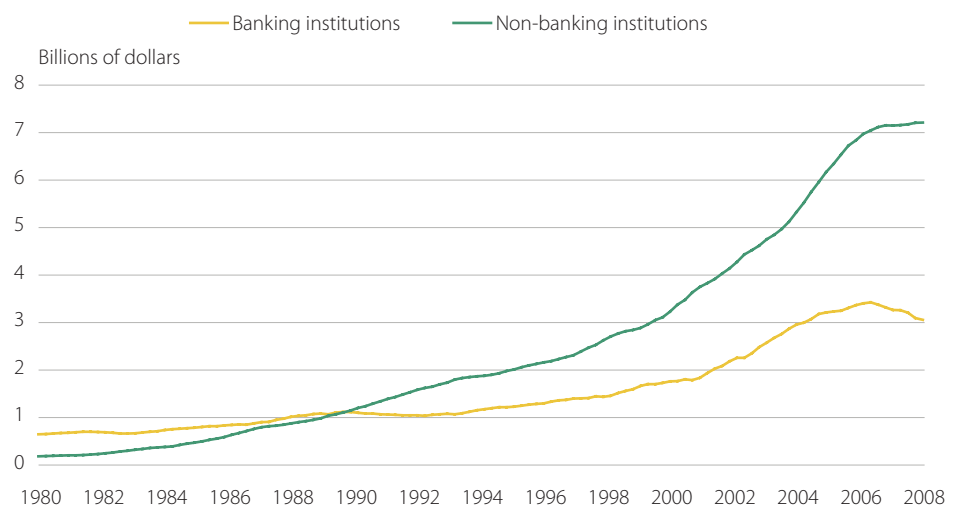
were not always correct²⁸ and secondly, even correct diversification of these types of loans does not effectively limit the risk caused by common macroeconomic factors, such as interest rates, house prices or employment. Another important factor to be included in this list is the high liquidity risk incurred by many asset-backed security originators or sponsors on financing assets with recurring long-term maturities to markets, such as monetary markets, with very short-term maturities.

The materialisation of risks with an aggregate scope associated with asset-backed securities led, in turn, to a rise in the systemic risk perceived in CDS markets as a significant part of the sharp falls in the values of many asset-backed securities negatively affected the financial position of some of the main entities which acted as dealers or net hedge providers. This last point led to an increase in counterparty risk in the CDS market.

Similarly, it is important to point out that the period of strong growth in mortgage-backed securities led to a radical change in the spread of holdings in these assets, with consequences for the stability of the whole financial system. Specifically, within the main issuer country of this type of asset –the USA– the proportion of mortgage loans in the hands of the banking system went from 80% in 1980 to 33% in 2007. This gave rise to several non-banking institutions (mainly asset-backed securities issuers and mortgage agencies with state support, such as Freddie Mac and Fannie Mae) becoming the main holders of mortgage credit through their securitisation funds (see figure 2.8). Consequently, a growing part of mortgage risk was spread over agents and institutions with regulation and supervision which, in some cases, has not grown at the same intense rate as that in the banking industry itself. This led to a shadow banking system. Consequently, the general nature of the originate-to-distribute model in some countries, especially Anglo-Saxon countries, might have also contributed to a relaxation of individual incentives for correct identification and assessment of the risks taken on by financial institutions.

Outstanding balance of mortgage credit in the US by sector¹

FIGURE 2.8



Source: Federal Reserve (*Flow of Funds*). (1) Banking institutions include commercial banks and other savings institutions and credit unions. Non-banking institutions include government-sponsored enterprises, agency- and GSE-backed mortgage pools and asset-backed securities issuers.

28. Coval *et al.* (2009) argue that the deficiencies in diversification criteria in the US were especially marked in the sub-prime mortgage-backed securities, which often included loans from the same geographical area and similar years.

With regard to this last point, it is important to highlight that the individual incentives in the financial sector have been strongly influenced in many cases by the remuneration systems of directors in the sector, which are excessively linked to short-term targets. Consequently, it cannot be ruled out that the gap between the volume of risk which is optimum to assume from an individual point of view and the capacity for reliable management of that risk by the system as a whole has increased significantly in recent years, fuelled by remuneration practices which are insensitive to sustainable value creation.

2.3 Main regulatory initiatives in securities markets

This section describes the most important initiatives put forward recently relating to the regulation of securities markets, with special emphasis on those with most relevance for Spanish markets. Some of the initiatives presented under the following headings are directly aimed at improving the operations of credit risk transfer mechanisms, including several measures to reactivate asset-backed securities, improve the operations of derivative markets and to rectify the problems detected in rating agencies. Others aim to strengthen some key elements for the financial system to operate with more transparency and stability. These include several recent proposals relating to remuneration packages for directors, extending the regulatory scope to hedge funds and private equity vehicles, accounting, preparation and presentation of financial information, and short selling in shares. Finally, the last point in this section describes some recent initiatives relating to investor education.

2.3.1 Asset-backed securities

Given the importance taken on by asset-backed securities as a way of financing and redistributing credit risk over the last expansive cycle, it is difficult to imagine the financial system returning to full normality without a recovery in securitisation markets. The challenge faced both by regulators and the industry itself at this time is how to achieve sustainable recovery which, on the one hand, prevents the errors of the past and, on the other hand, makes it possible to exploit the advantages of this financial practice so that it can remain as an economically viable financing option.

Most proposals made today can be grouped into four lines of action, which aim for improvements in: i) the incentive systems in securitisation structures, ii) their transparency, certification and standardisation, iii) the operation of secondary markets, and iv) the behaviour of rating agencies when rating asset-backed securities. The main new elements relating to the first three lines are explained below, while the last line is covered in the more general context of the initiatives for regulating rating agencies, which is dealt with in point 2.4.3.²⁹

29. The CNMV Bulletin corresponding to the first quarter of 2010 (chapter 1) contains a more thorough description of the proposals presented in this point.

Improvements in the incentive systems in securitisation chains

One of the particularly important conflicts of interest which may arise between different counterparties³⁰ is the lack of incentives for the originator to act with sufficient diligence in assessing the credit quality of asset-backed securities. With the aim of aligning the interests of originators and investors, initiatives have recently been provided from different sources to impose minimum mandatory requirements for holding asset-backed securities.

The G-20, in the Pittsburgh summit of September 2009, established the need for originators or sponsors to retain part of the risk of their asset-backed securities, although it does not specify how much. In May 2009, the European Union approved an amendment to the Capital Requirements Directive (Article 122a) which bars EU credit institutions from investing in asset-backed securities in which the originator maintains less than 5% of the net economic interest of the asset-backed securities, without the originator having recourse to any credit risk hedging mechanism in the retained tranches. The new norm is scheduled to come into force in 2011. In turn, the US Government in 2009, within the framework of the financial regulatory reform plan, launched a proposal which likewise targets a minimum retention of 5%.³¹

Towards greater transparency, simplification and standardisation

Complexity and lack of transparency, which in many cases have characterised asset-backed securities, have been key factors in the sudden collapse of investor confidence in these products. Consequently, their recovery will necessarily require greater transparency, simplicity and standardisation. This is the aim of various initiatives put forward recently, such as those described below.

IOSCO recently published an exhaustive list of disclosure principles for asset-backed securities (see IOSCO, 2010b). The IOSCO recommendations aim to improve transparency relating to the following aspects: identity, legal situation, functions and responsibilities of different counterparties, and possible links between them, the securitisation experience of the originator and sponsor, composition characteristics of the asset-backed securities and details of the individual performance, level of risk concentration in final debtors, transaction structure, breakdowns of the flow of funds, fees and expenses, contract termination or trigger clauses, credit enhancement, the use of derivatives to alter the flow of funds, type of markets on which the securities are to be traded and relevant tax information.

With the aim of sanctioning the most complex asset-backed security structures, the Basel Committee on Banking Supervision (BCBS) has strengthened the requirements for re-securitisation in the context of the new Basel II capital framework (see BCBS, 2009). As a result, the revised framework will include a new weighting scale created *ad hoc* for these products, specifying increases at times of over 100%. In addition, following this review, all the lines of liquidity support for asset-backed securities, irrespective of their maturity, will have a credit conversion factor of 50% (up to now the conversion factor for lines with a maturity of less than one year was

30. Ashcraft and Schuermann (2008) study in detail and provide some evidence about a good number of possible conflicts of interest between the different participants.

31. See US Treasury Department (2009). In March 2010, the SEC issued a public consultation document which contains a proposal for retaining at least 5% of asset-backed securities (see SEC, 2010).

only 20%). Finally, the BCBS has introduced new stricter transparency requirements for asset-backed securities held in the trading book, the sponsorship terms for off-balance-sheet items and the methodology used for measuring structured products on the balance sheet, among others. These changes are scheduled to come into force in 2011.

At the end of 2009, the European Central Bank prepared a proposal to establish a structure for collecting and maintaining detailed information about the loans included in the securitisation pools, with the aim of revising the disclosure requirements for asset-backed securities within the framework of the Eurosystem collateral system (see ECB, 2009b). With a similar objective, in March 2010 the Bank of England issued a proposal for increasing the transparency of asset-backed securities under the discount window facility (see Bank of England, 2010).

Nationally, the CNMV has implemented a pioneering specific regulation aimed at increasing the periodic public reporting requirements for securitisation funds. Further to its Circular 2/2009, of 25 March, on accounting standards, annual accounts, public financial statements and reserved statistical statements of securitisation funds, all funds operating in Spain are obliged to file public and reserve statements with the Spanish regulator starting in early 2010.³² Following the same line, the SEC (2010) has recently proposed establishing information disclosure requirements about each loan making up the portfolio of asset-backed securities.

Similarly, the industry itself has put forward various initiatives aimed at increasing transparency and standardising certain key elements of asset-backed securities. This is the case, for example, of the ten proposals under the Global Joint Initiative to Restore Confidence in the Securitization Markets (2008),³³ which contains measures to improve different aspects such as standardisation in definition and functioning of credit improvements, establishing guidelines relating to due diligence practices, improving valuation and auditing practices by third parties, etc. The industry initiative which is in the most advanced stage of implementation is that prepared by the American Securitization Forum in the US, which in 2008 introduced the RESTART (Residential Securitization Transparency and Reporting) program aimed at increasing disclosure requirements relating to mortgage securitisations.

Proposals for improving secondary markets in asset-backed securities

With the aim of strengthening the confidence of participants in secondary markets in asset-backed securities, several international initiatives have recently been put forward aimed at establishing mandatory post-trade transparency schemes (that is, requirements for public disclosures about trade volumes and prices).

In this regard, IOSCO (2009a) highlights that the current lack of liquidity in securitisation markets worldwide provides evidence of the lack of precise information for correct valuation of structured products.³⁴ Following on from the industry consulta-

32. See Manso, de Anta and Montero (2010) for a detailed analysis of the many new aspects introduced by this circular.

33. This is a joint initiative of the American Securitization Forum (ASF), the Securities Industry and Financial Markets Association (SIFMA), the Australian Securitisation Forum (AuSF) and the European Securitisation Forum (ESF).

34. Restoy and Rodríguez (2010) cover the more general issue of insufficient transparency requirements in many financial markets within the European Union.

tion, IOSCO has analysed the main benefits and disadvantages of a mandatory post-trade transparency scheme. The advantages include the reduction in information asymmetries, efficiency gains in price formation and the provision of useful information for investors when valuing their portfolios. Possible difficulties include the fact that the complexity, the lack of homogeneity and the illiquid nature of some asset-backed securities may reduce the comparability of their prices. Following the same line, the CESR (2009a) has recently recommended the staggered implementation of a post-trade transparency scheme which is harmonised throughout Europe for asset-backed securities of a comparable nature.³⁵

2.3.2 Infrastructures of credit derivatives markets

Although the structural trading failures in some important markets made evident by the crisis have not been a direct cause of the crisis, they have contributed to its rapid propagation and, in some cases, may represent serious obstacles in the recovery stage. One of the aspects of greatest interest both to the different agencies with regulatory responsibilities and to the industry itself is the trading of derivative products on OTC markets and, specifically, CDS. As a response, several proposals have been put forward over the year with objectives that can be grouped into the following three areas: i) reduction of counterparty risk; ii) increasing transparency; and iii) operational improvements and an increase in the level of standardisation.

Reduction of counterparty risk

The G-20, in its Pittsburgh Summit in September 2009, proposed the mandatory trading of all OTC contracts of standardised derivatives on organised markets or electronic trading platforms, as well as their settlement through central counterparty clearing houses (CCP). A deadline has been set for the end of 2012. Additionally, for those contracts which cannot be settled in CCPs, it proposed setting greater capital requirements for the intervening parties.

In October 2009, the European Commission published its proposals for modifying regulations in this area with aim of implementing them over 2010 (see EC, 2009c). Specifically, the European proposals, in line with the G-20 provisions, include making it mandatory to settle the most standardised OTC contracts in CCP and increasing the capital requirements for those positions which are settled outside a CCP, which would require a possible modification of the Capital Requirements Directive. Modification of this Directive would also include the obligation for the counterparties in OTC contracts which are not settled in CCP to constitute initial guarantees and to update them based on market conditions. Similarly, the EC has proposed setting up a CCP authorisation and supervision system in which the future European Securities and Markets Authority (ESMA) will be responsible for authorising the operations of the different CCPs in Europe, sharing supervision with national authorities.

In the United States, the Treasury Department's proposal for Financial Regulatory Reform (2009) also includes specific measures which incorporate the G-20 recom-

35. Losada (2010) provides a theoretical framework for the securitisations market which shows how a greater level of post-trade transparency and competition between dealers provide a greater level of social welfare.

mendations, including a new aspect comprising the need to carry out specific prudential supervision of the intermediaries and companies whose activity involves significant risk positions for their counterparties.³⁶

Increase in transparency

As highlighted above, the lack of transparent and timely information about the volumes of CDS contracts made it impossible, from the early stages of the crisis, to know the volume of risk present in these markets and how it was spread among the different participants.

The European Commission, in its communication of October 2009 (EC, 2009c), also put forward several proposals for increasing transparency in OTC markets by establishing trade depositories, similar to the Depository Trust & Clearing Corporation (DTCC) in the US, and for standardised contracts to be traded on regulated markets. At the same time, the EC announced that it will propose a specific regulation for trade depositories. This new regulation will include requirements for authorisation, access and disclosure of information, as well as the obligation for the different contracting parties to disclose information relating to their trades. These proposals will be considered for inclusion in the MiFID within the framework of its current revision process.

The proposal from the US government in this area indicates the need to amend legislation relating to the futures markets for commodities and securities in order to authorise the Commodity Futures Trading Commission (CFTC) and the SEC to impose information breakdown and registration requirements on all OTC derivative trades.

Operational improvements and standardisation in CDS contracts

The aforesaid initiatives, aimed at mitigating counterparty risk and increasing transparency, together with the joint capacity of the industry and regulators to achieve greater standardisation should lead to a reduction in operational risk in OTC markets. With this aim, the European Commission (2009c) is evaluating the possibility of modifying the treatment of operational risk given in the Capital Requirements Directive in order to encourage standardisation of contracts in OTC markets and their electronic confirmation. This measure would reduce the market's operational risks as trades would be confirmed and recorded in real time.³⁷

The industry itself has also put forward new initiatives. These include two protocols with modifications in the conventions of CDS contracts recently introduced by the International Swaps and Derivatives Association (ISDA).³⁸ The first of these, which is known as the Big Bang, was implemented in April 2009 and incorporates a series of global changes in all CDS markets and a specific section focused on the CDS

36. In line with the regulatory initiatives described herein, several recent works, such as those by Cecchetti *et al.* (2009), González Pueyo (2009) and Duffie *et al.* (2010) have underlined the potential reduction in counterparty risk which could result from the centralised settlement of CDS in a well-designed and sufficiently capitalised CCP.

37. Point 15.1 herein describes some recent initiatives of the CESR in this respect.

38. See Markit (2009a and 2009b). The CNMV Bulletin corresponding to the third quarter of 2009 (chapter 1) contains a description of the main aspects relating to the two ISDA protocols.

markets in North America. The global changes focus on efficiency improvements in settling contracts should there be a credit event. In the case of contracts signed in North America, the modifications are focused on standardising the payments of coupons so as to achieve a limited number of possible alternatives.

The second protocol, known as the Small Bang, is an extension of the above, which firstly includes changes in the conventions of European CDS, very similar to those introduced by the Big Bang in North American CDS and, secondly, modifications in the definition of a credit event applicable to European contracts. The aim is to maintain the restructuring of a benchmark entity's debt as a credit event. The changes in the contracts came into force on 31 July and the changes in the convention were implemented in Europe on 20 June.

In summary, by means of these initiatives, the industry aims to focus on achieving greater homogeneity in market conventions, thus increasing the level of contract standardisation, with the two-fold objective of, firstly, facilitating their settlement in CCP and, secondly, leading to a reduction in redundant contracts.

2.3.3 Risk rating agencies

Some of the problems indicated above relating to the functioning of rating agencies and, in particular, those linked to the lack of transparency in their methodologies and to conflicts of interest, had already become clear before the crisis broke out. In fact, previous experiences, such as the serious problems with Enron and Parmalat, had already triggered an initiative based on self-regulation in the sector, such as the report on the principles of the activities of rating agencies by IOSCO (2003) and their subsequent code of conduct, also prepared by IOSCO (2008a).

However, open reflection on the role of these institutions in the crisis has concluded that their activity needs to be regulated. Consequently, the G-20 April 2009 summit in London, after underlining the essential role of rating agencies in financial markets, established the need to submit these institutions to specific regulatory supervision, including registration, which must be compatible with the IOSCO code of conduct.

The initial drive for regulation by the G-20 has been followed by several initiatives by different national and regional authorities. Within the context of Europe, the recent publication of Regulation 1060/2009 of the European Parliament and of the Council, of 16 September 2009, on credit rating agencies establishes for the first time a registration and supervision system for these agencies within the EU.³⁹ Specifically, the new regulation makes registration mandatory for an agency to be considered as an ECAI (External Credit Assessment Institution), which the revised Basel II capital framework requires for its ratings to be considered for regulatory purposes. The main aspects of the new regulation are shown below:

- a) Measures to reduce conflict-of-interest: i) the agencies must include two independent members on the administrative or supervisory board, whose remuneration is not linked to the agency's results, and who have the internal function of periodically reviewing the quality of the ratings, ii) the agencies' activity must be focused on issuing ratings, and must not simultaneously pro-

39. See García and Ruiz (2009) for a detailed analysis of the main proposals contained in the regulation.

vide advisory or consultancy services, iii) the agencies must ensure that their employees have the necessary knowledge and experience, iv) employee remuneration must not be linked to the revenue which the agency receives from the entity which they rate, and v) staff turnover must be encouraged so that no long-lasting relations are established with the issuing entities.

- b) With regard to the technology for preparing ratings: i) the agencies shall use models that are rigorous, systematic, consistent and subject to validation based on historical experience and ii) they must disclose to the public the methodologies and assumptions and inform the market if they are modified.
- c) With regard to the disclosure of information relating to ratings, the agencies are required to: i) differentiate the ratings of structured products with a special scale, ii) indicate in their reports if there are doubts about the reliability of the information which their work is based on, and iii) provide information about all asset-backed securities for which they issue a preliminary rating, irrespective of whether there is a definitive rating.
- d) With regard to general and periodic communications, the agencies are required to: i) annually publish a transparency report which includes information about their legal structure, internal control mechanisms and revenue sources, and ii) provide the CESR with information about the performance of their ratings.

Finally, with regard to the supervisory responsibility required by the G-20, the new regulation assigns responsibility for registration and supervision to the authorities in the State in which the agency has its registered office. However, so that all interested national authorities may participate in supervision, the regulation requires that the decisions of the responsible national authority are discussed previously and, whenever possible, agreed by a board of supervisors.⁴⁰

For its part, the US Government has recently requested the SEC to continue with its efforts to strengthen the regulation of rating agencies,⁴¹ with special emphasis on managing conflicts of interest, the differentiation of ratings of structured products, and an increase in the transparency and reliability of their ratings. In addition, the US proposal requests that the use of ratings for regulatory purposes should be reduced as far as possible.

2.3.4 Remuneration systems

In April 2009, The Financial Stability Forum (FSF) published a list of principles on compensation practices (see FSF, 2009) aimed at financial institutions with the potential to affect the system's stability, but also applicable to other systemically important firms. The basic objective of these principles is to promote prudent management of financial institutions' risk, orientated towards long-term growth and stability. Accordingly, the FSF principles are based around the following lines of action: i) better effectiveness of corporate governance in controlling compensation systems; ii) increasing alignment between compensation systems and prudent risk

40. The European Commission has proposed that in the future this responsibility is taken on by the institution resulting from the transformation of the CESR into the European supervisory authority.

41. See US Treasury Department (2009).

taking, iii) increasing transparency in remuneration practices and effective supervisory oversight.

In September 2009, the Financial Stability Board (FSB), the agency which succeeded the FSF as of April of that year, published a list of standards for practical application of the FSF principles (see FSB, 2009) and promoted carrying out peer reviews among its members to verify compliance with its principles and standards. The report which includes the main results of that year (see FSB, 2010) highlights that significant progress was made in 2009 in applying its recommendations, although with different approaches and at different rates in different jurisdictions. In particular, the FSB indicates that most progress has been made in improvements in corporate governance, supervision and transparency of remuneration systems, and least progress has been made in aligning risk with the compensation structures.

In Europe, the European Commission adopted two recommendations regarding compensation policies (see EC, 2009a and 2009b) in April 2009. The first provides guidelines about how to structure and determine remuneration of the directors of listed companies, with four main recommendations: i) limits on severance pay, ii) balance between the fixed and variable components of the remuneration, linking the latter to management objectives in a manner which can be verified, iii) special emphasis on sustainability when designing incentives, and iv) establishing rules for refunding the variable component in the event of misleading information.

The second recommendation, aimed at financial institutions, includes the FSF principles and has been followed by a legislative proposal to be included in the new directive on capital requirements. Specifically, in March 2010 the European Parliament published a new draft of the Capital Requirements Directive (CRD III) which introduces explicit rules and supervision and sanction measures relating to remuneration policies in financial institutions which are subject to this directive, including the following provisions:

- Variable bonuses must be given according to results achieved over an extended time period and should not be guaranteed beforehand, avoiding severance pay which rewards management failure.
- Payment of bonuses must be subject to the priority objectives of strengthening the company's capital base and stability. In the case of institutions which have received exceptional government support, they must also return that support before paying bonuses.
- There must be a balance between variable remuneration and fixed salary. Specifically, the variable component must not account for more than half of the total annual remuneration.
- At least half of the variable bonuses must be paid in shares which, in turn must be held for at least three years.
- Payment of a substantial part of the variable remuneration must be deferred for a period proportional to the economic cycle of the products sold. The deferred part should be recoverable if the performance of these products was lower than estimated. At any event, at least 40% of bonuses (60% for the highest bonuses) must be deferred for a period of no less than three years.

With regard to the governance of remuneration mechanisms, the CRD III establishes that companies must create a remuneration committee which supervises its remuneration policies and which defends the long-term interests of shareholders, investors and other stakeholders. The members of this committee must be non-executive directors. Similarly, the companies must publish information about the remuneration policies and payment flows under this heading, including detailed breakdowns by business unit and director.

Box 2.1 contains the main new aspects involved in incorporating the aforesaid principles and recommendations in Spain.⁴²

In the United States, at the beginning of 2010, the Senate Banking Affairs Committee presented a new bill which includes important measures to discipline executive remuneration.⁴³ It contains three main measures: (i) providing shareholders with a non-binding vote on executive remuneration, (ii) the independence of the remuneration committee, and (iii) the requirement for listed companies to establish policies so that executives return their compensation when financial statements do not meet accounting standards. Similarly, the bill establishes that the SEC should set clear requirements for disclosures about remuneration, including the requirement to present data which allows comparison of director remuneration with the development of the company's value over a five-year period.

New aspects in Spain relating to the remuneration of directors of listed companies: The Unified Code of Good Governance and the Sustainable Economy Bill

BOX 2.1

In Spain, the Unified Code of Good Governance of listed companies, approved by the CNMV in the middle of 2006, is currently under review with the aim of incorporating several modifications relating to executive remuneration.¹ Specifically, the changes proposed by the CNMV are the result, on the one hand, of incorporating the recent recommendations from the European Commission to the Code and, on the other hand, including several recommendations previously contained in the Code in the Sustainable Economy Bill, approved by the Council of Ministers on 19 March 2010.

Firstly, with the aim of adopting the measures put forward in the new Recommendation of the European Commission of 2009 (2177/2009/EC) on the remuneration structure of directors, the CNMV conducted a public consultation in December 2009 relating to several proposals which would affect the following recommendations contained in the Unified Code: i) 36 and 39, which now specify the limitations in the remuneration structure for directors indicated by the EC, ii) 40, which encourages shareholders, especially institutional shareholders, to attend general meetings and to make prudent use of their votes with regard to the remuneration of directors (this would substitute the previous recommendation 40 of the Code on consultative voting by the general meeting of the remuneration report, which would now become mandatory, as indicated below), and iii) 54 and 57, which focus on the structure and functioning of the appointments and remuneration committee

42. See García and Domínguez (2009) for a detailed analysis about the remuneration systems of directors in listed Spanish companies.

43. See US Senate Banking Affairs Committee (2010).

Secondly, three recommendations of the Unified Code would no longer be part of the Code and would now be included in legal provisions, according to the Sustainable Economy Bill, as suggested by the CNMV. These recommendations are as follows: i) 35, on the content of remuneration policies; ii) 40, as mentioned above, on consultative voting by the general meeting on the remuneration report, and iii) 41, on disclosure of the individual remuneration of directors.

At a general level, the Sustainable Economy Bill, with regard to remuneration, aims to apply in Spain the good governance principles recently accepted in different international forums (G-20, FSB, and European Commission). Specifically, the project requires listed companies to increase the level of transparency in the remuneration of their directors and senior executives, as well as in their compensation policies. Similarly, the board of directors of listed public limited companies must disclose and submit to a vote in the shareholders' meeting an annual report about the remuneration of their directors and senior executives approved by the Board for the year in progress, in addition to the forecast for future years, as the case may be. This report will also include an overall summary of how the remuneration policy was applied during the last year, as well as a breakdown of the individual remuneration of each one of the directors and senior executives. In the case of savings banks, these obligations must also be met with regard to the members of the Control Committee. Credit institutions must increase the transparency of the remuneration practices and policies for those employees whose work may have an impact on their risk profiles. The Bank of Spain will require credit agencies to have governance rules which include remuneration policies and practices which are consistent with promoting solid and effective risk management.

1. The different corporate governance reports of entities issuing securities admitted to trading on official secondary markets and the annual corporate governance reports of Ibex 35 companies, published by the CNMV, offer detailed information about the level of compliance with the Code of Good Governance.

2.3.5 Hedge funds and private equity

At the start of the crisis, neither the hedge fund industry nor the private equity industry, with some exceptions, had been subject to regulation, although regulators were already paying attention to these investment vehicles. One of these exceptions is Spain, where hedge funds, known in Spain as *instituciones de inversión libre*, are regulated in the general framework of collective investment. Venture capital institutions, whose activities fall within the framework of the private equity industry, may voluntarily register with the CNMV in order to enjoy certain tax benefits, providing they also meet certain requirements.⁴⁴

Internationally, a particularly important turning point for regulators was the collapse of the Long-Term Capital Management (LTCM) fund in 1998. This was a serious warning about the systemic importance of these vehicles due to the fund's size,

44. See, for example, Cambón (2004) and CNMV (2006) for information on the development and regulatory treatment of the hedge fund industry until 2005. Also see Ruíz (2006) on the situation of the private equity industry in the same period.

its high leverage, the counterparty risks taken on by different financial institutions and the potential impact on markets of a massive settlement of positions.

Accordingly, during the period between the LTCM crisis and the breakout of the financial crisis, hedge funds –because of their involvement in terms of systemic risk and investor protection– became an important issue on the agenda of the FSF and other international forums.⁴⁵ The initiatives developed during this period mainly focused on controlling the counterparty risks of regulated financial institutions against these vehicles and other highly leveraged institutions. A less incisive tack was taken with the industry, with recommendations for better self-regulation (FSF, 2000).

However, following the start of the financial crisis, the tone of the initiatives arising from international forums became very different. Accordingly, the G-20, in its London summit of April 2009, expressed that it was favourable towards the need to regulate hedge funds with systemic importance. This obligation would involve supplying supervisors with figures about leverage and other important information so as to control systemic risk, as well as supervising risk management. Similarly, the G-20 requested the FSB to develop mechanisms for cooperation and exchange of information between relevant authorities so as to ensure effective oversight of the registered undertakings, irrespective of their location. It is worth pointing out that the G-20 declaration was based on the regulation principles which, at that time, were being developed by IOSCO, which are commented on below.

IOSCO has recently been developing different lines of work related to hedge funds and private equity. As regards the former, in 2008 it developed investor protection standards in hedge funds, and in November 2007 it published a set of principles relating to the evaluation of their portfolios (see IOSCO 2008b and 2007, respectively). Following an industry consultation process, in June 2009 IOSCO also published the six regulation principles which make up the G-20's new doctrine with regard to potentially systemic vehicles in this industry (see IOSCO 2009b). The principles can be summarised up as follows: 1) hedge funds and/or hedge fund managers should be registered, 2) operational requirements (prudential regulation, organisational standards and conduct of business rules), 3) prime brokers⁴⁶ and banks which provide funding to hedge funds should be subject to mandatory regulation, 4) they should provide the regulator with relevant information to control systemic risk, 5) regulators should encourage good industry practices, and 6) regulators should have the authority to cooperate and share information at an international level.

The European Union is trying to include the new G-20 position favourable to the regulation of potentially systemic financial institutions into its regulations. This is basically the objective of the proposal of the directive on alternative investment fund managers presented by the European Commission in April 2009. This is currently being processed by the European Council and Parliament. The term “alterna-

45. The assets managed by hedge funds increased from 408 billions of dollars in 2000 up to their historic high of 2.7 trillions at the end of the first half of 2008, while the overall assets managed under private equity rose from 262 billions of dollars in 2000 up to 490 billions in 2007, when it reached its highest point. However, the crisis has significantly affected both sectors, reducing their assets in 2009 to 1.7 trillions of dollars in the case of hedge funds, and 180 billions in the case of private equity (estimate based on annualised data from the first half of the year).

46. Financial institutions, in general investment banks, which maintain a stable commercial relationship with hedge funds, providing them with financing and other services.

tive investment fund” includes an extensive and diverse set of investment vehicles which, in addition to hedge funds and private equity vehicles, includes investment funds in commodities, real estate, infrastructures etc.

In particular, the Commission proposal requires registration of all management companies that manage assets greater than 100 millions of euros. The threshold increases up to 500 millions for vehicles which do not use leverage techniques and whose investments cover minimum redemption periods for participants or shareholders of five years. Under these conditions, the Commission estimates that the future directive would cover 30% of management companies and 90% of the assets managed by European hedge funds. The proposal is based on the IOSCO principles regarding authorisation and operational requirements and promotes the transparency of management companies and the managed funds with regard to supervisors, investors and other interested parties. The main difficulties observed in the current process revolve around the treatment of funds domiciled in third countries due to differences relating to the size and depth of requirements.

2.3.6 Accounting changes

In its summit on 2 April 2009, the G-20 requested the agencies responsible for developing accounting standards to improve the measurement criteria of financial instruments based on their level of liquidity and the time period considered by their holders, and underlined the need to re-affirm the conceptual framework relating to fair value accounting. Specifically, the G-20 requested immediate progress on the following three areas: (i) reducing the complexity of accounting standards, (ii) strengthening the accounting recognition of provisions for credit losses, and (iii) improving the accounting standards used with regard to off-balance sheet exposure and the effects of uncertainty on asset measurement.

With regard to the first two areas above, the IASB is currently working on an ambitious project, the most important aspect of which is the substitution of the former IAS (International Accounting Standard) 39, on recognition and measurement of financial instruments for the new IFRS (International Financial Reporting Standard) 9. The objective is to prepare a much simpler standard by reducing the categories of financial instruments and one which is sensitive to the pro-cyclical nature of the credit, at the same time as maintaining convergence with US accounting standards. Box 2.2 contains a description of the project’s key elements.

With regard to the requirement to improve the accounting criteria applicable to off-balance sheet exposures, in December 2008 the IASB issued a proposal to strengthen and improve the accounting requirements for identifying a takeover of one institution by another (see IASB, 2008). In addition, in the context of the review of IAS 39 and IFRS 7, on financial instrument disclosures, at the end of 2009 the IASB presented a catalogue with proposals for simplifying and clarifying the accounting treatment of derecognition (see IASB 2009c). Finally, with the aim of increasing the strength of accounting standards in situations of uncertainty regarding asset measurement, the IASB in May 2009 published a guide for applying fair value criteria,⁴⁷ which also contains criteria for measuring assets in markets suffering from a lack of liquidity (see IASB 2009a).

47. Manso and Rodríguez (2009) provide a detailed analysis of the main recent lines of debate regarding fair value criteria.

Modification in accounting of financial instruments: from IAS 39 to IFRS 9

BOX 2.2

IAS 39, which focused on the recognition and measurement of financial assets and liabilities has been the subject of controversy since it was issued in 1999. The most recurring criticisms relate to the complexity of the requirements, which affects their understanding, interpretation and application. In addition, since the start of the crisis, it has often been noted that this standard contains non-desirable pro-cyclical effects. In order to rectify these deficiencies, the IASB is preparing the new IFRS 9, for which it has planned a three phase development process.

The first phase relates to the classification and measurement of financial instruments, significantly simplifying accounting. However, this phase exclusively covers the accounting treatment of financial assets, classifying them into only two categories: amortised cost and fair value. This classification is based both on the business model used by the entity for its management and on the nature and characteristics of the financial instruments. The asset will be subsequently measured based on the initial classification, although this may be altered if a change in the business model can be shown. This first phase concluded in November 2009 when the IASB issued the definitive standard, which is still awaiting ratification in the European Union.

The second phase, which is currently in progress, covers the accounting of provisions for losses on loans. In November 2009, the IASB proposed progressing towards a model based on expected loss, which shares, together with the dynamic provision applied since 2000 by the Bank of Spain, the aim of promoting earlier loss recognition,¹ in contrast with the current situation which is based on incurred loss. Accordingly, in the expected loss model, credit institutions must recognise the suspected loss in the accounts when the transaction takes place. This will be done by using a provision which must be updated over the loan's life as the perception of the expected non-recoverable amount changes (see IASB, 2009b). In this way, the expected loss will have a direct impact on the income statement.

The content of the third phase will be reflected in a draft expected to be published in the first half of 2010. This phase will focus on hedge accounting and, in particular, greater simplification. It is expected to adopt an approach for hedging fair value similar to the current approach for cash flow hedging.

1. Poveda (2000) explains in detail the key points and operation of this accounting innovation.

2.3.7 Initiatives relating to short selling

As a result of the clear excessive volatility of share markets, especially relating to financial securities, many securities regulators imposed extraordinary provisions relating to short selling after September 2008. These provisions are mainly bans, restrictions and/or disclosure requirements. Their scope and duration have varied considerably between different countries. As shown in box 2.3, the regulator strength of these measures has ranged from establishing disclosure requirements for the market and/or supervisor, at one extreme, to a total ban on short selling of all types of securities, at the other. Some countries have only banned naked short

selling or have applied the measures only for financial securities. Similarly, the period during which these measures are in force has varied considerably.⁴⁸ The first European country to abandon the extraordinary bans was the United Kingdom, at the start of 2009, although the obligation for information disclosure remains in force. Some of these measures have subsequently been withdrawn in different countries. However, in some cases, such as in France, bans on short selling have been indefinitely extended.

In Spain, unlike in other European countries, naked short selling was already banned before the crisis. Accordingly, the decisions adopted by the CNMV in September 2008 in this regard were limited to reminding all the members of the market about the existence of the ban and to adopt measures to disclose information relating to short positions which exceed 0.25% of the issuer's share capital.⁴⁹

Having overcome the stages of greatest instability in equity markets, debate has now begun on the advantages and disadvantages of establishing new regulatory measures relating to short selling. Within this context, several legislative proposals have been put forward in recent months, which are described below.

In March 2010, the CESR sent the European Commission a new model for reporting short positions with the aim of encouraging a change in legislation in this area (see CESR, 2010). The new model is based on reporting to the supervisor regarding short positions in all securities admitted to trading on regulated markets or multilateral trading systems in the European Economic Area. Specifically, those short positions which are equal to or greater than 0.2% of the company's share capital must be reported to the regulator, but will not be disclosed to the market. Short positions which are equal to or greater than 0.5% of the share capital must be reported to the regulator and to the market, while the minimum increase in the position which must be reported in both cases is 0.1% of the share capital (with the exception of market makers).

In the United States, the SEC approved a new regulation at the beginning of 2010 which establishes restrictions on short selling when the price of a security falls by more than 10% in one day compared with the price at the close of the previous day. Under these circumstances, short selling will only be allowed if the price of the security in question is above the best immediately previous ask price.

48. See Buenaventura (2008) and chapter 1 of the CNMV Bulletin of the third quarter of 2009 for an extensive analysis of these (and other) initiatives.

49. Chapter 11 herein presents more detailed information about the CNMV's actions in this regard.

Short selling: some measures adopted in the context of the crisis

BOX 2.3

The following table presents a summary of the measures adopted during the crisis in different countries relating to short selling which, in some cases, have changed from the measures initially adopted in 2008.

Measures on short selling adopted in different countries

Country	Measures ¹
Germany	<ul style="list-style-type: none">– Ban on naked short selling in 11 financial securities, which has not been extended beyond 31/01/10.– Introduction of a scheme for disclosing short positions in financial securities selected in two levels: i) positions equal to or greater than 0.2% of the issuer's share capital shall be reported to the regulator and ii) positions equal to or greater than 0.5% of the capital shall be reported anonymously to the market. Changes of 0.1% in the share capital over reference levels shall also be reported (entry into force on 25/03/10).
Spain	<ul style="list-style-type: none">– Reminder of the existing ban on naked short selling in all securities, including intra-day transactions.– Requirement for disclosure of short positions exceeding 0.25% of the issuer's share capital for 20 financial securities.
United States	<ul style="list-style-type: none">– Ban on short selling in financial securities (the ban lasted 19 days until it was withdrawn on 09/10/08).– Since the end of 2008, various legislative amendments have been incorporated aimed at reducing failures in the delivery of securities and abusive naked short selling.
France	<ul style="list-style-type: none">– Temporary ban on naked short selling in 15 financial securities.– Obligation to inform both the regulator and the market of short positions in 15 financial securities greater than 0.25% of the issuer's share capital. With effect from 31/01/10, the AMF extended these measures (ban and disclosure) indefinitely.
Italy	<ul style="list-style-type: none">– Temporary ban during June and July 2009 on short selling in all securities, except for capital increases. In this last case, sales must be supported both by the asset's availability and ownership.– Publication of short positions is not required.
Portugal	<ul style="list-style-type: none">– Naked short selling is generally banned in Portugal. Normal short selling is allowed providing the seller or broker demonstrates that it holds the securities.– The obligation to inform the CMVM about short positions, in place since September 2008, was lifted on 10/01/09.
UK	<ul style="list-style-type: none">– The ban on normal and naked short selling of financial securities in place since 18/09/08 was lifted on 16/01/09– Requirement to publish short positions in financial securities greater than 0.25% of the issuer's share capital and additional increases of 0.1%. The FSA indefinitely extended this obligation with effect from 30/06/09.

Source: Own preparation. (1) Most of the countries where there is some type of limitation on short selling also recognise the special needs of market makers and similar agents.

Economic and financial framework

Financial markets through the crisis: Challenges and initiatives for their recovery

2.3.8 Investor education

The intense process of financial innovation which began at the end of the last century has led to a greater offer of complex financial products. The level of complexity of savings instruments often makes them difficult to understand and, in particular, makes it difficult for retail investors to analyse their risks. That is why different international agencies and national authorities are promoting initiatives to improve the public's financial knowledge.

At an international level, the OECD published a catalogue of good practices in financial education relating to credit in July 2009 (see OECD, 2009). This recommends that credit institutions clearly show a summary of the main terms and conditions of their loans, which should include information relating to the consequences of default. Similarly, the OECD recommends public authorities to strengthen their protection systems for small investors and to help them better understand the key aspects of credit transactions and complex financial assets.

For its part, the European Commission last year continued developing the initiatives implemented within the framework of its Communication on Financial Education (see EC, 2007). The most noteworthy new aspect is the presentation in 2009 of the European Database on Financial Education, which brings together extensive information about educational programs in this area which are currently in operation in the EU.

In Spain, with the aim of progressing in improving financial knowledge among all segments of the population, in 2009 a work group was created which will develop the Financial Education Plan provided for in the agreement between the CNMV and the Bank of Spain, which was presented in May 2008. This work group, which is made up of members of the agencies which signed the agreement, and more recently with representatives from the Directorate-General of Insurance and Pension Funds, has focused its efforts on designing and developing the content of the website www.finanzasparatodos.es, which is considered as one of the project's main benchmarks. The key elements of this initiative are summarised in box 2.4.

One of the plan's main aspects is to introduce financial education in schools so that it becomes part of the knowledge considered as indispensable in daily life. Accordingly, the CNMV and the Bank of Spain signed an agreement with the Ministry of Education in 2009. The work group created within the framework of this agreement recommended that the first step should be to introduce financial education into the third year of secondary school, although the final objective is for it to be taught in sixth forms and technical colleges.

On 3 May 2010, the President of the CNMV and the Governor of the Bank of Spain presented the portal www.finanzasparatodos.es, the first visible item of the Financial Education Plan. The design of the portal is based on the plan's master lines. Thus, in accordance with the objective to change the perception of finance as an area reserved for professionals, the portal shows how many decisions taken throughout life relating to achieving personal objectives are essentially financial. Accepting this situation is the first step towards transforming passive attitudes into more proactive behaviour, based on defining objectives and planning income and expenses

Accordingly, five main content modules have been defined: *i) how to reach the end of the month; ii) the economy at different stages of life; iii) tips for investing; iv) the range of financial products and services, and v) the financial survival kit.* In order to have an effect on the close relationship between a person's financial issues and their personal situation, the portal also has a navigation system based on the profile or information required at any given time.

The portal has been designed with a practical approach based on real daily needs. Accordingly, it offers recommendations and possible solutions for issues which interest everybody, whatever their situation or income level, including the following: organising a budget to optimise available resources, intelligent credit management to control the cost of debt, options for planning retirement, tips for avoiding financial fraud and to protect personal data, insurance and investment alternatives etc.

The practical utility of the contents is backed up by many available tools, calculators and simulators, which allow immediate application of the concepts and recommendations given. The main uses which can be made of the website are a "financial health" check-up, a template for preparing budgets, calculators for assessing the need to accumulate capital in different situations, saving simulators for children etc.

Finally, the portal is configured with easily accessed contents. The project's suitability for a wide range of people is clear not only through the technical accessibility, which is certified by the relevant agencies, but also, especially, through the "easy reading" option. This last option corresponds to an international initiative to simplify texts so as to make them easier to understand for the target audience. In finanzasparatodos.es, the most important content in each module has been adapted to the easy reading guidelines so that clear messages are also within the reach of people with an intellectual disability or those with language difficulties.

In 2010, the portal will continue to enrich its contents and strengthen the options for interactivity with users.

II Markets and issuers

3.1 General overview

In 2009, equity markets were marked firstly by the sharp falls in share prices up to the first days of March, and then by the rapid recovery mainly over the second and third quarters of the year. Share prices began the year falling sharply, mainly as a consequence of the depth of the economic recession and doubts about the strength of the international financial system. Since then, signs of stabilisation in the financial system and a slowdown in the fall in economic activity led to a substantial rise in prices, which allowed the Ibex 35 to rise 29.8% for the year as a whole, higher than the rises seen in other benchmark European stock markets (see table 1.1).

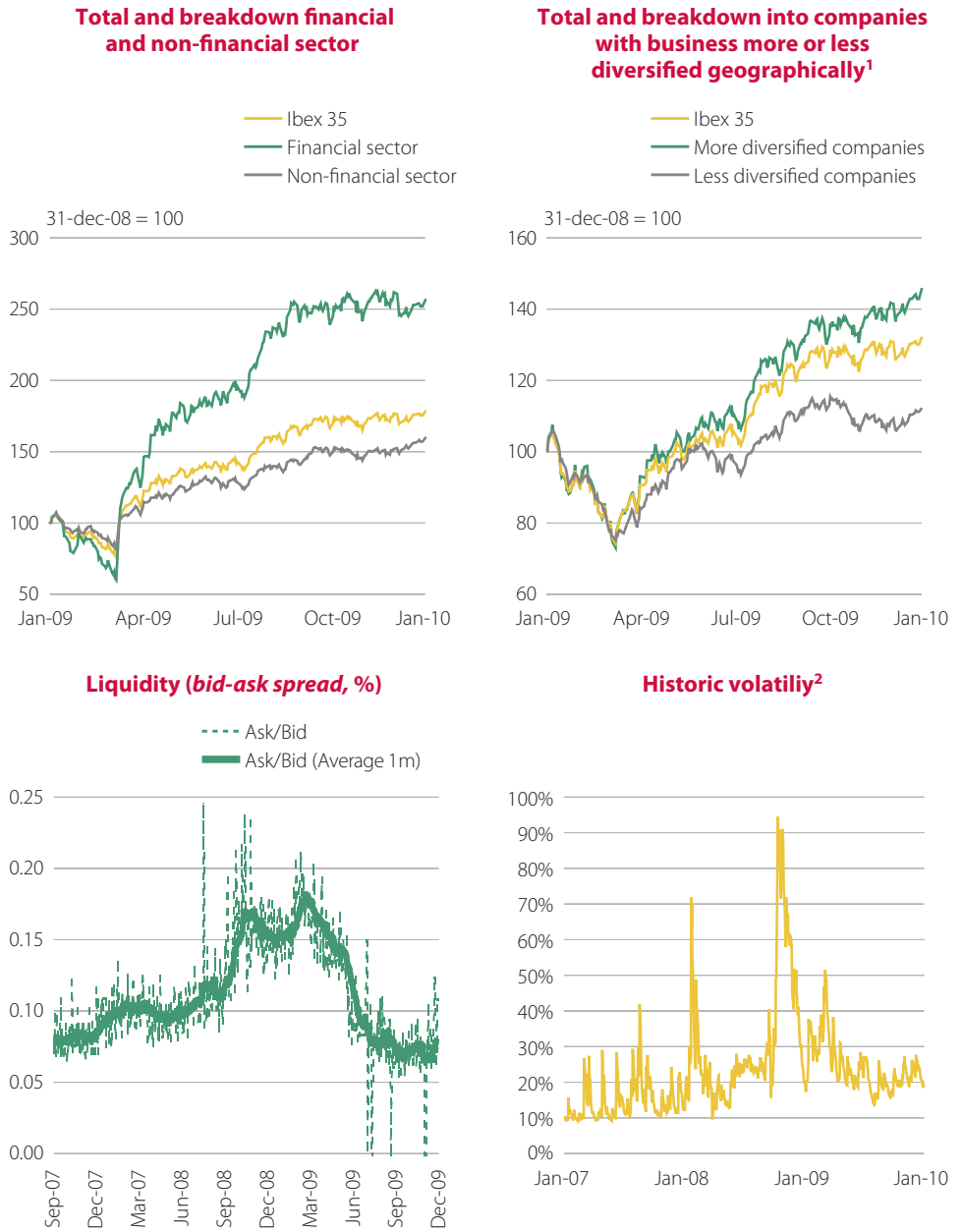
One of the most noteworthy characteristics of the strong recovery in share prices from the lows reached in March was the uneven performance between financial and non-financial companies. Accordingly, as can be seen in the upper-left panel of figure 3.1, the rise in share prices of financial institutions in 2009 was much higher than that for other companies. This can be explained by the implementation of major extraordinary support measures for this sector. The upper-right panel of figure 3.1 shows how the recovery in the prices of companies with greater presence in international markets was stronger than in those mainly orientated towards the domestic market.

Within this framework, the historic volatility of the Ibex 35, which increased in the first two months of the year, at times reaching 50%, fell in the following months, ending 2009 at close to 20% (see lower-right panel of figure 3.1). This closing level of volatility can be considered as normal in situations without turmoil in the financial markets according to the averages recorded in the last decade. At the same time, liquidity conditions assessed through the Ibex 35 bid-ask spread, which also worsened considerably in the first few weeks of 2009, later improved significantly, reaching values similar to those recorded before the start of the crisis.

In all, trading volume fell for the second consecutive year, back down to 2005 levels. Unlike the previous year, when the reduction in the cash volume of trades coincided with the fall in share prices, the fall in cash volume during 2009 took place together with sharp price rises. The fall in trading was similar to that observed in other benchmark stock markets.

Ibex 35 indicators (prices, liquidity and volatility)

FIGURE 3.1



Source: Thomson Datastream and CNMV. (1) The figure defines as companies which have a more geographically diversified business those whose revenue from abroad exceed 50% of total revenues. (2) An asymmetric GARCH model is used to estimate the Ibx 35's historic volatility. The specific equation is: $\ln(P_t / P_{t-1}) = \alpha + \beta \varepsilon_t$ with variance: $\sigma_t^2 = \omega + \theta \cdot \varepsilon_{t-1}^2 + \beta \cdot \sigma_{t-1}^2 + \eta \cdot \varepsilon_{t-1}^2 \cdot [1 \varepsilon_{t-1} < 0] + u_t$.

3.2 Market size

3.2.1 Market capitalisation

The market value of companies listed on Spanish stock markets stood at 549,803 millions of euros at the end of 2009, up 21.1% on 2008. The above-mentioned price increase was the main determining factor for the increase in capitalisation. Domestic companies on the electronic market accounted for 99.2% of total capitalisation while those listed on open outcry accounted for 0.7% (see table 3.1).

Market capitalisation¹ in Spanish stock markets

TABLE 3.1

Million euro					
	2006	2007	2008	2009	% chg. 09 / 08
All markets	728,698.5	764,751.6	476,031.7	549,803.6	21.1
Electronic market	711,116.4	756,786.3	470,426.1	545,465.0	16.0
Spanish	708,164.2	755,285.4	469,876.7	544,140.5	15.8
Foreign ²	2,952.2	1,501.0	549.4	1,324.5	141.1
Open outcry ³	17,189.4	7,678.4	5,495.7	4,257.7	-22.6
of which SICAV ⁴	9,284.1	245.4	155.0	31.2	-81.6
Madrid	9,665.3	2,008.1	1,554.4	997.3	-35.8
Barcelona	6,285.8	4,657.8	3,609.8	3,431.9	-5.0
Bilbao	511.4	108.2	45.9	435.4	849.4
Valencia	1,653.6	1,229.3	786.1	559.2	-28.9
2nd market	392.7	286.8	109.9	80.9	-26.4

Source: CNMV. (1) Includes only capitalisation of companies that were traded at some time during the year. Excludes Latibex, MAB and ETFs. (2) The capitalisation of foreign companies listed on the Spanish exchanges is based on the number of shares registered by Iberclear. (3) The market capitalisations of companies traded by open outcry in more than one market have been included in the figures for each market at the price for that market. In the 'open outcry' total, they have been included only once. (4) Only includes investment companies registered as listed UCITS.

As shown in table 3.2, almost all stock market sectors increased their capitalisation, but the increase was considerably greater among financial companies (42.5%), led by banks, than among non-financial companies (4.8%), reflecting the strength of the price recovery of the former as from spring. The sector with the greatest loss in capitalisation was the real estate sector, followed by oil and energy & water.

The Spanish stock market is still one of the largest with respect to the size of the economy, in terms of capitalisation and trading volume as a percentage of GDP (see table 3.3). In Europe, the percentages of the Spanish market are only exceeded by the London Stock Exchange and Euronext in capitalisation, and by the former in trading volume.

No. of listed companies and capitalisation by sector¹

TABLE 3.2

Million euro					
Sector	2008	2009	2008	2009	% chg. 09 / 08
Oil	2	2	36,523.1	28,685.8	-21.5
Energy & water	11	9	112,084.9	100,576.0	-10.3
Mining & base metals	9	9	4,622.3	6,119.7	32.4
Cement and construction materials	5	5	2,535.2	2,644.0	4.3
Chemicals	6	6	2,603.5	3,559.3	36.7
Textiles and paper	20	20	24,194.2	32,149.4	32.9
Metal-mechanical	17	17	9,299.00	12,964.2	39.4
Food	14	13	7,180.4	6,826.5	-4.9
Construction	7	8	25,221.7	29,717.8	17.8
Real estate	28	27	10,487.9	6,254.5	-40.4
Transport and communications	6	5	90,680.5	108,365.8	19.5
Other non-financial	22	24	15,138.4	18,936.4	25.1
Total non-financial sector	147	145	340,571.0	356,798.9	4.8
Banks	11	10	114,506.5	168,489.8	47.1
Insurance	2	2	8,328.8	10,440.0	25.3
Portfolio companies	12	11	12,447.6	14,020.3	12.6
SICAVs ²	4	2	177.8	54.7	-69.2
Finance houses	0	0	0	0	—
Total financial sector	29	25	135,460.8	193,004.8	42.5
Total	176	170	476,031.7	549,803.6	15.5

Source: CNMV. (1) Includes only capitalisation of companies that were traded at some time during the year. Excludes Latibex, MAB and ETFs. (2) Only includes investment companies registered as listed UCITS.

Market capitalisation and trading as a percentage of nominal GDP (%)

TABLE 3.3

	Market capitalisation		Trading volume	
	2008	2009	2008	2009
USA ¹	82.7	104.4	497.7	337.5
New York	64.9	82.0	237.0	123.1
Tokyo	64.0	67.3	114.8	81.2
London	65.9	104.3	228.5	126.9
Euronext ²	47.1	63.8	99.8	43.9
Germany	30.4	35.1	106.2	61.0
Italy	22.4	28.3	65.5	41.0
Spain	43.7	52.3	112.9	83.4

Source: World Federation of Exchanges, International Monetary Fund, CNMV and INE. (1) The numerator is the combined total of the NYSE, Nasdaq and American Stock Exchange. The market capitalisation figures for each market correspond to the last working session in the month of December. (2) The denominator is the sum of the nominal GDP of France, the Netherlands, Belgium and Portugal.

3.2.2 Listed companies

Excluding SICAVs, at the end of 2009 there were a total of 170 companies listed on Spanish stock markets, six fewer than in 2008. The electronic market had 133 companies, three fewer than at the end of the previous year. Only one company registered on this market, while four companies were de-listed. On the open outcry market there was one admission and three de-listings, two of which were SICAVs (see table 3.4).

Number of companies listed on the Spanish stock exchanges¹

TABLE 3.4

	All markets		Electronic market			Open outcry		Second market
	Total	Ex SICAVs	Total	Spanish	Foreign	Ex SICAVs	SICAV	
Listed at 31/12/08	176	173	136	131	5	29	3	8
Listed at 31/12/09	170	169	133	128	5	29	1	7
New listings in 2009	2	2	1	1	—	1	—	—
New listings	2	2	1	1	—	1	—	—
Listed due to mergers	—	—	—	—	—	—	—	—
Change of market	1	—	—	—	—	—	—	—
De-listings in 2009	8	6	4	4	—	1	2	1
De-listings	8	6	4	4	—	1	—	1
De-listed due to merger	—	0	—	—	—	—	—	—
Change of market	2	0	—	—	—	—	2	—
Net change in 2009	-6	-4	-3	-3	0	0	-2	-1

Source: CNMV. (1) Totals do not include MAB, Latibex and ETFs.

3.3 Listings, issues and public offerings

Despite the partial recovery in stock market prices, the prevailing uncertainty about the development of the economy and markets created an unfavourable environment for capital increases and floatations last year. The total amount of capital increases was 11,371 millions of euros, down 30.3% compared with the previous year (see table 3.5). Share issues for cash stood at 7,800 millions of euros, 68.6% of the total.

The most significant capital increase of the year, in terms of the amount, was that of Gas Natural (3,500 millions of euros), carried out in the context of the takeover bid that this company made for Unión Fenosa.

There were only three IPOs, two of which corresponded to growth stocks which went on to be listed on the Alternative Stock Market.

Primary and secondary public offerings¹

TABLE 3.5

Cash amount in million euro				
	2007	2008	2009	% change 09/08
Capital increases	67,887.0	16,339.7	11,390.7	-30.3
of which primary offerings ²	8,502.7	292.0	17.4	-94.0
With Spanish tranche	4,821.3	292.0	17.4	-94.0
With international tranche	3,681.4	0.0	0.0	—
Secondary offerings	2,068.5	9.5	1.9	-79.6
Spanish tranche	1,517.1	9.5	1.9	-79.6
International tranche	551.4	0.0	0.0	—
Total	69,955.5	16,349.2	11,409.9	-30.3
Pro memoria: IPOs				
Primary or secondary offerings ²	10,571.2	301.5	19.3	-93.6
Others ³	74,207.1	—	879.2	—

Source: CNMV. (1) Includes only transactions that took place, excluding those that were not completed. (2) Public offering of warrants after shareholders waived their preferential subscription rights. (3) In 2007, this includes the new listings of ArcelorMittal (formerly Arcelor), Reyal Urbis, Martinsa-Fadesa and Vértice 360. In 2009, the new listing of all the share capital of Grupo Empresarial San José, following the merger by takeover of Parquesol Inmuebles y Proyectos and other companies of the Udra group.

3.4 Trading

3.4.1 Spot trading

Trading amounted to 877 billion euros in 2009, down 28.6% on the previous year. Unlike in 2008, the fall in trading took place in a context of price rises, which clearly reflects a fall in the number of securities exchanged. The daily average trading volume was significantly higher during the first months of the year, coinciding with the period of greatest instability in share prices, but subsequently fell for the year as a whole to 3.4 billions of euros (4.8 billions in 2008). The figures corresponding to the first months of 2010 show a recovery in the average, which stood at 3.7 billions of euros between the start of the year and the middle of March.

As shown in table 3.6, almost all share trading (99.9%), was carried out on the electronic market. In this market, most trading took place in the regular session, essentially through order-based trades and block trading. The second type, designed for large transactions, was used especially by large foreign institutional investors. As shown in table 3.7, in 2009 block trading recorded a lower fall in total trading than orders or put-throughs.

Last year, trading on the electronic market tended to be concentrated in the largest securities even more so than in previous years. The five most liquid securities on the market accounted for 75% of trading. In 2008, this percentage was reached with the nine most liquid securities.

Equity trading in Spanish stock markets

TABLE 3.6

Million euro						
	2005	2006	2007	2008	2009	% chg. 09 / 08
All markets	853,588.1	1,149,930.3	1,654,702.1	1,228,631.5	877,149.3	-28.6
Electronic market	847,663.7	1,144,562.9	1,653,354.8	1,228,392.4	877,073.6	-28.6
Spanish	832,548.6	1,133,012.6	1,645,855.5	1,226,985.3	872,323.1	-28.9
Foreign	15,115.1	11,550.3	7,499.3	1,407.1	4,750.4	237.6
Open outcry	5,898.5	5,318.1	1,154.4	207.5	72.6	-65.0
Madrid	3,671.1	3,231.5	515.5	94.4	31.4	-66.8
Bilbao	241.7	403.1	5.2	0.1	1.1	1,050.1
Barcelona	1,560.2	1,192.3	444.4	107.0	32.3	-69.8
Valencia	425.5	491.3	189.3	6.0	7.8	30.67
2nd market	25.9	49.3	192.9	31.7	3.2	-90.0
ETF	—	1,827.1	4,664.5	6,938.1	3,470.6	-50.0
Alternative stock market	—	1,814.2	6,985.2	7,060.3	5,080.1	-28.1
Latibex	556.7	723.3	868.2	757.8	434.7	-42.6

Source: CNMV.

Trading on the electronic market by type¹

TABLE 3.7

Million euro						
	2.005	2.006	2.007	2.008	2009	% chg. 09 / 08
Regular trading	798,934.5	1,080,120.5	1,577,249.5	1,180,835.9	833,854.9	-29.4
Order-based	488,416.3	658,891.1	985,087.6	774,718.1	499,182.8	-35.6
Put-throughs	82,403.1	105,899.4	155,085.1	105,673.9	51,335.8	-51.4
Block trades	228,115.1	315,330.1	437,076.8	300,443.9	283,336.3	-5.7
Off-hours	27,863.0	11,648.8	18,301.5	10,175.2	5,996.6	-41.1
Other types	20,866.2	52,793.6	57,803.9	37,381.4	37,222.1	-0.4

Source: CNMV. (1) Excludes Latibex, MAB and ETFs.

3.4.2 Margin trading and securities lending

Spanish legislation allows margin trading (*crédito* system) and provides two different systems for securities lending (*crédito* and *préstamo*). The *crédito* system (for margin trading and securities borrowing) is commonly used by retail investors dealing in Ibex 35 stocks. The *préstamo* system is more commonly used by institutional investors and covers a broader range of securities, including shares traded on Latibex and ETFs.

Margin trading using the *crédito* system once again shrank significantly in 2009, for the third consecutive year, despite the rise in prices over the year. As shown in table 3.8, the amount of trading using this system in 2009 (106.4 millions of euros) was slightly above one-quarter of the amount reached in 2007, the year that the financial crisis began.

Margin trading¹			TABLE 3.8
Million euro			
	Outstanding balance	Trading volume	
2005	52.3	465.0	
2006	70.1	511.9	
2007	59.4	411.3	
2008	7.0	154.7	
2009	5.6	106.4	

Source: CNMV. (1) Transactions performed in accordance with Ministerial Order dated 25 March 1991 on the margin system in spot transactions.

With regard to sales transactions, the development of the main type, securities lending, proved to be the least attractive of these transactions in the bullish market as of March. Securities lending stood at 471 billions of euros, 19.3% down on 2008. Sales under the *crédito* system, which is a much smaller system, followed a reverse trend, going from 624.9 millions of euros in 2008 to 704.3 millions in 2009.

Securities lending (<i>crédito</i> and <i>préstamo</i> systems)					TABLE 3.9
Million euro					
	Sale of securities (<i>crédito</i> systems) ¹		Securities lending (<i>préstamo</i> system) ²		
	Outstanding balance	Trading volume	Outstanding balance ³	Trading volume	
2005	28.5	152.2	66,737.5	393,964.1	
2006	73.6	379.9	62,058.2	550,850.4	
2007	112.4	555.4	79,532.9	835,326.9	
2008	20.7	624.9	43,647.8	583,950.8	
2009	21.1	704.3	47,322.2	471,007.1	

Source: CNMV. (1) Transactions performed in accordance with Ministerial Order dated 25 March 1991 on the margin system in spot transactions. (2) Regulated by Section 36.7 of the Securities Market Act and Order ECO/764/2004. (3) Total balance less amount of re-lending.

3.5 Takeover bids (OPAs)

As shown in table 3.10, the number of takeover bids processed by the CNMV fell again. However, the total amount increased significantly compared with 2008 due to the weight of one specific transaction (that of Unión Fenosa). All the bids presented were accepted and authorised (see section 11 of chapter 3 herein, referring to takeover bid supervision).

The largest transaction was that of Gas Natural for Unión Fenosa, with a potential cash volume close to 16.5 billions of euros. From this amount, close to 15.7 billions of euros was actually carried out, spread among the transactions agreed beforehand by the bidder with some of the target company's shareholders (close to 10 billions of euros) and the results of the takeover bid itself (5.7 billions of euros).

The transaction involving Unión Fenosa and that carried out for Itínere Infraestructuras were the only takeover bids, among those presented, which aimed for a genuine takeover. In both takeovers, the bidders had reached agreements with some of the target company's shareholders to buy their shares. In the acquisition of Unión Fenosa, the structure of the transaction meant that the takeover bid was mandatory

as the bidder had previously acquired a controlling stake. On the other hand, in the transaction for Itínere Infraestructuras, the controlling stake was obtained through the takeover bid itself. The two affected companies were subsequently excluded from trading on the stock market, in the case of Unión Fenosa, as a consequence of its takeover by the bidding company, and in the case of Itínere Infraestructuras, at the issuer's request by means of a purchase order for the shares at the same price as the bid. In the latter case, one of the exclusion bid exceptions was applied as established in the corresponding legislation.

Takeover bids

TABLE 3.10

Million euro					
	2005	2006	2007	2008	2009
Authorised¹					
Number	13	21	16	6	5
Potential amount	7,511	62,615	48,939	3,658	9,952
Potential amount plus agreements prior to acquisition ²	—	—	49,215	3,781	18,516
Carried out³					
Number	9	16	16	6	5
Amount	6,822	18,997	43,179	3,319	7,201
Amount plus agreements prior to acquisition ²	—	—	43,455	3,442	17,605

Source: CNMV. (1) Authorised during the year. (2) Amount of takeover bids plus cash volume of acquisitions agreed prior to each bid. Until 2006, both figures were the same because a takeover bid had to be presented before attaining a controlling stake. (3) All bids authorised during the year, even if completed in the following year, except where the bid was unsuccessful or was withdrawn.

Two of the remaining three transactions were exclusion bids: those of Aguas de Valencia and Federico Paternina. The fifth transaction was carried out by Corporación Dermoeestética in order to reduce its capital by acquiring a maximum number of own shares.

The five bids involved cash consideration, and all met the fair price rules defined in regulations. None of the bids met the squeeze-out and tag-along conditions (see annex 1.9 for further information about the takeover bids presented in 2009).

3.6 Multilateral trading facilities

3.6.1 Latibex

Prices on Latibex, where Latin American shares are traded in euros, followed a downward trend over the first three months of the year, but subsequently rose sharply. The Latibex indexes rose 70% over the year, which reflected not only the global recovery in equity markets, but also the specific recovery forecasts for the economies with the largest number of shares listed on this market (Brazil and Mexico).

As in other equity markets, the recovery in prices did not prevent a sharp fall in trading volume, which stood at 434.7 millions of euros, 42.6% down on the previous year. At the end of the year, Latibex had 33 listed companies, with two additions and three de-listings over the year. Total capitalisation stood at 573.8 billions of euros as at 31 December 2009, almost double that of the previous year.

Companies listed on Latibex, by country

TABLE 3.11

Million euro

Country	No. of companies		Market capitalisation			Trading volume		
	2008	2009	2008	2009	% chg.	2008	2009	% chg.
Argentina	2	2	946.2	1,277.4	35.0	0.6	0.5	-3.2
Brazil	15	13	145,536.2	311,978.4	114.4	517.3	315.5	-39.0
Chile	4	4	17,451.0	27,421.5	57.1	56.4	26.8	-52.5
Costa Rica	0	0	0.0	0.0	—	0.0	0.0	—
Mexico	10	12	122,718.2	231,758.1	88.9	160.6	82.5	-48.6
Panama	0	0	0.0	0.0	—	0.0	0.0	—
Peru	1	1	165.2	1,000.2	505.6	13.9	4.1	-70.8
Puerto Rico	1	1	372.2	394.6	6.0	8.9	5.3	-40.7
Venezuela	0	0	0.0	0.0	—	0.0	0.0	—
Total	33	33	287,188.9	573,830.1	99.8	757.7	434.7	-42.6

Source: CNMV.

3.6.2 The Alternative Stock Market (MAB)

In 2009, total trading volume on the Alternative Stock Market totalled 5.1 billions of euros, 28% down on the previous year. The SICAV segment accounted for almost all trading on the MAB. These companies had a total market value of 26.2 billions of euros at the end of the year, 6.8% up on 2008.

Two new companies were included in the growth stocks segment. These were Zinkia and Imaginarium, whose flotation involved acquiring resources of 7 millions and 12 millions of euros respectively. It is also important to highlight the introduction of two new figures in this segment: the *register adviser*, whose role will be to help companies meet their obligations with the MAB, and the *liquidity provider*, who helps to find counterparties for sales transactions.

3.7 Exchange-traded funds (ETF)

Exchange-traded funds have been on the Spanish market for three years. Since their launch, both the number of funds and the assets under management have grown, although the number of management companies remains low. At the end of the year there were 32 listed funds, all belonging to management companies in the BBVA and Société Générale groups, with a wide range of underlying indexes in terms of countries, sectors, securities and strategies. The first inverse ETF on the Ibex 35 began trading in June.

Assets under management of the funds listed on the SIBE amounted to 13.9 billions of euros at the end of 2009, an increase of 30% on 2008. The bulk of those assets corresponds to funds managed by Lyxor, part of the Société Générale group, which is also listed on the European markets.

Total trading amounted to 3.5 billions of euros, 50% down on the previous year. The two funds with the highest trading volume were Acción DJ EUROSTOXX 50 and AFI Monetario Euro, both from BBVA, which account for 19% and 12% of the total respectively. Five funds account for 65.5% of total trading.

4.1 General overview

Activity in fixed income markets in 2009 was once again significantly affected by the economic and financial crisis. Private sector issues, where financial institutions play a major role, declined significantly, as seen in table 4.1. Compared with the previous year, there were also changes in the type of assets issued by Spanish issuers. Specifically, asset-backed security issues and commercial paper issues were substituted by an increase in the issue of simple bonds, sometimes guaranteed by the State. There was also a significant rise in the issue of convertible bonds and preferred shares as several credit institutions wanted to improve their solvency ratio.

In contrast with private fixed-income, public debt issues soared, the main issuer being the Spanish Central Government.

Gross issues and outstanding balances: breakdown by issuer

TABLE 4.1

Nominal amount in million euro

	Amount ¹		(% change)		Pro memoria: Eurozone	
	2008	2009	08/07	09/08	2009	% change 09/08
Gross issues	713,317	785,765	-12.3	10.2	13,484,805	-4.5
Public authorities	124,475	248,016	107.0	99.2	2,915,891	30.7
Financial institutions	579,324	526,635	-22.1	-9.1	9,552,200	-10.7
Non-financial companies	9,518	11,114	3.2	16.8	1,016,714	-15.0
Net issues	131,009	193,871	-41.1	48.0	1,071,287	-6.1
Public authorities	51,580	127,753	—	147.7	590,000	49.7
Financial institutions	77,565	65,390	-65.5	-15.7	384,895	-44.7
Non-financial companies	1,865	728	-8.0	-61.0	96,392	88.3
Outstanding balance	1,420,445	1,615,164	10.0	13.7	15,030,899	14.1
Public authorities	390,102	517,650	15.4	32.7	5,882,877	11.5
Financial institutions	1,014,886	1,081,325	8.0	6.5	8,348,747	16.0
Non-financial companies	15,456	16,189	13.5	4.7	799,274	14.1

Source: Bank of Spain, CNMV and ECB. (1) Includes issues in Spain and abroad.

As for secondary markets, the public debt book-entry market continued to be the largest in terms of trading volume. Within that market, the short-term segment (*Letras del Tesoro*) registered sharp growth in both outright trades and repos and sell-buybacks/buy-sellbacks, evidencing investors' preference for very liquid assets with high credit quality. In contrast, trading in the long-term segment (State *bonos* and *obligaciones*) fell significantly.

AIAF's secondary market in private fixed-income securities saw a sharp increase in sell-buybacks/buy-sellbacks, largely due to Treasury transactions in that market, which were concentrated in the asset-backed security segment. In contrast, the volume of the other two types of trade (outright and repos) fell. Trading volume on AIAF exceeded that on the stock exchange (where the bulk of trading was concentrated in Barcelona, specifically in bonds issued by the Regional Government of Catalonia).

4.2 Public debt

4.2.1 Primary market

Gross issues by public authorities amounted to 248 billions of euros, more than double the 2008 figure (see table 4.1). The bulk of that increase is attributable to the Spanish Central Government, which issued 228.3 billions of euros in 2009 compared with 115.2 billions in 2008. Gross issues by regional governments expanded 115.9% to 19.6 billions of euros.

As indicated in chapter 1, public authorities incurred a deficit equivalent to 11.2% of GDP in 2009. This deficit led to a net issue of 127.8 billions of euros, 26% in short-term issues and the remaining 74% in long-term issues. Within the public authorities, the Spanish Central Government issued 93.4% of the total (for further details, see annexes II.11 and II.12).

4.2.2 Secondary market

As indicated previously, the Public Debt Book-Entry Market continued to be Spain's largest organised fixed-income market in terms of trading volume. As shown in table 4.2, total trading on the public debt book-entry market in 2009 fell 7.1% compared with 2008. In this context, short-term issues (*Letras del Tesoro*) and long-term issues (*bonos* and *obligaciones*) showed opposing trends. While trading in the first type rose 39.1%, trading in the other type fell 12.9%

Trading on the Debt Book-Entry Market

TABLE 4.2

Million euro

	2005	2006	2007	2008	2009	% change 09/08
Letras	2,230,370	1,695,552	1,594,556	2,222,278	3,091,844	39.1
Outright	116,478	93,332	57,925	115,312	202,589	75.7
Spot	116,087	92,831	57,363	114,611	197,502	72.3
Maturity	390	501	561	701	5,087	625.7
Repos	1,709,753	1,185,339	1,230,166	1,635,437	2,107,507	28.9
Sell-buybacks/Buy-sellbacks	404,139	416,881	306,466	471,529	781,748	65.8
Bonds and debentures	19,989,574	20,919,806	21,069,771	17,722,218	15,430,615	-12.9
Outright	2,531,614	3,137,244	3,413,112	2,351,993	2,417,266	2.8
Spot	2,222,121	2,810,314	3,120,022	2,087,519	2,272,782	8.9
Maturity	309,494	326,931	293,090	264,474	144,484	-45.4
Repos	9,700,501	9,850,419	9,741,672	8,474,523	6,537,836	-22.9
Sell-buybacks/Buy-sellbacks	7,757,459	7,932,144	7,914,986	6,895,703	6,475,513	-6.1
Total	22,219,944	22,615,358	22,664,327	19,944,496	18,522,459	-7.1

Source: Bank of Spain.

The increase in trading in short-term issues is mainly explained by investors' greater preference for short-term assets with high credit quality. Trading in long-term issues largely saw the effects of the increase in the perception of sovereign risk, which was especially intense during the first and last quarters of the year. This coincided with significant increases in sovereign risk premiums traded on CDS markets (see figure 4.1) and with a significant increase in the yield spread with respect to German debt.

Annexes II.13 and II.14 provide more detail on trading in the Public Debt Book-Entry Market.

5-year CDS premiums of sovereign debt

FIGURE 4.1



Source: Markit and Thomson Datastream.

4.3 Private fixed-income

4.3.1 Primary market

Gross private fixed-income issues carried out by Spanish issuers amounted to 537.7 billions of euros in 2009, down 8.7% on 2008 (see table 4.1). This fall was concentrated exclusively in issues in Spain, which accounted for 72% of the total and which fell 18.6%, while those performed abroad rose 33.2%. As in previous years, most of the amount issued corresponded to short-term issues (commercial paper). However, the proportion of long-term issues increased from 34.7% of the total amount in 2008 to 45.2% in 2009. Most issuers were from the financial sector.

As shown in table 4.3, which breaks down the issues registered in the CNMV, both commercial paper issues and asset-backed security issues suffered significant falls. The relative importance of these issues within the total fixed-income issues registered with the CNMV fell considerably to 49.4% (65.5% in 2008) for commercial paper and to 21.1% (28.3% in 2008) for asset-backed securities, which are dealt with later on in the report. In the case of commercial paper, the fall was mainly due to fewer issues by credit institutions, which increased their issues of these instruments abroad (see table 4.4), and which made greater use of the Eurosystem for short-term finance.¹

Gross issues registered at the CNMV: breakdown by instrument

TABLE 4.3

Nominal amount in million euro

	2005	2006	2007	2008	2009
Long term	149.894	188.674	206.323	164.537	196.134
Non-convertible bonds and debentures	41.907	46.688	27.416	10.490	62.249
Subordinated debt	3.165	6.555	2.381	1.545	5.831
Convertible bonds and debentures	163	68	0	1.429	3.200
Mortgage bonds	35.560	44.250	24.696	14.300	35.574
Territorial bonds	1.775	5.150	5.060	1.820	500
Securitisation bonds	69.044	91.608	141.627	135.253	81.651
Asset-backed (ABS)	62.194	87.308	136.887	134.453	80.835
Mortgage-backed (MBS)	6.850	4.300	4.740	800	817
Preferred shares	1.356	911	225	1.246	12.960
Other issues	89	0	7.300	0	0
Short term¹	264.360	334.457	442.434	311.738	191.342
Commercial paper	264.360	334.457	442.434	311.738	191.342
Asset-backed	2.767	1.993	465	2.843	4.758
Total	414.254	523.131	648.757	476.276	387.476

Source: CNMV. (1) The figures for commercial paper issues correspond to the amounts placed.

With regard to other instruments, there was a significant rise in non-convertible bond and debenture issues, as well as mortgage bonds and preferred shares. The proportion of non-convertible bonds and debentures in the total registered with the CNMV rose from 6% in 2008 to 16% in 2009. This increase was mainly due to State-

1. Financing from the ECB to Spanish credit institutions rose from 63.6 billions of euros at the end of 2008 to 77.3 billions at the end of 2009. Financing from the ECB to Spanish credit institutions rose steadily throughout the year.

guaranteed issues by credit institutions. In 2009, 47.9 billions of euros in simple bonds and debentures guaranteed by the State were issued, which accounted for 76.8% of the total issues of non-convertible bonds and debentures.

The increase in mortgage-bond issues reflected the fact that investors valued these instruments more favourably than asset-backed securities, which suffered more from the withdrawal of investor confidence in the most complex products. Another reason was the implementation in June 2009 of an extraordinary programme for purchasing bonds, including mortgage bonds, guaranteed by the European Central Bank, with a budget of 60 billions of euros. The increase in the issue of convertible bonds and preferred shares was a result of credit institutions' need to improve their solvency ratios.

Tables 16, 17 and 18 of Annex II provide greater detail about private fixed-income issues registered at the CNMV.

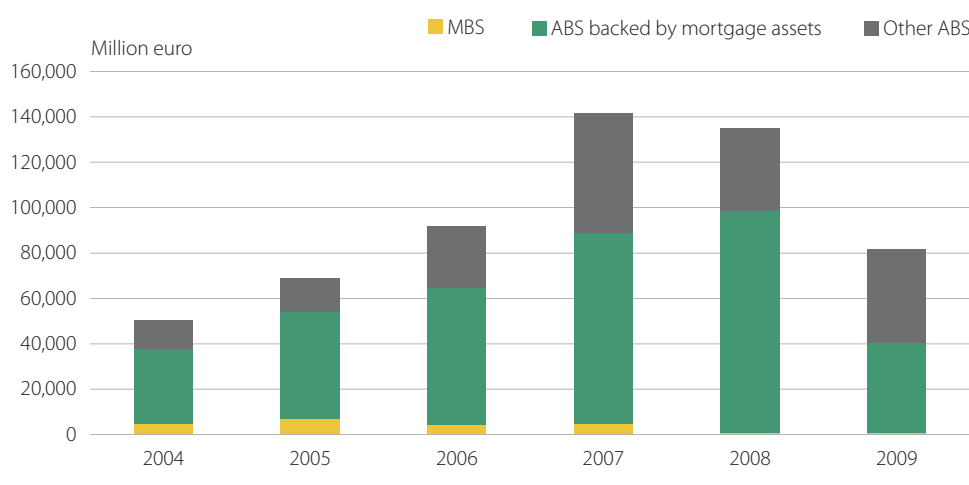
Asset- and mortgage-backed securities

As in 2008, most securitisation bond issues were retained by their originators for use as collateral in funding operations with the Eurosystem. In addition, financial institutions were also able to obtain resources through the sale of these assets to the Financial Asset Acquisition Fund.²

In 2009, total issues of securitisation bonds amounted to 81.7 billions of euros, a fall of 39.6% compared with 2008. The fall was largely due to the substantial increase in the haircut which the ECB began to apply to credit institutions which provided this type of instrument in order to obtain liquidity.³ In addition to this option, credit institutions were also able to substitute these issues for simple bonds with State guarantees.

Asset- and mortgage-backed securities registered at the CNMV

FIGURE 4.2



Source: CNMV.

- The Financial Asset Acquisition Fund (FAAF) is a fund created by Royal Decree-Law 6/2008 and developed by Order EHA/3118/2008. The FAAF is a non-legal entity attached to the Ministry of Economy and Finance. This fund was initially provided with 30 billions of euros, which may be increased to 50 billions. The objective of this fund is to purchase top quality financial assets, according to criteria of objectivity, safety, and transparency, efficiency, yield and diversification.
- In February, haircuts went from 2% of their market price to 12%. Assets with no market price were subject to an additional penalty of 5%, as were uninsured bank bonds.

As shown in table 4.3, issues of securitisation bonds peaked in the first part of the year, when credit institutions' financial difficulties increased notably as a result of the perception of increased systemic risk following the collapse of Lehman Brothers and government intervention in various institutions in the United States and Europe at the end of 2008.

Mortgage-backed securities were again the most common type of issue, although their weight fell from 72.4% of the total in 2008 to 49.7% in 2009 (see annex II.20 and figure 4.3). Tables 19 and 20 of annex II provide additional information on securitisation bond issues registered at the CNMV.

Issues in foreign markets

Fixed income issues in foreign markets by Spanish issuers increased by 33.2% compared with the previous year, totalling 149.7 billions of euros. The rising trend in issuing activity in foreign markets over recent years was thus maintained. Both long-term and short-term issues grew; the former by 18.4% and the latter by 41.4%. In this context, it is important to point out that for the first time since 2005, bond and debenture issues in foreign markets were lower than those in Spain, mainly because of the possibility of State guarantees for these issues in Spain.

Gross private fixed-income issued by Spanish issuers in foreign markets TABLE 4.4

Nominal amount in million euro						
	2005	2006	2007	2008	2009	% change 09/08
Long term	44,159	73,257	65,629	39,894	47,230	18.4
Preferred	2,165	1,504	2,581	0	3,765	—
Subordinated debt	1,487	5,758	8,984	70	2,061	2,844.1
Bonds and debentures	39,308	64,292	53,327	39,360	41,404	5.2
Securitisation bonds	1,199	1,703	736	464	0	—
Short term	15,021	25,718	38,003	72,472	102,456	41.4
Commercial paper	15,021	25,718	38,003	72,472	102,456	41.4
Asset-backed	12,367	16,517	12,119	425	108	-74.5
Total	59,180	98,975	103,631	112,366	149,686	33.2

Source: Bank of Spain.

Financial institutions accounted for almost 90% of gross issues in other countries. Specifically, subsidiaries of Banco de Santander accounted for 39.2% of gross issues. The non-financial companies with most issues were Telefónica, Gas Natural and Iberdrola, which issued 4.8%, 2.8% and 2.2% of the total respectively.

4.3.2 Secondary market

Spain has two official secondary markets in private fixed-income securities: AIAF and the stock exchanges. The breakdown and trend in the number of issuers, the number of issues and the outstanding balance listed in both markets are shown in tables 4.5 and 4.6, respectively. The majority of listed issues are traded on the AIAF market, which accounted for 96% of the total outstanding balance at year-end.

The outstanding balance of debt listed on the AIAF market grew 6.3% in 2009 (i.e. by less than the previous year, due to fewer new issues). Asset-backed securities (ABS, *cédulas hipotecarias* and *cédulas territoriales*) accounted for 95.1% of the outstanding balance on AIAF. The increase in the outstanding balance of listed issues, which can be seen in table 4.5, reflects the increase in the public debt of the Autonomous Regions and the move to list convertible bonds issued mainly by credit institutions.

Issuers, issues and outstanding balances of fixed-income on AIAF TABLE 4.5

Nominal amount in million euro

	No. of issuers		No. of issues		Outstanding balance		% change 09/08
	2008	2009	2008	2009	2008	2009	
Commercial paper	72	67	2,489	1,507	71,762	41,647	-41
Bonds and debentures	523	581	1,964	2,336	567,321	626,902	10.5
securitisation bonds	383	442	1,436	1,629	422,011	442,831	4.9
Mortgage bonds	22	29	146	202	162,466	185,344	14.1
Territorial bonds	11	11	26	25	17,030	16,030	-5.9
Matador bonds	12	12	14	14	1,059	1,059	0
Total	556	612	4,639	4,084	819,638	870,981	6.26

Source: AIAF and CNMV.

Issuers, issues and outstanding balances of fixed-income on markets TABLE 4.6

Nominal amount in million euro

	No. of issuers		No. of issues		Outstanding balance		% change 09/08
	2008	2009	2008	2009	2008	2009	
Total¹	58	62	271	269	29,143	36,300	24.6
Regional government debt	3	3	82	76	9,973	12,338	23.7
Other	55	59	189	193	19,170	23,961	25.0
Barcelona Stock Exchange	49	52	214	216	20,459	30,942	51.2
Bilbao Stock Exchange	31	32	71	65	2,094	9,570	357.1
Madrid Stock Exchange	26	27	63	56	8,678	13,056	50.4
Valencia Stock Exchange	30	32	112	100	2,847	10,400	265.3

Source: Stock markets and CNMV. (1) Does not include book-entry debt.

In total, private fixed-income trading on AIAF and stock markets totalled 4.7 billions of euros. 98.4% of total trading corresponded to AIAF, where trading increased by 84.8%. However, this increase was exclusively concentrated in sell-buybacks/buy-sellbacks with bonds and debentures, especially those trades in which the Treasury intervened as counterparty. These transactions, with maturities at one or two days, totalled 3.2 billions of euros, over 80% of the total trading volume in sell-buybacks/buy-sellbacks.

Total trading on AIAF

TABLE 4.7

Nominal amount in million euro

	2005	2006	2007	2008	2009	% change 09/08
Total	877.812	910.494	1.127.478	2.521.040	4.658.633	84,8
By type of asset						
Commercial paper	408.185	489.069	568.010	591.944	533.331	-9,9
Bonds and debentures	404.410	344.698	469.533	1.788.946	3.854.898	115,5
securitisation bonds	313.778	257.629	378.005	1.704.342	3.527.486	107,0
Mortgage bonds	60.061	70.113	80.811	129.995	263.150	102,4
Territorial bonds	2.740	3.659	7.750	10.142	7.209	-28,9
Matador bonds	2.416	2.954	1.374	13	45	243,2
By type of transaction						
Outright	322.819	386.369	416.478	387.897	378.348	-2,5
Repos	284.520	330.840	441.363	381.505	362.069	-5,1
Sell-buybacks/Buy-sellbacks	270.473	193.285	269.637	1.751.638	3.918.216	123,7

Source: AIAF and CNMV.

Transactions with commercial paper were mainly carried out in the retail segment, that is, between members and their clients⁴. In contrast, securitisation bond transactions were concentrated in the wholesale segment (trading among market members). Trading in the wholesale segment more than doubled that in the previous year if we include Treasury transactions in this segment. If we exclude these transactions, the increase was slightly above 50%. However, in the retail segment, trading continued to fall as in recent years, in this case by 8.4%. The relative weight of the retail segment in total trading on the AIAF market fell from 29.5% in 2008 to 14.6% in 2009 (48% if Treasury transactions are excluded).

Private fixed-income trading fell 7.2% on stock markets, as shown in table 4.8. The Barcelona Stock Market account for 87.1% of total trading on Spanish markets, mainly as a result of the debt issues by the Regional Government of Catalonia. It is important to point out the fall in trading of securitisation bonds backed by assets guaranteed by the Generalitat (the Regional Government of Catalonia), which went from 7.7 billions of euros in 2008 to 3.8 billions in 2009.

Fixed-income trading on the stock markets

TABLE 4.8

Nominal amount in million euro

	2005	2006	2007	2008	2009	% change 09/08
Total	87,998	91,063	91,605	80,605	74,756	-7.2
Regional government debt ¹	83,204	84,444	83,866	70,075	65,121	-7.1
Other	4,758	6,584	7,705	10,392	9,586	-7.8
Public debt book-entry securities	36	36	34	46	49	6.4

Source: Stock exchanges and CNMV. (1) The regional governments of Catalonia, Valencia and the Basque Country. Does not include: *Instituto Catalán de Finanzas* (Catalan Finance Institute), *Diputación Foral de Vizcaya* (Provincial Council of Biscay) or *Consorcio de Transportes de Vizcaya* (Biscay Transport Consortium).

5 Registry, counterparties, clearing and settlement

5.1 Iberclear

Iberclear is in charge of registering, clearing and settling securities in Spain. It mainly deals with securities traded on stock markets, public debt markets and AIAF.

At 2009 year-end, Iberclear had 205 members, three less than in 2008 (see table 5.1). Five participants deregistered from the public debt clearing and settlement system and one participant deregistered from AIAF. However, the number in stock markets and Latibex increased by one and two members respectively.

Iberclear members		TABLE 5.1
	2008	2009
Total Iberclear¹	208	205
Members of:		
Stock markets	90	91
Latibex	78	80
AIAF	80	79
Public debt	166	161

Source: Iberclear. (1) The total is lower than the sum of the number of clearing members in the various markets since many firms are members of more than one market.

The activity indicators for the two platforms managed by Iberclear fell as a result of the fall in trading in the corresponding markets (see Chapters 3 and 4).

5.1.1 Iberclear-CADE

In 2009, 4,483 issues were registered in this platform, with a nominal amount of 1,390,825 millions of euros. 93% of issues correspond to the AIAF market and the rest to the public debt market. 63% of the nominal amount was from issues listed on AIAF and 37% from the public debt market.

The AIAF market saw a 12% reduction in the number of issues compared with the previous year, although the nominal issued amount rose by 5%. The number of issues in the debt market fell by 3%, while the nominal amount rose significantly, 28%, due to the large amount of issues by the Treasury over the year.

Iberclear-CADE. Registry

TABLE 5.2

Millions of euros							
Registered securities	Public debt		AIAF		Total		% change
	2008	2009	2008	2009	2008	2009	
Number of issues	327	318	4,756	4,165	5,083	4,483	-11.8
Nominal amount	400,647	511,212	840,439	879,613	1,241,086	1,390,825	12.1

Source: CNMV.

As usual, the most important transactions in the debt market were related to repos and sell-buyback/buy-sellbacks. The number of these transactions fell, although the amount increased (see tables 5.3 and 5.4). The other transactions did not show very significant changes compared with the previous year.

Iberclear-CADE. Number of trades settled

TABLE 5.3

Type of transaction	Public debt		AIAF		Total		% change
	2008	2009	2008	2009	2008	2009	
Outright trades	208,910	212,635	1,217,626	1,410,616	1,426,536	1,623,251	13.8
Repos and sell/buybacks and buy/sellbacks	5,733,333	4,607,955	199,202	145,077	5,932,535	4,753,032	-19.9
Outright transfers (between accounts of the same owner)	144,600	148,029	215,808	189,347	360,408	337,376	-6.4
Temporary transfers (between accounts of the same owner)	108,354	63,196	119	51	108,473	63,247	-41.7
Transfer of securities to maturity (to a different owner)	325,734	366,453	72,438	67,894	398,172	434,347	9.1
Transfers for collateral (to a different owner)	2,684	2,194	30,776	16,428	33,460	18,622	-44.3
Total	6,523,615	5,400,462	1,735,969	1,829,413	8,259,584	7,229,875	-12.5

Source: CNMV.

Iberclear-CADE. Amount of the settled trades¹

TABLE 5.4

Millions of euros							
Type of transaction	Public debt		AIAF		Total		% change
	2008	2009	2008	2009	2008	2009	
Outright trades	2,885,198	2,925,513	442,183	420,906	3,327,381	3,346,419	0.6
Repos and sell/buybacks and buy/sellbacks	39,240,986	40,551,622	4,056,696	6,690,594	43,297,682	47,242,216	9.1
Outright transfers (between accounts of the same owner)	2,025,069	2,021,763	2,202,459	1,941,148	4,227,528	3,962,911	-6.3
Temporary transfers (between accounts of the same owner)	701,347	477,264	1,116	816	702,463	478,080	-31.9
Transfers of securities to maturity (to a different owner)	7,128,755	8,112,439	794,106	812,499	7,922,861	8,924,938	12.6
Transfers for collateral (to a different owner)	82,664	71,598	888,093	432,952	970,757	504,550	-48.0
Total	52,064,019	54,160,199	8,384,653	10,298,916	60,448,672	64,459,115	6.6

Source: CNMV. (1) Effective amount, in the case of outright trades, repos and sell-buybacks/buy-sellbacks; nominal amount, in the case of temporary and held-to-maturity transfers.

Incidents had a limited impact on the settlement process. 514 incidents were registered, which accounted for 0.01% of the total number of settled trades, with an amount equivalent to 0.02% of trades. 84% of the incidents were produced by non-resident entities, which were very active in the debt market and which sometimes had difficulties finding securities to cover short positions at the end of the day.

5.1.2 Iberclear-SCLV

In 2009, the reduction in stock market trading volumes led to a fall in settlement volumes on the SCLV platform. In terms of daily average, the effective volume of purchases plus sales and the number of transactions fell 30% and 17% respectively compared with the previous year.

By the end of the year, Iberclear had registered 5,281 issues, with a nominal value of 110,118 millions of euros. There was a significant reduction in the number of registered issues compared with the previous year, while the nominal total amount remained practically the same. The fall in the number of issues registered reflects the fact that a large number of SICAV issues moved on to regional settlement systems, following their exclusion from the SIBE and their transfer to the Alternative Stock Market.

Iberclear SCLV. Registry

TABLE 5.5

Millions of euros

Registered securities	Stock market			Latibex		
	2008	2009	% change	2008	2009	% change
Number of issues	7,153	5,281	-26.2	38	37	-2.6
Registered amount ¹	110,127	110,118	0.1	195	377	93.8

Source: CNMV. (1) Nominal amount, in the case of the stock market; effective amount, in the case of Latibex.

Taking both the stock market and Latibex together, the number of settled trades in 2009 amounted to 24,503,657, with an effective value of 2,132,863 millions of euros, a fall of 15% and 30% respectively compared with the previous year. In the case of Latibex, effective volume fell 82%.

In addition to settling purchase and sale trades, the platform settles transfers of securities from one holder between different custodians. Transfers may be free of payment or against payment. In 2009, the number of free of payment transfers fell 25%, while the number of transfers against payment rose slightly, although the effective amount fell significantly. In the case of Latibex, the number of free of payment transfers fell slightly, while the number of transfers against payment fell significantly. The amounts of the transfers against payment declined 44% (see table 5.6).

2009 saw an improvement in settlement efficiency. The amount of failed settlements with regard to total trades to be settled was 0.3%, an improvement on the 0.8% registered in 2008, largely due to the collapse of Lehman Brothers. Similarly, the number of non-settled trades on D+3 was 0.2% of total trades, compared with 0.5% registered in the previous year. The reduction in activity and the fall in corporate movements also contributed to the platform's efficiency.

Iberclear SCLV. Trades settled

TABLE 5.6

Millions of euros

Trades	Stock market				Latibex			
	No. of trades		Amount		No. of trades		Amount	
	2008	2009	2008	2009	2008	2009	2008	2009
Purchases and sales	27,493,503	23,236,231	2,529,808	1,764,150	71,079	60,097	1,522	873
Failed settlements	65,042	21,528	10,354	2,610	1,717	1,664	46	28
Buy-ins	869	192	90	7	18	30	0	0
Transfers f.o.p.	247,739	185,284	—	—	1,784	1,655	—	—
Transfers a.p.	991,530	995,382	480,945	356,728	2,014	1,594	59	33
Total	28,732,772	24,416,897	3,010,753	2,120,878	74,877	63,346	1,580	906

Source: CNMV. Transfers f.o.p. = transfers free of payment. Transfers a.p. = transfers against payment.

5.1.3 Technical enhancements Iberclear-SCLV

Proposal to modify Iberclear's Regulations

On 29 December 2009, the CNMV Board passed on to the Ministry of the Economy and Finance the favourable proposal for the request presented by Iberclear to modify its Regulations relating to the new procedure for settling and registering settlements and OTC trades, as well as activities through links with other central securities depositories. The proposal included favourable reports from the Bank of Spain and the Autonomous Regions with authority in this area, all in line with point 4 of Section 44 of the Securities Market Act.

The request presented by Iberclear includes two new titles:

- 1) Title V, which includes a new procedure for settling and registering bilateral trades conducted outside the official secondary market.
- 2) Title VI, which contains an extension of the current content of the activities and services offered through the direct link with other central securities depositories and a framework for the agreements with entities which perform similar functions.

Link Up Markets

Development of the Link Up Markets continued over 2009, with the aim of improving efficiency and reducing post-trade costs of cross-border securities transactions. The initiative currently covers central securities depositories. On 29 June 2009, Iberclear connected to the Link Up Markets infrastructure.

New multilateral settlement cycle

The development of the operational framework for clearing and settlement systems in Europe has generated the need to provide settlement systems with greater flexi-

bility and new functionalities. Iberclear, in accordance with its Circular n^o 3/2002, may establish more than one settlement cycle for each settlement day. The aforementioned Circular delegates and authorises that these processes may be developed and established by means of an operational instruction. On 11 May 2009, Iberclear implemented a new multilateral stock market settlement cycle in accordance with the provisions in its Operational Instruction No. 8/2009, of 3 April. Three settlement cycles have now been established: at 9 AM, 1 PM and 3 PM. This new cycle increases intraday strength as it provides participants with greater capacity to reuse their assets.

Mechanisms for dependent settlement

In addition, in order to provide the settlement system with greater flexibility and to align its procedures with international standards, Iberclear approved Operational Instruction No. 15/2009, of 3 December, which was included in the mechanism for retaining and releasing orders in the communication of stock market transfers and lending, as well as transfers instructed on the CADE platform. In accordance with the new operations, orders will not pass to the settlement process while they are being retained. This Instruction will enter into force in May 2010, and the entities will enjoy a test month in which they can check the developments that they need to put in place.

5.1.4 European integration initiatives

In 2009, further progress was made in the different initiatives relating to post-trading in Europe. The most noteworthy aspects are described below.

Target2-Securities (T2S)

The key aspects of this project are: (i) development of the project's specification, (ii) appointment, by the Governing Council of the European Central Bank, of a new Programme Board for T2S, responsible for executing the decisions adopted by the Governing Council, (iii) signing of a collaboration agreement between the European Central Bank, the 16 Central Banks in the Eurozone and the 27 Central Securities Depositories (CSD) interested in participating in T2S, including Iberclear, in order to prepare the next phase in the project's development, and (iv) continuation of the work carried out by the legal group set up by the Eurosystem to specify the legal nature of the institution which will ultimately offer the centralised settlement system, its corporate governance system and the contractual mechanisms to be used.

ESCB-CESR recommendations on clearing and settling infrastructures

In June 2009, the *Recommendations for securities settlement systems and central counterparties* was approved. This was prepared jointly by the Committee of European Securities Regulators (CESR) and the European System of Central Banks (ESCB). The new document is based on previous documents of the CPSS-IOSCO, with recommendations about securities settlement systems (November 2001¹), the

1. See CPSS-IOSCO (2001).

management methodology for these systems (November 2002²) and recommendations for central counterparties (November 2004³). Unlike the functional approach taken by those documents, the ESCB-CESR recommendations are aimed at public authorities instead of at post-trade service providers.

The key improvements introduced with regard to the original CPSS-IOSCO document are as follows: including treatment of risks for central counterparties regarding the clearing of OTC derivatives, strengthening the protection of customers' assets in custody (Recommendation 12 for securities settlement systems), and treatment of legal cover and cover for the risks arising from the activities of central securities depositories (CSD) and central counterparties under interoperability agreements, which update the traditional treatment of the links (recommendations 1 and 19 for CSD and 1 and 11 for central counterparties)

Member State working group on derivatives and market infrastructures

On 25 September 2009, the G-20 leaders agreed that OTC contracts for standardised derivatives should be traded on electronic markets or platforms and should be cleared in central counterparties by the end of 2012 at the latest. In addition, OTC derivative contracts should be reported to centralised institutions, known as trade repositories. On 20 October 2009, the European Commission published a Communication⁴ which announced the immediate adoption of any legal initiatives to enforce the G-20 decisions. On 2 December, the Council of the European Union supported the Commission's legislative initiative, underlining the need to adopt measures to facilitate progress in the areas of access and interoperability. Once it had received the Council's support, the Commission organised a member state working group, which began to develop this initiative in the middle of January 2010.

Member State working group on possible future legislation on legal certainty of securities holding and dispositions

The European Commission is preparing a draft Directive on legal certainty in securities holding, transactions and dispositions. This legislation is expected to occupy the legal framework for book-entry securities holding and dispositions. The aspects which this Directive will legislate on include: legal disputes relating to regulating the exercise of investors' rights flowing from securities through a chain of intermediaries (including cross-border situations), the establishment of a free, EU-wide choice of issuers, irrespective of the initial entry of their securities in any specific central securities depository, and submission of any activity of custody and administration of securities under an appropriate supervisory regime.

In order to begin the work of developing the Directive, the Commission organised a Member State working group, which began to develop this initiative in the middle of January 2010.

2. See CPSS-IOSCO (2002).

3. See CPSS-IOSCO (2004).

4. See European Commission (2009c).

5.2 MeffClear

Markets and issuers
Registry, counterparties,
clearing and settlement

In 2009, MeffClear registered 531 trades with a total market value of 87,789 millions of euros. These figures show significant growth compared with 2008, both in cash terms (102.7%) and in trades (86.3%) (see table 5.7). All the transactions consisted of Senaf repo trades, with no executed trade registered outside this platform.

The increase in activity is related to the general increase in repo trading and the transfer of trades to this central counterparty in order to reduce the consumption of capital through bilateral risk. The argument of regulatory capital savings is even more evident in the case of forward trades, as these involve a greater consumption than overnight trades. This explains the significant increase in the average term of the transactions, which went from 1.9 days in 2008 to 7.9 days in 2009.

The number of members fell by one, down to 14, as Caja de Ahorros Municipal de Burgos left the clearing house last year.

Activity in MeffClear

TABLE 5.7

Millions of euros	2008	2009
Senaf platform: trades cleared	43.317	87.789
Bilateral transactions: trades cleared	0	0
Total	43.317	87.789
Senaf platform: number of trades	285	531
Bilateral transactions: number of trades	0	0
Total	285	531
No. of members	15	14

Source: MeffClear/CNMV.

6.1 General overview

As a result of the decline in trading activity and, from March, in the volatility in the market of the underlying assets, the number of contracts traded on the Spanish financial derivatives markets fell in almost all instruments in 2009. As shown in table 6.1, the main exception was the MEFF segment of share options due to the significant increase in the registration of OTC transactions aimed at reducing counterparty risk through this market's central counterparty. It is also important to point out the sharp increase in trading in the Olive Oil Futures Market.

Trading on Spain's financial derivatives markets

TABLE 6.1

No. of contracts, except where otherwise stated

	2006	2007	2008	2009	Change (%) 2009/08
MEFF FI	15	13	12	18	50.0
Debt futures	15	13	12	18	50.0
Debt options	—	—	—	—	—
Mibor futures and options	—	—	—	—	—
Euribor futures	—	—	—	—	—
MEFF Equity	40,775,643	44,176,717	72,988,780	86,302,237	18.2
Ibex 35 futures	6,568,791	8,721,832	7,605,341	5,751,818	-24.4
Ibex 35 Plus	6,408,961	8,435,258	7,275,299	5,436,989	-25.3
Ibex 35 Mini ¹	159,830	286,574	330,042	314,829	-4.6
Ibex 35 options	551,062	567,077	828,622	435,726	-47.4
Stock futures	21,229,811	21,294,315	46,237,568	44,586,779	-3.6
Stock options	12,425,979	13,593,493	18,317,249	35,527,914	94.0
Total MEFF	40,775,658	44,176,730	72,988,792	86,302,255	18.2
Electronic market	2,852,348	5,085,503	2,872,261	1,730,694	-39.7
Warrants ²	2,852,348	5,085,503	2,872,261	1,730,694	-39.7

Source: CNMV. (1) 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 euros). (2) Premiums traded, in thousands of euros, in the electronic market.

6.2 MEFF

Trading on MEFF, measured by the number of contracts, maintained the upward trend of recent years, increasing by 18.2%. Of the main European markets, only the Italian IDEM/MIF derivatives market grew at a higher rate, as shown in table 6.2.

Trading on Europe's financial derivatives markets

TABLE 6.2

Thousands of contracts

	2006	2007	2008	Change (%)	
				2009	2009/08
Eurex	1,526,753	1,899,812	2,165,043	1,687,159	-22.1
NYSE Euronext	730,303	949,022	1,049,730	1,056,012	0.6
Nasdaq OMX	150,980	164,155	166,481	102,129	-38.7
MEFF	40,776	44,177	72,989	86,302	18.2
IDEM/MIF	31,606	37,125	35,929	42,583	18.5

Source: Eurex and CNMV.

Futures on Spanish shares were once again the most traded product on MEFF by number of contracts. However, in 2009, trading of these contracts fell slightly by 3.6%. This decline was partly due to the reduction in the number of large volume trades in the days close to the payment of dividends, which in 2008 was very significant. Futures on the most liquid and largest-cap shares accounted for the bulk of trading. Equity futures on Banco Santander, BBVA, Telefónica and Iberdrola accounted for 87.5% of total trading.

Trading on equity options almost doubled compared with 2008, exceeding 35.5 million contracts. As has been indicated, this increase is related to the increase in the registration of OTC transactions in the MEFF central counterparty. As in equity futures, trading in options was concentrated in the most liquid and largest-cap shares. In particular, options on Telefónica, BBVA and Banco de Santander accounted for 91.3% of total trading.

Trading in Ibox 35 options and futures fell significantly. Trading in Ibox 35 futures declined 24.4% with respect to 2008, to slightly over 5.7 million contracts (table 6.1). The decline was especially significant in the Ibox 35 Plus future, which fell 25.3%, while the Ibox 35 Mini future, which is more focused on the retail investor, fell 4.6%. The fall in trading in Ibox 35 options was even sharper than for futures. The number of contracts fell 47.4% compared with the previous year, to slightly over 4.3 million contracts.

As in 2008, the number of MEFF members fell both in MEFF Equity and Meff Fixed Income. The decline was the result of a regularisation process carried out by the governing companies, which deregistered the entities that had not operated for over one year.

MEFF membership figures

TABLE 6.3

	2008	2009
MEFF equity	114	94
Settling custodian members	29	26
Settling members	29	26
Trading members	31	23
Proprietary trading members	25	19
MEFF fixed income	49	37
Settling custodian members	30	24
Settling members	9	7
Trading members	10	6

Source: MEFF and CNMV.

6.2.1 New developments in MEFF

The main new feature in 2009 with regard to products was MEFF's October launch of a new Ibex 35 future, entitled "Impacto Div". This index brings together the sum of the dividends paid by the companies which make up the Ibex 35 index in a pre-determined period. This new future makes it possible to isolate the dividend component of an Ibex 35 future, providing or eliminating exposure to that variable. This contract has not been traded since its launch.

In addition, several modifications in the general conditions of certain contracts have been approved. Specifically, the size of the trading ticks has been modified (to make them more compatible with trading of the underlying asset) as has the settlement (so that, in the case of corporate events subject to adjustment, the settlement is more precise and will not require supplementary cash settlements), as well as the procedure for calculating the settlement price on maturity.

With regard to changes in the margins, in addition to the circulars modifying parameters, the margin levels have been gradually reduced as market volatility subsided. It is important to mention the updating of the additional margins for large positions, which are set as a multiple of the daily margin and are applied to Ibex 35 positions.

Furthermore, MEFF also provided its members with a new high-speed access, thus making it possible to reduce line latency. This new access meets the growing demand from some members which follow high-frequency trading strategies.

6.3 Warrants and certificates

6.3.1 New developments in the segment of warrants, certificates and other items

In 2009, two new types of exotic product were introduced in the warrants segment: *inline warrants* and *turbo pro warrants*. The former are corridor warrants which incorporate a special mechanism called “barrier level” whereby the warranty expires in advance of its expiry date if, over the life of the warrant, the price of the underlying asset reaches or exceeds certain given upper or lower levels. *Turbo pro warrants* are a variety of turbo warrant which start trading when the underlying asset on which the warrant is issued trades within its activation range.

It should also be pointed out that in February 2009 trading of the securities in the warrants, certificates and others segment was migrated from the SIBE platform to a new platform called SMART-warrants. This new platform has greater capacity than the previous one, allowing market members to enter a greater number of transactions per second, and providing greater flexibility for specialists to enter combined purchase and sale positions.

6.3.2 Issues

For the first time since 2004, both the amount of premiums and the number of issues fell in 2009. The former fell by 57.8% compared with the previous year to 5.2 billions of euros. As in 2008, half of the value corresponds to share warrants, 38% to index warrants and the rest to currency and commodities warrants (see table 6.4). The number of issues fell 25%, while the number of issuers rose from eight to nine. For the first time since 2005, no certificate issue was registered (see table 6.5).

Warrant issues registered with the CNMV

TABLE 6.4

Thousands of euros

	Number		Amount of premium				
	Issuers	Issues	Total	Shares	Indices ¹	Currencies	Commodities
2005	6	1,720	1,840,016	1,180,845	562,258	61,110	35,803
2006	8	4,063	5,143,108	3,697,600	1,070,119	286,810	88,580
2007	7	7,005	8,920,269	6,215,075	2,313,222	163,201	228,772
2008	8	9,790	12,234,336	6,914,044	4,552,107	425,336	342,850
2009	9	7,342	5,165,129	2,607,091	2,000,077	328,862	229,099

Source: CNMV. (1) Includes baskets of securities and indexes.

Certificate issues registered with the CNMV

TABLE 6.5

Thousands of euros

	Number		Amount of premium				
	Issuers	Issues	Total	Shares	Indices ¹	Currencies	Commodities
2006	1	2	95,650	75,650	20,000	0	0
2007	2	8	418,390	0	385,000	0	33,390
2008	1	10	120,083	31,583	88,500	0	0
2009	0	0	0	0	0	0	0

Source: CNMV. (1) Includes baskets of securities and indexes.

6.3.3 Trading

Trading on the secondary market in warrants fell significantly compared with 2008, both in terms of total premiums traded (-39.9%), and the number of warrants traded (-17.7%). The fall affected all types of underlying assets. Accordingly, traded premiums for individual share warrants fell 47.5%, while trading for warrants on indexes fell 28.6% (see table 6.6).

Trading in warrants on the electronic market

TABLE 6.6

Premiums traded, in thousands of euros

	No. of issues	Premiums traded, by type of underlying asset				Total
		Indexes ¹	Shares	Currencies ²	Commodities	
2005	2,698	516,788	1,587,593	25,262	12,734	2,142,377
2006	4,268	727,918	2,098,613	25,817	55,046	2,907,394
2007	7,837	1,378,286	3,674,848	32,369	44,123	5,129,626
2008	9,770	1,066,510	1,727,644	78,107	71,467	2,943,728
2009	8,038	761,610	907,527	61,557	37,749	1,768,443

Source: CNMV. (1) Includes baskets of securities and indexes. (2) Includes fixed-income warrants in the years in which these were traded.

Trading in certificates underwent a sharp increase (see table 6.7), despite the absence of new issues during the year and the fall in the number of issues traded (22 compared with 26 in 2008).

Trading in certificates on the electronic market by type

TABLE 6.7

Premiums traded, in thousands of euros

	No. of issues	Premiums traded, by type of underlying asset				Total
		Indexes ¹	Shares	Currencies	Commodities	
2004	16.0	78,556.9	0.0	0.0	0.0	78,556.9
2005	15.0	69,760.1	0.0	0.0	0.0	69,760.1
2006	14.0	58,725.0	87.2	0.0	0.0	58,812.2
2007	18.0	48,494.6	1,299.0	0.0	0.1	49,793.7
2008	26.0	13,673.4	1,617.3	0.0	1,513.8	16,804.5
2009	22.0	33,086.8	978.1	0.0	5,095.0	39,159.9

Source: CNMV. (1) Includes baskets of securities and indexes.

6.4 Other financial contracts

The registration of call and put option contracts with the CNMV fell 54.5% in 2009, following the trend of the previous two years (see table 6.8). The nominal amount issued was 35 millions of euros, of which 25 millions corresponded to share options and 10 millions to options on baskets of shares. As in the previous year, only one issuer registered this type of contract.

Issues of call and put option contracts registered with the CNMV

TABLE 6.8

thousands of euros

	Number		Amount of premium				
	Issuers	Issues	Total	Shares	Indices ¹	Commodities	Exchange rates
2005	4	13	112,200	87,800	16,400	0	8,000
2006	4	12	206,840	196,240	10,600	0	0
2007	3	9	151,000	145,000	6,000	0	0
2008	1	4	77,000	77,000	0	0	0
2009	1	3	35,000	25,000	10,000	0	0

Source: CNMV. (1) Includes baskets of securities and indexes.

6.5 Olive Oil Futures Market

Trading on the Olive Oil Futures Market (MFAO)¹ increased dramatically in 2009. Specifically, a total of 135,705 contracts were traded,² an increase of 182.2%. This increase was mainly due to the fact that applications increased by 560.6%, with a volume of 88,845 euros. Market transactions also increased, although to a lesser extent, amounting to 46,860 contracts, 35.3% up on 2008. In line with the increase in the number of contracts, the average of open positions went from 6,664 contracts in 2008 to 11,309 in 2009.

The increase in trading on MFAO indicates that this market is becoming a necessary reference for the olive oil sector, as highlighted by the increase in trades performed by industrial members of the market which, until now, held their positions until maturity.

The number of MFAO members did not change in 2009. However, its composition did (see table 6.9). Over the year, the number of settling members fell by one due to the merger of Banco Popular and Banco de Andalucía, while one new industrial member joined (Aceites Maeva, S.L.).

MFAO membership figures

TABLE 6.9

	2008	2009
Settling custodian members	5	5
Settling members	6	5
Trading members	2	2
Industrial members	5	6
Total	18	18

Source: MFAO and CNMV.

1. The Olive Oil Futures Market (MFAO) began operating on 6 February 2004. It was the first market in the world on which olive oil derivatives are traded.
2. Each olive oil future contract represents one tonne.

III Financial institutions and investment services

7 Collective investment (UCITS)

7.1. Mutual funds

Assets managed by mutual funds totalled 170.5 billions of euros at the end of the year, a fall of 3% compared with the previous year. In 2008, mutual funds suffered a 31% reduction in their assets due both to falling prices and the fact that redemptions predominated over subscriptions. In 2009, the portfolio generated gains thanks to the rise in asset prices. Therefore, the slight decline in assets held in the year is attributable to redemptions. Nevertheless, it should be pointed out that, as from the middle of the year, net subscriptions were once again positive, and both the assets and the number of unit-holders began to rise. In the year as a whole, the gap between redemptions and subscriptions was five times lower than in 2008 (see annex II.1).

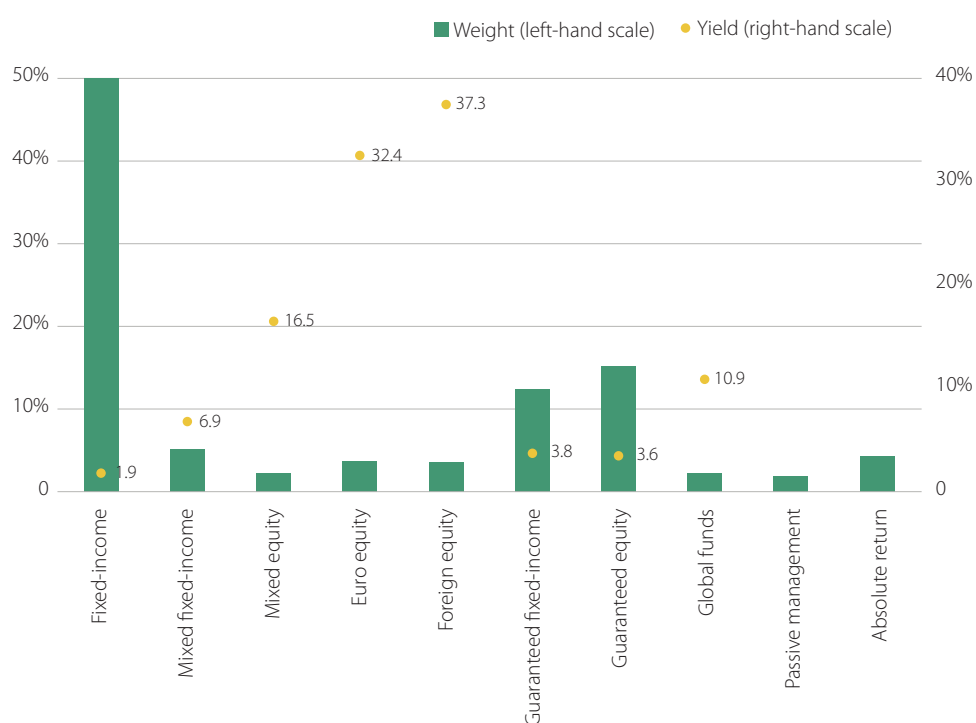
It is difficult to analyse assets by fund category because of certain difficulties resulting from the legislative change in classification by profiles introduced by Circular 1/2009, of the CNMV, which entered into force in the second quarter of 2009, leading to numerous funds being reassigned to different categories (see legislative annex for further details). In general terms, the most significant falls in assets over the year took place in the lower risk categories, that is, guaranteed fixed-income and equity funds and fixed-income funds, which suggests strong competition with bank deposits. At the end of the year, these three types of mutual funds accounted for 77% of the total assets held in mutual funds, five percentage points less than in 2008.

Yields were positive in all fund categories (see figure 7.1 and annex II.4). Given the positive developments in stock markets worldwide, equity funds produced the highest yields, although without offsetting losses made in 2008. The lowest risk categories (guaranteed and fixed-income) obtained the lowest yields.

With regard to portfolio composition, the relative weight of the domestic portfolio fell slightly, especially in debt securities, in favour of the foreign portfolio, where the increase was especially notable in equity (see table 7.1). At the end of the year, the cash heading accounted for 4.26% of assets, compared with 4.95% in 2008. Despite the fall, the relative weight of this heading in the assets is still clearly higher than that seen in the years prior to the crisis and, at any event, the minimum required by regulations (3%). Finally, it should be pointed out that, as indicated in chapter 12 of this report, the CNMV has paid special attention to investments by mutual funds in low liquidity assets since the start of the financial crisis. These assets, which are mostly securitisation bonds and other private fixed-income assets, have maintained a relatively stable proportion of the assets over the last three years. At the end of last year, low liquidity investments in private fixed-income accounted for 30.1% of the portfolio in this segment, and 8.7% of total assets.

Mutual funds: breakdown of assets and yields by profile¹

FIGURE 7.1



Source: CNMV. (1) Annual yield is not provided for the "passive management" and "absolute return" profiles, which were introduced in 2009.

Mutual fund asset breakdown¹

TABLE 7.1

Thousands of euros

	2008	%	2009	%
Assets	175,865,523	100.0	170,547,707	100.0
Financial investment portfolio	166,384,653	94.6	163,165,461	95.7
Spanish securities	107,346,884	61.0	100,642,686	59.0
Securities representing debt	81,903,958	46.5	74,628,985	43.8
Equity instruments	4,023,150	2.3	4,740,969	2.8
UCITS	10,134,263	5.8	9,041,484	5.3
Deposits in credit institutions	10,657,500	6.1	11,552,208	6.8
Derivatives	627,902	0.4	679,017	0.4
Other	112	0.0	23	0.0
Foreign securities	59,036,046	33.6	62,486,994	36.6
Securities representing debt	49,660,535	28.2	48,435,165	28.4
Equity instruments	5,216,118	3.0	7,784,253	4.6
UCITS	3,524,463	2.0	5,665,351	3.3
Deposits in credit institutions	17,549	0.0	82,424	0.1
Derivatives	599,512	0.3	518,722	0.3
Other	17,869	0.0	1,078	0.0
Doubtful, delinquent and in litigation investments	1,723	0.0	35,781	0.0
Cash	8,703,200	5.0	7,268,186	4.3
Net balance (debtors/creditors)	777,670	0.4	114,061	0.1

Source: CNMV. (1) Excludes hedge funds.

Management companies have taken advantage of the changes in legislation regarding fund profiles in order to restructure their products by merging funds. Accordingly, of the 440 mutual funds withdrawn from the CNMV registries in 2009, 426 were absorbed by another mutual fund. In addition, the reduced appeal of mutual funds meant that UCITS management companies launched fewer funds in 2009 than in previous years. Consequently, at the end of the year, 2,593 funds were registered with the CNMV, a fall of 12% compared with the previous year. The average assets per fund rose from 60 millions of euros in 2008 to 67 millions in 2009.

Registrations and removals in 2009

TABLE 7.2

Type of firm	UCITS registered at 31/12/08		UCITS registered at 31/12/2009	
	Registrations	Removals	Registrations	Removals
Total financial mutual funds	6,354	132	594	5,892
Mutual funds	2,943	90	440	2,593
Investment companies	3,347	34	149	3,232
Funds of hedge funds	40	2	4	38
Hedge funds	24	6	1	29
Total real estate UCITS	18	0	2	16
Real estate mutual funds	9	0	1	8
Real estate investment companies	9	0	1	8
Foreign UCITS marketed in Spain	563	71	52	582
Foreign funds	312	47	35	324
Foreign companies	251	24	17	258
UCITS operators	120	2	2	120
Depositories	125	0	1	124

Source: CNMV

Following a reduction of more than 30% in 2008, the number of unit-holders fell 8% in 2009 to 5,475,403. Most of the de-registrations took place in fixed-income funds and guaranteed equity funds. These funds accounted for 60% of all unit-holders at the end of the year (see annex II.1 for further details). Resident natural persons made up 96% of mutual fund unit-holders and accounted for 77% of total assets, similar to the percentages in 2008.

7.2 Investment companies (SICAVs)

The number of SICAVs registered with the CNMV fell 3.4% in 2009 to 3,232 companies (see table 7.2). Almost all SICAVs were listed on the Alternative Stock Market. The number of shareholders also fell, as can be seen in table 7.3.

Despite these falls, and unlike the situation with most UCITS, the assets managed by SICAVs rose 5.1%. This rise was due to an increase in asset prices, as redemptions exceeded subscriptions. Accordingly, both the average assets per shareholder and the average assets per SICAV increased to 62,000 and 8 millions of euros respectively.

Unlike in the previous year, in 2009 the weight of foreign assets (43.6%) in the total assets managed by SICAVs rose significantly, mainly at the cost of private domestic fixed-income assets. The only heading under domestic assets which increased its relative importance was that of deposits in credit institutions. As with mutual funds, the cash heading remained at high levels compared with the period before the start of the financial crisis, although it did fall slightly, as shown by table 7.3.

Investment company asset breakdown

TABLE 7.3

Thousands of euros

	2008	%	2009	%
Assets	24,656,759	100.0	25,924,787	100.0
Financial investment portfolio	23,445,854	95.1	24,813,905	95.7
Spanish securities	16,175,123	65.6	13,514,699	52.1
Securities representing debt	10,434,124	42.3	7,400,434	28.6
Equity instruments	3,214,853	13.0	3,376,285	13.0
UCITS	1,108,840	4.5	1,091,069	4.2
Deposits in credit institutions	1,383,187	5.6	1,631,884	6.3
Derivatives	9,762	0.0	-6,634	-0.0
Other	24,356	0.1	21,662	0.0
Foreign securities	7,267,910	29.5	11,294,154	43.6
Securities representing debt	2,609,726	10.6	4,606,455	17.8
Equity instruments	2,014,579	8.2	3,559,352	13.7
UCITS	2,486,447	10.1	2,987,436	11.5
Deposits in credit institutions	28,881	0.1	26,277	0.1
Derivatives	120,472	0.5	113,050	0.4
Other	7,806	0.0	1,583	0.0
Doubtful, delinquent or in litigation investments	2,821	0.0	5,052	0.0
Intangible fixed assets	2	0.0	2	0.0
Property, plant and equipment	136	0.0	173	0.0
Cash	1,021,015	4.1	975,922	3.8
Net balance (debtors/creditors)	777,670	0.4	114,061	0.1
Pro-memoria: No. of shareholders	435,395		419,504	

Source: CNMV.

7.3 Hedge funds

Hedge funds were only recently introduced in Spain and are small compared with UCITS as a whole (accounting for less than 1% of total assets). At the end of 2009, their assets stood at 1.5 billions of euros, 6.3% down on the previous year, the first fall since these funds were introduced in Spain. The fall mainly took place in funds of hedge funds, the total assets of which fell 20.7%. In contrast, the assets held by hedge funds increased by 20.9%.

The difference between the two types of vehicles is mainly explained by the quantity of redemptions of funds of hedge funds, especially in the first half of the year. In both cases, portfolio yields were positive: 14.9% for hedge funds and 7.9% for

funds of hedge funds. However, while net subscriptions were positive for the former, net subscriptions were negative for the latter, especially during the first half of the year. It is worth remembering that, with the start of the financial crisis, funds of hedge funds faced liquidity and asset valuation problems associated with their investments in foreign hedge funds, which led to an increase in redemption requests. The second half of the year saw some improvement, with a net entry of funds.

The number of unit-holders developed in a similar way to the amount of assets. Accordingly, the number of unit-holders in hedge funds rose from 1,589 in 2008 to 1,917 in 2009, while unit-holders in funds of hedge funds fell from 5.646 to 5.321. The average assets per investor stood at around 340,000 euros for hedge funds and 150,000 euros for funds of hedge funds.

At the end of the year, there were 29 hedge funds registered with the CNMV (24 in 2008) and 38 funds of hedge funds (40 in 2008). Over half of the latter were formerly in an ordered process of liquidation or had informed the CNMV of their intention to do so. It is also worth pointing out that the vehicles registered in 2009 included the first two incorporated as companies.

7.4 Real estate UCITS

Real estate UCITS assets totalled 6.8 billions of euros at the end of 2009, 12.9% down on 2008. The number of unit-holders fell by 14% for real estate UCITS, standing at 83,583, while the number of shareholders in real estate investment trusts and companies fell 17% to 928. A total of 16 institutions were registered at the end of the year, spread equally between funds and companies.

In 2009, management of real estate UCITS continued to be dependent on the adjustments in the domestic real estate sector. Accordingly, in the case of real estate funds, which accounted for 95.4% of total assets at the end of the year, almost three quarters of the asset losses of these vehicles over the year are explained by negative yields from the portfolio (the negative yield of 8.3% was a historic low). The rest of the asset loss was due to the gap between redemptions and subscriptions which, however, was smaller than in 2008 (around one quarter of the amount for the period).

In this context, faced with the difficulties for meeting redemptions, some real estate funds opted for advance sales of assets, reducing the frequency of redemptions or carrying out additional valuations on real estate. In addition, the CNMV authorised the suspension of redemptions for a period of two years in two real estate funds, at the request of their management companies. At the end of the year, three institutions had their redemptions suspended (the two mentioned above plus a third one authorised in 2008). It should also be pointed out that, as of said date, one company was involved in a liquidation process. The aggregate assets of these four institutions accounted for 72.6% of the total.

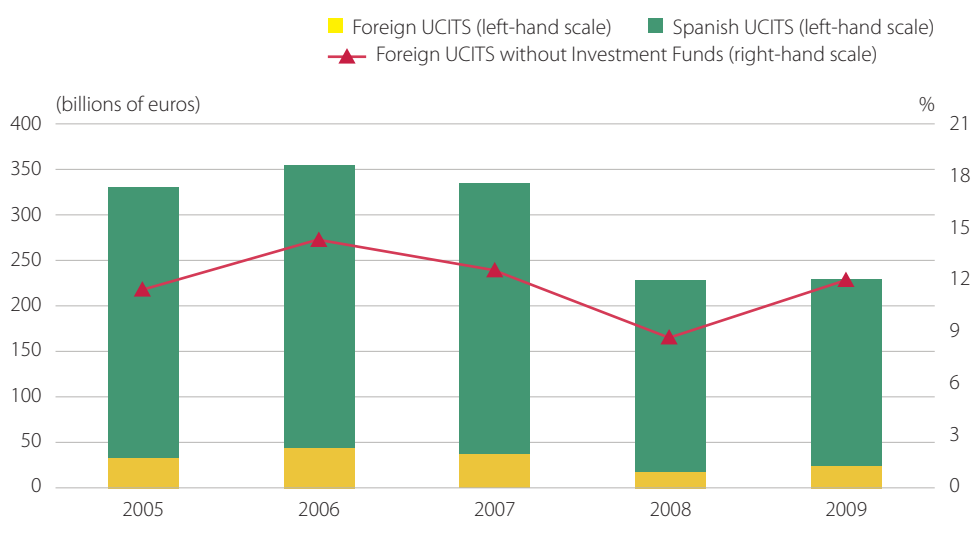
7.5 Foreign UCITS marketed in Spain

Following two years of falls, the volume of investments of foreign UCITS marketed in Spain rose 35% in 2009 compared with the previous year, up to 24.3 billions of euros at the end of the year. This was equivalent to 11.9% of the assets of Spanish UCITS, up from 8.6% in 2008 (see figure 7.2). However, despite this increase, the investment volume of foreign UCITS was still far from its historic high, which was reached in June 2007 (50 billions of euros).

At the close of the year, a total of 582 foreign UCITS were registered with the CNMV, of which 324 were funds and the rest were companies (see table 7.2). There were 71 new registrations during the year and 52 de-registrations. Most of the registered institutions were from Luxembourg, followed by France and Ireland (see annex II.5).

Assets of foreign UCITS marketed in Spain

FIGURE 7.2



Source: CNMV.

7.6 UCITS management companies

In December 2009, there were a total of 120 UCITS management companies registered with the CNMV, the same number as at the end of 2008, as there were two new registrations and two de-registrations (see annex II.6). The number of managed UCITS fell significantly due to the high number of mergers between funds, as mentioned above. At the end of the year, total assets managed by UCITS management companies fell slightly to 203.7 billions of euros. This was made up of all the assets of mutual funds plus over 96.3% of SICAVs assets. As in the preceding years, the managed assets were extremely concentrated. Accordingly, at the end of the year, two UCITS management companies accounted for 31.7% of the managed assets, while the top 10 management companies by assets managed accounted for 63.9% of the total.

UCITS management commissions, which make up the bulk of the commissions received by UCITS management companies (see table 7.4), fell 25.8% compared with 2008. This fall, which in relative terms greatly exceeds the fall in managed assets, suggests that management companies were forced to significantly reduce

the commissions applied. Accordingly, while in 2008 management commissions received were the equivalent of 1.1% of assets, in 2009 this figure fell to 0.8%. There was also a significant fall in the commissions received for subscriptions and redemptions.

The fall in commissions received was partially offset by a similar fall, in relative terms, of the marketing commissions paid to other entities. Despite this, the sector's gross margin fell by 30.5%. Operating expenses fell by 7.5%, but this fall was offset by the sharp increase in impairment losses, which were four times greater than in the previous year. Finally, aggregate profit before tax of the UCITS management companies fell by 52.5%, down to 236.3 millions of euros.

Income statements of UCITS management companies

TABLE 7.4

thousands of euros

	2008	2009	Change (%)
Interest margin	69,722	18,617	-73.3
Net commissions	789,613	612,542	-22.4
Commission revenues	2,457,653	1,815,038	-26.1
UCITS management	2,315,119	1,717,145	-25.8
Front-end and back-end fees	86,239	41,846	-51.5
Other	56,294	56,047	-0.4
Commission expenses	1,668,040	1,202,496	-27.9
Profit from net financial investments	14,196	-9,439	—
Earnings on capital instruments	4,192	2,221	-47.0
Net exchange differences	-117	-355	203.9
Other products and net operating charges	1,882	-12,648	—
Gross profit	879,488	610,939	-30.5
Operating expenses	357,173	330,544	-7.5
Staff costs	213,974	200,059	-6.5
General expenses	143,200	130,485	-8.9
Depreciation, amortisation and other provisions	16,524	13,125	-20.6
Impairment losses on financial assets	5,926	24,504	313.5
Net operating profit	499,865	242,766	-51.4
Other gains/losses	-2,035	-6,434	216.1
Profit before tax	497,830	236,332	-52.5
Corporation tax	151,988	78,107	-48.6
Profit from continuing operations	345,842	158,225	-54.2
Profit from discontinued operations	0	0	—
Profit for the year	345,842	158,225	-54.2

Source: CNMV.

At the end of the year, the number of loss-making firms amounted to 31, three less than in 2008. Aggregate losses totalled 40.9 millions of euros (see table 7.5), more than double the losses recorded in 2008. This was mainly due to one entity whose losses were almost five times higher than in the previous year.

**Profit before taxes, ROE and the no. of loss-making firms
and amount of loss**

TABLE 7.5

thousands of euros

	Profit before taxes	No. of loss-making firms	Amount of loss
2005	622,779	16	5,798
2006	743,961	12	4,507
2007	770,649	19	5,330
2008	497,830	34	19,725
2009	236,332	31	40,939

Source: CNMV.

7.7 UCITS depositories

At the end of the year, a total of 124 entities were registered as depositories, one less than in 2008 (see table 7.2). Segregating the assets under custody of the UCITS by type of depository, the figures for December 2009 show a slight fall in the market share of banks (of 2.3 percentage points to 65.3%, and of broker-dealers and dealers (of 0.1 percentage points, to 3.4% of the total assets under custody). On the other hand, savings banks increased their share (2.1 percentage points to 29.4%) as did credit cooperatives (0.3 percentage points to 1.9%).

8 Provision of investment services

8.1 Credit Institutions¹

As at 31 December 2009, a total of 193 Spanish credit institutions were registered with the CNMV (banks, savings banks and credit cooperatives), two fewer than at the end of 2008. In addition, 423 foreign credit institutions authorised to operate in Spain were registered with the CNMV, nine more than in 2008, of which 362 operated under the free provision of services regime and 61 through branches. Most foreign credit institutions are from another Member State of the European Union (413 institutions, eight more than in 2008).

As in the previous year, in 2009 credit institutions suffered a significant fall in revenue for providing securities services and marketing mutual funds, as shown in table 8.1. In general terms, this fall reflects the lower appeal of stock market related investments, fuelled by investors' high perception of risk within the context of recession and considerable uncertainty. The breakdown reveals that the fall was especially significant in marketing mutual funds, which is the main source of revenue for stock market related services. In all, revenue for providing investment services continued to lose ground in the total revenue of credit institution services (in 2009 they amounted for 16.3% of the total, ten points under the top reached in 2006).

Credit institutions continued to play a central role in terms of their share of total revenue for investment services. As shown in table 8.2, credit institutions accounted for the bulk of revenue for placement and underwriting, administration and custody and marketing mutual funds. They also led in asset management. However, broker-dealers and brokers maintain their leading position in order processing and execution, with 60% of total commissions.

1. Credit institutions are allowed to provide investment services providing that the legal regime under which they operate, their articles of association and specific authorisation allows them to do so. In this case, they are supervised by the CNMV. The Bank of Spain informs the CNMV of the credit institutions, both Spanish and foreign, which are authorised to provide investment services in Spain.

Credit institution revenue from the provision of securities services and marketing non-bank financial products

TABLE 8.1

Amounts in millions of euros

	2006	2007	2008	2009	% of credit institutions' total commissions
Securities services	1,394	1,751	1,286	1,177	8.0
Placement and underwriting	143	340	124	163	1.1
Securities trading	472	608	467	400	2.7
Administration and custody	681	675	601	533	3.6
Asset management	98	128	94	81	0.6
Marketing of non-bank financial products	3,923	4,237	3,661	3,002	20.5
Mutual funds	2,498	2,530	1,801	1,248	8.5
Pension funds	433	483	482	446	3.0
Insurance	935	1,131	1,291	1,204	8.2
Other	57	93	87	104	0.7
Pro memoria:					
Total revenues for commissions	14,534	16,242	15,585	14,677	100.0

Source: Bank of Spain.

Commissions received for investment services

TABLE 8.2

Amounts in millions of euros

	Broker-dealers and brokers	Portfolio management companies	Credit institutions (CI)	Total	% CI/total
Total for investment services	767	19	2,425	3,211	75.5
Placement and underwriting	29	—	163	192	84.9
Securities trading	603	—	400	1,003	39.9
Asset management	31	19	81	131	61.8
Administration and custody	17	—	533	550	96.9
Mutual fund marketing	87	0	1,248	1,335	93.5

Source: CNMV and Bank of Spain.

8.2 Investment services firms

8.2.1 Broker-dealers and brokers

Authorisation and registration

At the end of 2009, 100 broker-dealers and brokers were registered with the CNMV, one less than in 2009. This was the result of four registrations and five de-registrations over 2009 (see table 8.3). All the registrations of Spanish entities corresponded to brokers which were not stock market members. With regard to de-registrations, one was of a foreign banking entity, three were foreign insurance companies, and the other was a Spanish insurance company (see annex II.8 for further details).

Registrations and de-registrations

TABLE 8.3

Type of firm	Firms at 31/12/08	Registrations	De-registrations	Firms at 31/12/2009
Spanish firms	101	4	5	100
Broker-dealers	51	0	1	50
Stock market members	37	0	0	37
Non-members	14	0	1	13
Brokers	50	4	4	50
Stock market members	7	0	0	7
Non-members	43	4	4	43
Foreign firms	1,818	236	132	1,922
With a branch	37	2	3	36
Free provision of services	1,781	234	129	1,886
Pro memoria:				
Representatives	6,668	689	617	6,740

Source: CNMV.

In 2009, there were few significant changes in the controlling interests of broker-dealers and brokers. It is important to mention the acquisition of a broker-dealer by a Spanish credit institution and the acquisition of a broker by a foreign insurance company (see annex II.9).

Use of the community passport by broker-dealers and brokers authorised in Spain continued to be limited in 2009. Accordingly, at the end of the year only two firms had branches in other European Union countries (United Kingdom and Sweden), the same as in the previous year. The number of firms under free provision of services, that is, without physical premises, increased from 33 to 36 (see annex II.10).

The number of firms authorised in other Member States of the European Union operating in Spain increased, although by less than in 2008. Specifically, the increase took place exclusively under the free provision of services regime, where the number of firms rose from 1,781 in 2008 to 1,886 in 2009. However, the number of foreign firms with a branch fell from 37 to 36. Most of the firms with the community passport operating in Spain, or which have declared their interest in doing so, are from the United Kingdom (see annex II.7).

Profitability and solvency

2009 was once again a complicated year for the sector, characterised by a fall in revenues from the main lines of business, although the falls were less intense than in the previous year. Aggregate profit before tax for broker-dealers and brokers as a whole totalled 369.6 millions of euros, 29.6% down on 2008. The fall in profits was sharper, in relative terms, for brokers (53%) than for broker-dealers (28.6%)², although in both cases the falls were lower than those recorded in 2008 (79% for the

2. When interpreting this figure, it is important to bear in mind that in 2008 one firm obtained exceptionally high profits on own account trading in OTC markets, which were not repeated in 2009. If we exclude this firm, the reduction in aggregate profit before tax for the remaining entities in this sector was 13.1%.

former and 36% for the latter). Furthermore, the fall in profits was not as generalised as in the previous year and, in fact, one third of firms improved their profits, compared with 17% in 2008. As regards the distribution of aggregate profits, broker-dealers accounted for 95% of the sector's profit before tax in the year.

As shown in table 8.4, provision of services to third parties was the main source of revenue for broker-dealers, contributing in net terms almost 70% of their gross profit. Gross revenue for this item totalled 782 millions of euros, 17.2% lower than in 2008. These transactions mainly include those arising from processing and executing orders, which fell by 17.2%, mainly because of the fall in the amount of trades brokered in Spanish equity markets. As shown in figure 8.1, the average effective brokerage applied in these markets by broker-dealers which are stock market members rose slightly, following several years of falls. Revenue from commissions also fell in the other services, except in investment advisory services, which increased by 9%.

Income statement for broker-dealers¹

TABLE 8.4

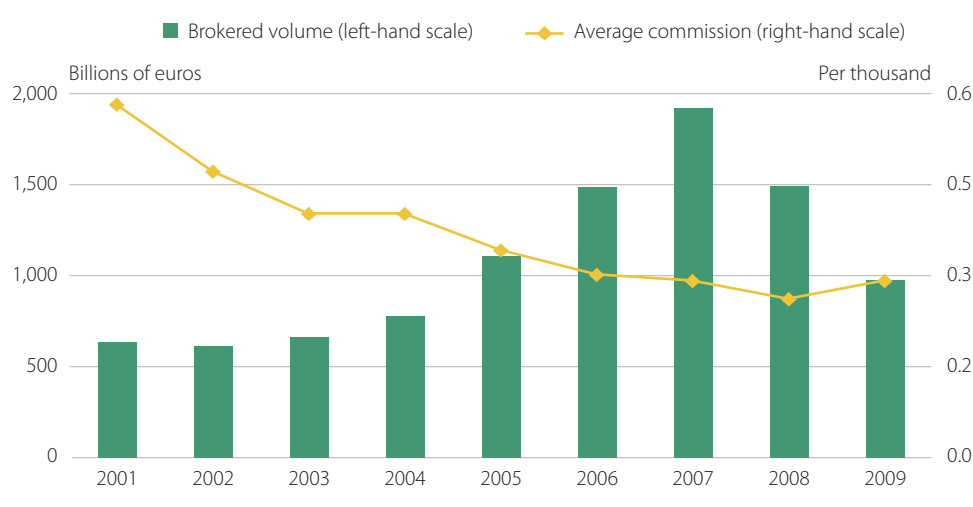
Amounts in thousands of euros

	2008	2009	% change 09/08
Interest margin	109,682	163,202	48.8
Net commissions	674,204	529,792	-21.4
Commission revenues	943,619	781,555	-17.2
Order processing and execution	648,036	548,951	-15.3
Placement and underwriting	42,502	25,726	-39.5
Deposit and entry of securities	21,198	16,183	-23.7
Marketing UCITS	91,167	63,296	-30.6
Portfolio management	17,306	11,543	-33.3
Investment advisory services	52,276	56,966	9.0
Other	71,134	58,889	-17.2
Commission expenses	269,415	251,763	-6.6
Profit from financial investments	800,194	43,855	-94.5
Net exchange differences	-643,539	22,437	—
Other products and operating charges	17,012	-854	—
Gross profit	957,553	758,431	-20.8
Operating expenses	445,842	378,100	-15.2
Staff costs	288,077	240,851	-16.4
General expenses	157,764	137,249	-13.0
Depreciation, amortisation and other provisions	8,442	7,729	-8.5
Impairment losses on financial assets	69,059	96,855	40.3
Net operating profit	434,209	275,747	-36.5
Other gains/losses	68,683	83,343	21.3
Profit before tax	502,893	359,090	-28.6
Corporation tax	137,519	98,631	-28.3
Profit from continuing operations	365,374	260,458	-28.7
Profit from discontinued operations	2,292	0	-100.0
Profit for the year	367,665	260,458	-29.2

Source: CNMV. (1) Includes information from all firms which were included in the CNMV registries at any time during the year, and not only at year-end.

With regard to proprietary trading of broker-dealers, profits from financial investments (trading portfolio) fell, mainly due to the fall in profit under this heading of one firm, as indicated above. If we exclude this firm, profit from financial investments for the other firms totalled 88 millions of euros, compared with a loss of 3.9 millions of euros in 2008. This improvement was focused mainly on equity and, above all, on derivatives. The composition of the aggregate securities portfolio changed substantially. The proportion of Spanish private fixed-income securities fell at the end of the year, from 51% of the total portfolio in 2008 to 18% in 2009. There was also a substantial fall in financing through temporary asset assignment. The sharp fall in interest expenses for this item was enough to offset the fall in interest and dividends from investments, leading to a 49% rise in the interest margin.

Broker-dealers which are stock market members: Brokered volume and average effective commission in Spanish equity FIGURE 8.1



Source: CNMV.

The gross profit for broker-dealers, which is the result of summing the net revenue for interest, commissions and profit from the trading portfolio, plus net exchange differences and other products and operating profits, fell by 20.8% compared with 2008. The operating profit fell by 36.5%, despite a new fall in operating expenses, which was more than offset by the increase in impairment losses on financial assets. Total profit from non-ordinary activities (other gains and losses plus discontinued operations) was positive, and increased significantly compared with the previous year (17.4%).

As in recent years, in 2009 the profits of broker-dealers were extremely concentrated (the profit before tax of the five firms with highest profits accounted for 51% of the total). The fall in profits was generalised. However, compared with 2008, more firms recorded an improvement (30% of broker-dealers in 2009, compared with 11% in 2008). The number of loss-making broker-dealers rose slightly, from eight to ten. Seven of them were independent firms, that is, not part of a financial group.

Unlike broker-dealers, brokers may not invest on their own account. Therefore, their revenues basically come from providing services. In the case of brokers which are members of the stock market, their main source of revenue comes from processing and executing orders. However, most brokers are not members of the stock market and have opted for specialising in specific services. Most brokers are independent firms (37 out of a total of 50).

Aggregate profit before tax for brokers totalled 10.5 millions of euros in 2009, as mentioned above, 53% down on 2008. The fall in profits mainly reflects the fall in commission revenues, which totalled 144.4 millions of euros, 16.2% down on the previous year (these had fallen by 37% in 2008). The fall in revenue was generalised in all types of commissions. However, particularly noteworthy, because of their relative weight, were the commissions for processing and executing orders³ and the commissions for marketing UCITS, which declined 13.4% and 23.4% respectively (see table 8.5). As a result of the fall in commission revenues, gross profit fell by 18.4%. As operating expenses did not fall as sharply as revenues, both net operating profit and profit before tax fell by more than 50%.

Income statement for brokers¹

TABLE 8.5

Amounts in thousands of euros

	2008	2009	% change 09/08
Interest margin	7,980	2,652	-66.8
Net commissions	149,874	127,410	-15.0
Commission revenues	172,344	144,373	-16.2
Order processing and execution	62,345	53,988	-13.4
Placement and underwriting	4,847	2,989	-38.3
Deposit and entry of securities	676	509	-24.7
Marketing UCITS	31,287	23,966	-23.4
Portfolio management	21,137	19,633	-7.1
Investment advisory services	4,130	2,571	-37.8
Other	47,923	40,716	-15.0
Commission expenses	22,470	16,963	-24.5
Profit from financial investments	-1,176	1,709	—
Net exchange differences	75	-265	—
Other products and operating charges	3,451	-845	—
Gross profit	160,204	130,661	-18.4
Operating expenses	136,560	118,988	-12.9
Staff costs	84,711	72,196	-14.8
General expenses	51,849	46,792	-9.8
Depreciation, amortisation and other provisions	3,165	2,522	-20.3
Impairment losses on financial assets	102	60	-41.4
Net operating profit	20,377	9,090	-55.4
Other gains/losses	2,031	1,438	-29.2
Profit before tax	22,408	10,529	-53.0
Corporation tax	8,036	5,666	-29.5
Profit from continuing operations	14,372	4,862	-66.2
Profit from discontinued operations	0	0	—
Profit for the year	14,372	4,862	-66.2

Source: CNMV. (1) Includes information from all firms which were included in the CNMV registries at any time during the year, and not only at year-end.

3. Commissions for processing and executing orders accounted for over 75% of commission revenues for firms which are members of the stock market and 30% for non-members.

Despite the fall in aggregate profits, profits were uneven on an individual level. Accordingly, 18 of the 50 brokers registered at the end of 2009 recorded improved profits/losses before tax (14 of them obtained profits). The number of loss-making firms fell from 17 in 2008 to 14 in 2009.

From the total number of broker-dealers and brokers, a total of 24 firms, one less than in 2008, finished the year with losses. Of these, 15 had also recorded losses in 2008. As shown in table 8.6, the number of loss-making broker-dealers increased, while the number of loss-making brokers decreased.

**Profit before tax, and the no. of loss-making firms
and amount of the losses before tax**

TABLE 8.6

Amounts in thousands of euros

	Profits before tax ¹	No. of loss- making firms	Amount of the losses before tax
Broker-dealers			
2005	382,854	4	-17,463
2006	627,102	1	-635
2007	769,116	2	-14,437
2008	502,893	8	-13,356
2009	359,090	10	-16,839
Brokers			
2005	57,766	9	-3,256
2006	91,897	9	-4,167
2007	117,234	7	-3,261
2008	22,408	17	-9,911
2009	10,529	14	-8,831

Source: CNMV (1) Includes information from all firms which were included in the CNMV registries at any time during the year, and not only at year-end.

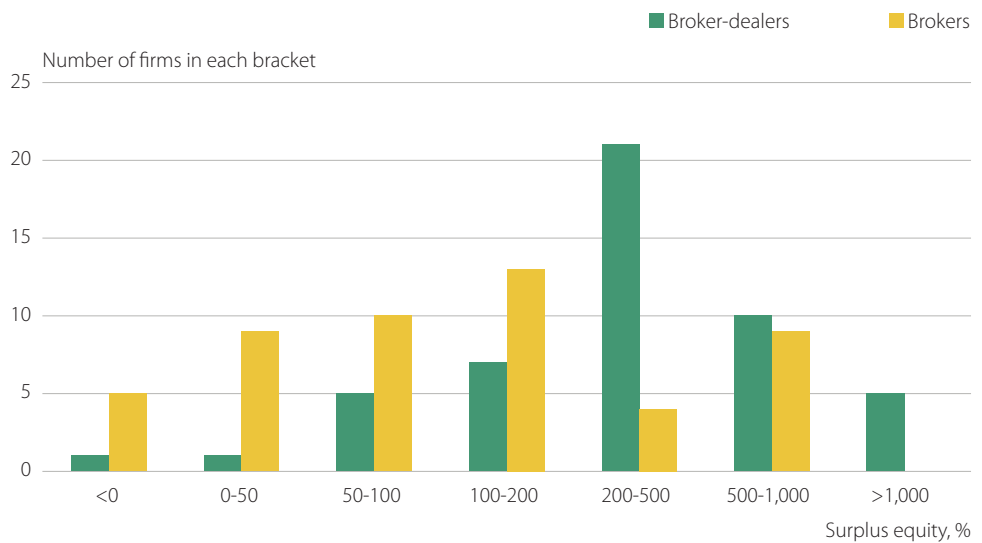
The sector still remains noticeably strong. Accordingly, the solvency ratios remain high, even though they fell slightly in 2009, mainly due to the new regulations which require greater equity levels, mainly to cover operational risk.⁴ Accordingly, at the end of 2009, surplus equity was 3.7 times higher than the equity required for broker-dealers, and 1.5 times higher than that required for brokers. As shown in figure 8.2, most broker-dealers have surplus equity greater than 200% of the requirements, while brokers were below this threshold. Six firms ended the year with equity deficits (five brokers and one broker-dealer). The firms with a solvency deficit are subject to specific monitoring by the CNMV so that they design appropriate viability plans to eradicate this situation as soon as possible, pursuant to current regulations.

It should be pointed out that on 5 March 2010, one broker published a significant event in which it informed the CNMV that it had filed for voluntary bankruptcy proceedings. The CNMV agreed to intervene and to suspend its activities, so as to guarantee maximum protection for investors. Initial bankruptcy proceedings were declared on 23 March.

4. CNMV Circular 12/2008 on the solvency of investment firms and their consolidatable groups.

Surplus equity over minimum requirements for broker-dealers and brokers. 2009

FIGURE 8.2



Source: CNMV.

8.2.2 Portfolio management companies

In 2009, one portfolio management company de-registered, and so at the end of the year there were nine of these firms registered with the CNMV. It should be remembered that over recent years, the number of portfolio management companies has fallen, partly because asset management has been transferred to the parent company of financial groups or to other subsidiaries.

At the end of the year, assets managed by portfolio management companies totalled 2,976 millions of euros, 3.4% up on 2008. The main revenue heading, portfolio management commissions, fell by 10.3%, while the number of portfolios managed declined 2.9%. As shown in table 8.7, gross profit fell 16.4%, although this fall was offset by the reduction in operating expenses, which led to an increase in net operating profit. Aggregate profit before tax totalled 1.4 millions of euros, 19.9% up on the previous year. Two firms recorded losses for the year.

Most portfolio management companies continued to amply exceed minimum equity requirements, despite the aforementioned increase in requirements. At the end of 2009, portfolio management companies had an overall equity surplus amounting to 149% of the minimum requirements.

Income statements of portfolio management companies¹

TABLE 8.7

Amounts in thousands of euros

	2008	2009	% change 09/08
Interest margin	1,482	341	-77.0
Net commissions	12,044	10,820	-10.2
Commission revenues	23,877	21,835	-8.6
Marketing UCITS	66	18	-73.0
Portfolio management	20,683	18,549	-10.3
Investment advisory services	2,484	2,698	8.6
Other	644	571	-11.4
Commission expenses	11,833	11,016	-6.9
Profit from financial investments	-108	92	—
Net exchange differences	13	5	-58.4
Other products and operating charges	-432	-389	9.9
Gross profit	13,000	10,869	-16.4
Operating expenses	11,330	9,142	-19.3
Staff costs	6,488	4,946	-23.8
General expenses	4,842	4,196	-13.3
Depreciation, amortisation and other provisions	512	198	-61.4
Impairment losses on financial assets	0	135	—
Net operating profit	1,157	1,395	20.5
Other gains/losses	-8	-15	-105.1
Profit before tax	1,150	1,379	19.9
Corporation tax	385	419	8.9
Profit from continuing operations	765	961	25.5
Profit from discontinued operations	0	0	—
Profit for the year	765	961	25.5

Source: CNMV (1) Includes information from all firms which were included in the CNMV registries at any time during the year, and not only at year-end.

Financial institutions
and investment services
Provision of investment
services

Assets under management, commission revenues and profits before tax of portfolio management companies

FIGURE 8.3



Source: CNMV.

8.2.3 Financial advisory firms

Financial advisory firms exclusively make personalised recommendations for their clients about their transactions with financial instruments. They are recognised as investment services firms under Act 47/2007, which transposed the Directive on Markets in Financial Instruments (MiFID) into Spanish legislation, and which was subsequently developed by Royal Decree 217/2008 and CNMV Circular 10/2008. They are therefore a type of investment services firm which has only recently been introduced in Spain.

The first firms of this type were set up in 2009, with a total of 16 new registrations with the CNMV, all of which were independent firms. The data available on the report date reveal that retail clients account for the bulk of the advisory service contracts signed with these firms (91% of the 275 contracts recorded to date), while the total assets under the advisory services amount to 1,355 millions of euros.

9.1 Venture capital firms registered with the CNMV

2009 saw a slowdown in the number of new venture capital firms. There were 19 registrations, compared with the 55 firms which registered in 2008, a fall of 65.4%. The fall in the number of new firms was similar for companies, funds and management companies, with declines of 66.6%, 64% and 66.6% respectively.

There was also an increase in the number of de-registrations, up 44.4% on 2008. Most of these de-registrations were from venture capital companies (ten de-registrations, compared with five in 2008), most of which were family-owned companies.

In net terms, the number of firms registered with the CNMV increased by six. The total number of registered firms, including venture capital firms and management companies, was 328 at the end of the year. A breakdown of these firms is shown in table 9.1.

Registrations and de-registrations of venture capital firms in 2009 TABLE 9.1

	Situation at 31/12/2008	Registrations	De-registrations	Situation at 31/12/2009
Venture capital funds	95	7	1	101
Venture capital companies	154	9	10	153
Venture capital management companies	73	3	2	74
Total	322	19	13	328

Source: CNMV.

The main characteristics of the new firms registered in 2009 are as follows:

- As in 2008, most firms registered in 2009 adopted the simplified system (94%).
- Most of the new venture capital firms which registered in 2009 focus on small businesses and early-stage projects. No firms dedicated to leveraged deals have registered, unlike in other years.
- With regard to the different sectors, a large number of venture capital firms continue to focus on renewable energies (basically, photovoltaic solar energy), as well as firms focused on the technological sector and, in particular, nanotechnology.
- The new venture capital firms are focused on operations in Spain.

9.2 Sector data

According to preliminary data from the ASCRI (Spanish Venture Capital Association), investment in venture capital in Spain fell 47% in 2009 compared with 2008, to 1,617 millions of euros. However, the fall in the number of deals was only 5%, which means that the average volume per deal has fallen from 3.3 millions of euros in 2008 to 1.9 millions in 2009.

As has been the case since 2008, the fall in investment by venture capital firms is due both to the difficulties in obtaining funding and to the increase in institutional investors' perception of risk in this type of investment. According to the ASCRI, 53% of the invested volume corresponds to expanding companies, followed by 33% in leveraged deals and 7% in early-stage companies.

The ASCRI has estimated that 955 millions of euros were raised in 2009, a fall of 65% on the previous year. However, as a result of the volume of funds raised during the three previous years, 5 billions of euros were available for investment by venture capital funds.

Finally, although divestments increased by 21% compared with 2008, a large part of them were due to the recognition of losses, which in many cases were due to problems in refinancing the debt.

IV The regulation and supervision of securities markets

10 Issuers' financial and corporate governance disclosures

10.1 Financial disclosures

10.1.1 Auditors' reports and financial statements¹

Issuers of securities listed on an official secondary market or on any other regulated market domiciled in the European Union, when Spain is the Member State of origin, are obliged to send to the CNMV the auditors' report accompanied by the annual financial statements, the management report and the statements of responsibility for their content, with the exceptions provided for in the rules.²

Main characteristics of the information presented

In 2009, the CNMV received auditors' reports on the individual and consolidated annual financial statements corresponding to 2008. The number of reports received totalled 915, 4.6% more than the previous year, as a result of an increase in the number of securitisation trusts. However, the number of reports corresponding to issuers with listed shares fell by 5.6%, due to the delistings and mergers which have taken place during 2008. The CNMV also received a total of 56 special auditors' reports.³

The auditors' reports corresponding to the annual financial statements for 2008 show another rise in the number of qualified reports, amounting to 6% of the total (see table 10.2). If we exclude securitisation trusts, all of whose auditors' reports were unqualified, the increase in the percentage of reports with qualifications is even greater, rising from 6.9% of the total in 2007 to 11.6% in 2008. In two companies which are currently in the process of winding up and whose shares are suspended from trading, the auditor issued a denial of opinion, while in a third case the opinion was unqualified.

With regard to the reason for the qualifications, the number of auditors' reports with errors or non-compliance with generally accepted accounting principles and

1. This information is available in the Spanish area of the CNMV website at www.cnmv.es in the section "Audited annual accounts", under the headings "Registration Files", "Issuers Filings: Information under regulation and other", and "Annual Accounts".
2. Article 35 of Law 24/1988, the Securities Market Act. Entities exempt from this obligation are "[...] Member States of the European Union, Autonomous Regions, local authorities and other similar entities [...], international public organisations of which at least one Member State of the European Union is a member, the European Central Bank, and the national central banks of Member States [...]; and issuers which only have outstanding issues of debt securities listed in an official secondary market [...] whose par unit value is at least €50,000 [...]".
3. The purpose of special auditors' reports is to update information regarding audits that received a qualified audit opinion. The information is updated at the end of the first half-year of the financial year following the one to which the qualified audit report relates.

standards (qualified opinion) continued to fall. Only six auditors' reports in 2008 presented a quantified qualification, while in 2007 there had been eleven.

Scope limitation opinions are especially worrying qualifications since they mean that the auditor did not have enough information to form a proper opinion on the accounts. Initially there were eleven auditors' reports on the accounts for 2008 with scope limitations, corresponding to seven securities issuers. However, in response to deficiency letters issued by CNMV and once the procedures set out in the Technical Auditing Standards were applied, the auditors removed the limitations in five of these reports, corresponding to three companies, while, for a fourth company, the limitation was lifted in the special audit report.

In the case of going-concern opinions, the auditor expresses doubts as to the company's or the group's ability to continue with their activities. The number of such opinions has practically doubled, from 28 reports in 2007 to 52 reports in 2008, mainly due to the increase in the number of companies facing a material risk of being unable to continue to trade.

Summary of the audits of issuers received by the CNMV

TABLE 10.1

	2006		2007		2008	
	Number	%	Number	%	Number	%
Audits received by the CNMV	845	100	875	100	915	100
Separate accounts	621	73.5	671	76.7	721	78.8
Consolidated accounts	224	26.5	204	23.3	194	21.2
Special reports under Ministerial Order 30/9/92	30		34		56	
Auditing opinion						
Unqualified opinion	807	95.5	840	96.0	860	94.0
Opinion with uniformity exception	5	0.6	0	0.0	0	0.0
Opinion with other qualifications	33	3.9	35	4.0	55	6.0
Types of qualifications excluding uniformity exceptions						
Reports with exceptions	15	1.8	11	1.3	6	0.7
Reports with uncertainties, etc.	21	2.5	28	3.2	52	5.7
Reports with limitations	0	0.0	3	0.3	6	0.7
Effects of exceptions						
Effects of exceptions on earnings						
Reports with positive effects	0	0.0	2	0.2	2	0.2
Reports with negative effects	14	1.7	7	0.8	0	0.0
Effects of exceptions on equity						
Reports with positive effects	8	0.9	0	0.0	0	0.0
Reports with negative effects	2	0.2	1	0.1	2	0.2
Nature of uncertainties, etc.						
Going concern	4	0.5	12	1.4	35	3.8
Tax contingencies	3	0.4	1	0.1	3	0.3
Asset recovery	11	1.3	8	0.9	19	2.1
Litigation	8	0.9	5	0.6	5	0.5
Other uncertainties	2	0.2	4	0.5	9	1.0
Denial of opinion or adverse opinion	1	0.1	5	0.6	3	0.3

Source: CNMV.

The CNMV's role

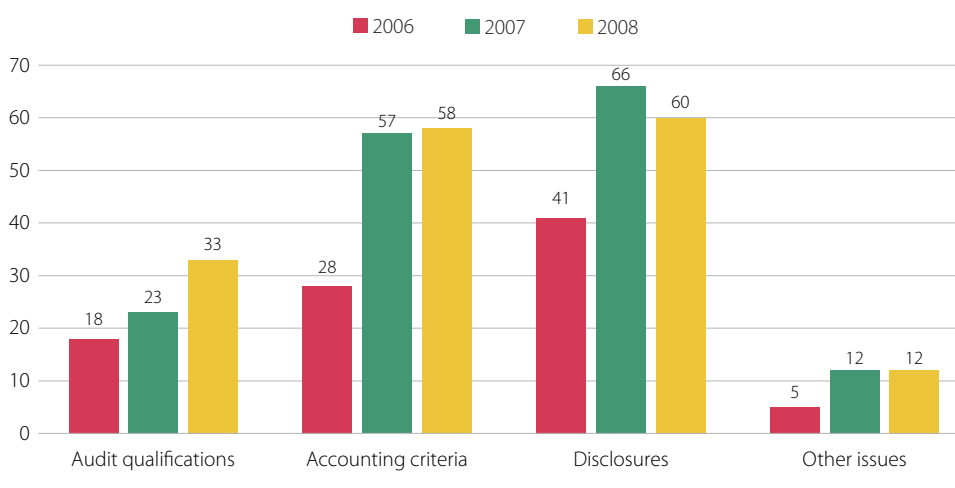
The CNMV reviews and publishes all the opinions contained in the auditors' reports. In particular, it checks that regulated public information has been prepared in compliance with applicable standards and, if not, to require their compliance. The CNMV also makes a substantive review of a certain number of audited annual financial statements. Entities are chosen to be the subject of this substantive review on the basis of a mixed selection technique based on risk and random rotation, in conformity with the principles set out in standard number 1 of the Committee of European Securities Regulators (CESR) on financial information.

The formal review of financial statements and management reports for 2008 paid special attention to monitoring: (i) the transition to the New General Chart of Accounts for separate financial statements; (ii) the statement of responsibility for the content of annual financial statements, signed by the directors (Article 8 of Royal Decree 1362/2007); (iii) the inclusion of an annual corporate governance report (hereinafter ACGR) in the management report (Article 202 of the Public Limited Companies Act); (iv) on the capital management of companies (NIC1.124A-C); (v) the provision of reserve funds for securitisation trusts; (vi) the preparation of unabridged annual financial statements (articles 175, 176 and 201 of the Public Limited Companies Act); and (vii) the differences arising between the annual financial statements and the financial information corresponding to the second half-year.

The substantive review of the annual financial statements and management reports of issuing companies has resulted in 69 entities being sent deficiency letters in connection with audit qualifications, omissions of information, clarifications of accounting criteria, and valuation methods applied, the distribution and recent trends of which are shown in figure 10.1 below.

Substantive reviews: number of deficiency letters, broken down by reason

FIGURE 10.1



Source: CNMV.

During its review of annual financial statements, the CNMV held work meetings with 41 listed entities and with each of the six major auditing firms in terms of number of reports received, representing 97% of all auditing firms.

For the purpose of facilitating the dissemination of financial information, the CNMV publishes on its website the full text of annual financial statements, management reports, and the auditors' report on the issuing companies, both separate and consolidated, together with a summary of audit qualifications, responses to deficiency letters issued, and special auditors' reports. In accordance with CESR recommendations, the CNMV also publishes an annual report on the supervision of the annual financial statements received by the CNMV, which describes the main incidents detected in the review of annual and interim financial statements, and identifies areas of the financial statements which will be subject to closer scrutiny in the review of the annual financial statements for 2009.

The CNMV required two issuers to restate their consolidated financial statements for 2008, and to rectify their consolidated public disclosures for that year, after having detected breaches of the recognition and valuation principles set forth in current regulations with a material impact. In the case of other issuers, breaches of recognition and valuation principles were detected which, due to their relative immateriality, did not require the restatement of the annual financial statements, but needed to be rectified in the annual financial statements for 2009 with the presentation of the corresponding comparative information with the previous year.

10.1.2 Half-yearly and quarterly reporting

Issuers of securities listed on an official secondary market or on any other regulated market domiciled in the European Union, when Spain is the Member State of origin, are obliged to send financial information to the CNMV on a quarterly or half-yearly basis.⁴

The CNMV constantly monitors these interim financial disclosures to detect any issues that might raise doubts as to the proper application of accounting standards. The scope of review of this information is narrower than that of the annual financial statements, due to its shorter duration (these reviews only take place in the month after the receipt of the information by the CNMV) and because only abridged information is provided.

As a result of its review work, the CNMV required errors to be corrected or asked for clarifications from a total of 101 entities in respect of financial statements for the second half-year of 2008, and 40 in respect of reporting on the first half-year of 2009.

It should be noted that 35% of all issuers, as opposed to 38% for the previous year, subjected their abridged annual financial statements for the first half-year of 2009 to limited review or to a full audit.⁵ This percentage rises to 76% (65% in 2008) if only entities forming part of the Ibx 35 are considered. The auditor issued a clean opinion of the interim financial reporting in 90% of the auditors' reports and limited review reports.

4. Article 35 of Law 24/1988, the Securities Market Act.

5. In a full audit, we can be reasonably confident that the conclusions of an auditors' report provide a fair view of interim financial statements, whereas limited audit reviews are less reliable. In 2009, twelve entities opted for the former option and 75 for the latter (11 and 82 entities, respectively in 2008).

10.1.3 New regulatory developments

On 31 March 2009, CNMV Circular 2/2009 of 25 March on accounting standards, annual accounts, public financial statements, and confidential statistical returns of securitisation trusts was published in the BOE (Official State Gazette). The Circular updates the rules governing the accounting of securitisation trusts to take into account their special legal and operating characteristics, among which is the concept of zero net equity and the absence of legal personality. This rule change is based on the Code of Commerce and respects the principles established in the General Chart of Accounts approved by Royal Decree 1514/2007, of 16 November. The Circular also establishes the need for fuller disclosure with a twofold purpose: to enhance the level of transparency and to facilitate better monitoring and analysis of the performance of these securitisation structures at a European level.

In the course of last year, an expert group in internal control systems over the financial reporting of listed companies was formed on the initiative of the Executive Committee of the CNMV, commissioned with the task of making recommendations in this matter with a view to improving the reliability of financial information. Among other conclusions, the group proposed changing the annual corporate governance report so that entities would provide information to the market about their internal control systems relating to financial information (see box 10.1).

Expert group on internal control systems over the financial reporting of listed companies

BOX 10.1

In order to increase the transparency of internal control systems of listed companies, on 16 April 2009 the Executive Committee of the CNMV decided to create an expert group to produce a report with recommendations on the internal control over the reliability of financial reporting. The requested report was to include: (i) proposed changes to the regulation, (ii) a catalogue of principles and best practices, (iii) supporting guidelines for reporting and supervisory purposes (iv) proposals for the processing of companies applying for listing for the first time.

The group, made up of experts from listed companies, the four most representative external auditing firms in the securities markets, and the Institute of Internal Auditing, has reviewed both the current Spanish regulatory framework and those of other neighbouring countries, and has established a set of best practice recommendations relating to internal control over financial reporting systems (ICFR) for listed companies.

In regard to ICFR, it should be noted that the Government sent the Draft Bill on the Auditing of Accounts to the Congress of Deputies (the Lower House of the Spanish Parliament) in October 2009. This draft bill provides for new competencies for the audit committees of listed companies, among which is the oversight of the effectiveness of internal control and risk management systems.

As a result of their deliberations, the expert group proposed:

- Regulatory developments based on the approval of the aforementioned legislative initiatives. In particular, the modification of the ACGR so that companies report on their ICFR.
- A reference framework of general principles and best practices to help listed companies design, implement, operate and supervise their ICFR systems.
- A guide, based on the reference framework, designed to include the basic reporting which listed companies should disclose in relation to ICFR.
- Guidelines governing the audit committee's role in supervising ICFR.
- In terms of the information to disclose on their ICFR system, once companies applying for listing are actually listed, they should be subject to the same requirements as companies already listed.
- It is recommended that the external auditor make a limited scope review of the disclosed ICFR information and that, if this is not done, the auditor should report the reasons why it was not done.

The conclusions document, which was submitted for public consultation for two months and presented in the four Spanish stock exchanges, will be subject to approval by the Executive Committee of the CNMV.

10.2 Information relating to significant shareholders, directors, executives and own shares (Royal Decrees on Transparency and Market Abuse⁶)

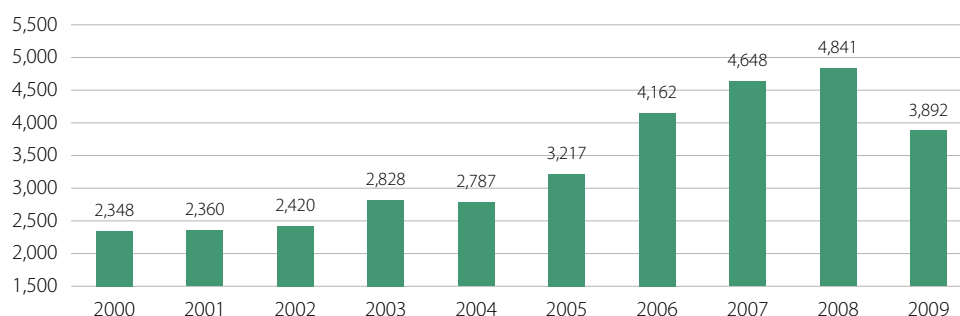
During 2009 a total of 3,892 notifications were validated, 20% fewer than in 2008 (see figure 10.2). 34% of the notifications were submitted by telematic means (CIFRA-DOC/CNMV). Validated notifications account for 84% of all sent (4,640); the remainder were either cancelled or replaced by new notifications, as the case may be. The number of notifications cancelled due to errors fell by 33% compared with 2008.

With regard to the breakdown of the notifications registered, 71% correspond to directors (65% in 2008), 14% to non-director significant shareholders (18% in 2008), 10% correspond to executives, a percentage similar to 2008's, and the remaining 5% corresponded to transactions with own shares (6% in 2008).

6. Royal Decree 1362/2007 of 19 October, enacting Law 24/1988 of 28 July, the Securities Market Act, on transparency requirements for issuers whose securities are listed on an official secondary market or on another regulated market within the European Union, and Royal Decree 1333/2005 of 11 November, enacting Law 24/1988 of 28 July, the Securities Market Act, on market abuse issues (amended by RD 364/2007 of 16 March).

Number of notifications recorded

FIGURE 10.2

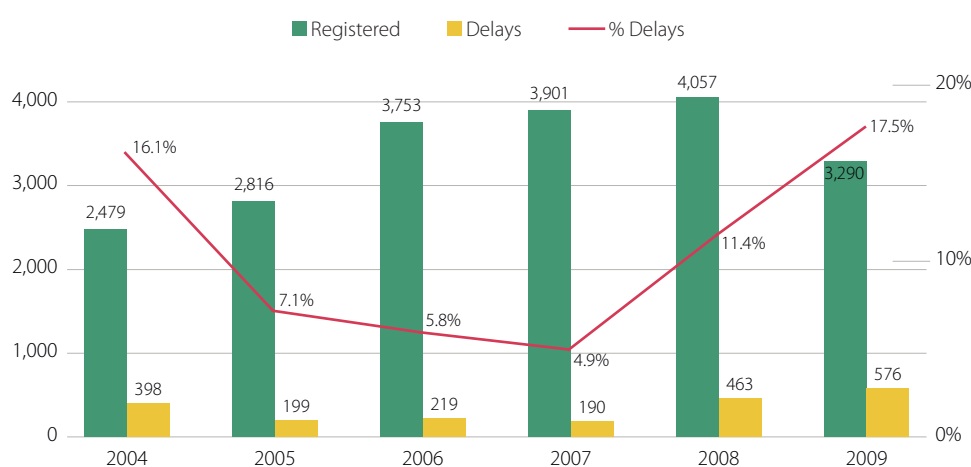


Source: CNMV.

The number of notifications received after the deadline during 2009 amounted to 650, of which 89% corresponded to notifications submitted in respect of directors and significant shareholders. As can be seen in figure 10.3, the delays in these notifications increased significantly during the last two years. Last year, the CNMV sent letters to a total of 100 obligated parties, requesting explanations for the delay. According to the answers received, 79% of the obligated parties blamed the delay on errors in the interpretation of the new rule, mainly related to the reduction of submission period, or administrative or internal control failures.⁷ The remainder alleged various other reasons.

Director and significant shareholder notifications submitted late

FIGURE 10.3



Source: CNMV.

Notifications referring to non-director significant shareholders

According to the Royal Decree on Transparency, the first notification threshold for significant shareholders is 3% of the voting rights. If the shareholder is resident in a tax haven, this notification threshold drops to 1% and its respective multiples. In 2009, 526 notifications of this type were submitted, affecting 102 listed companies and corresponding to 229 different shareholders. The total number of validated notifications fell by 39.7% compared with 2008, although it must be taken into

7. The Royal Decrees on Transparency and Market Abuse reduced the notification period for major shareholders and directors to four and five business days respectively, compared with the seven business days allowed under the previous rules.

account that in 2008 there was a sharp rise in the number of notifications due to the introduction, for the first time, of the mandatory 3% threshold, which obliged all shareholders with shareholdings of between 3% and 5% to send a notification. The decline in stock market trading also impacted on the number of notifications, as did the low number of new listings (see chapter 3). Table 10.2 shows the breakdown of notifications received, grouped by levels of voting rights and the market cap of the companies involved.

Number of notifications regarding voting rights referring to significant shareholders

TABLE 10.2

Companies	Voting rights			
	Under 5%	5% to 30%	30% to 50%	Over 50%
Ibex 35	127	52	3	9
Over 1 billion of euros	14	14	1	7
Under 1 billion of euros	136	121	7	13
Delisted	7	6	1	8
Total	284	193	12	37
% of total	54	37	2	7

Source: CNMV

Shareholders are also obliged to notify the CNMV of the acquisition or transfer of financial instruments which provide the holder the right to acquire a significant shareholding in terms of voting rights. In 2009, ten notifications of this type were received (18 in 2008), submitted by six shareholders and involving six listed companies. In all cases, the notifications reported the exercise of rights associated with financial instruments acquired the previous year and not replaced by any new instrument.

Notifications referring to directors

The Royal Decree on Market Abuse obliges directors of listed companies to notify all transactions involving shares or financial instruments whose underlying is shares of the listed company on whose board the member sits. Also, the Royal Decree on Transparency obliges directors to disclose the final holding of voting rights or financial instruments.

As can be seen in table 10.3, the number of notifications referring to voting rights corresponding to directors (2,365) decreased significantly compared to the previous year, as did the number of companies (141) and the number of directors involved (882).

Number of notifications of voting rights referring to directors

TABLE 10.3

Companies	Issuers		Notifications		Directors	
	2008	2009	2008	2009	2008	2009
Ibex 35	33	34	743	865	294	286
Over 1 billion of euros	15	14	341	219	122	96
Under 1 billion of euros	106	90	1,632	1,259	540	485
Delisted/Other	9	3	138	22	43	15
Total	163	141	2,854	2,365	999	882

Source: CNMV

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The trend in notifications of voting rights contrasts with that of notifications of financial instruments which increased by nearly 25%. In total, 389 notifications of this type were received involving 27 listed companies, 15 of which belonged to the Ibex 35.

The Royal Decree on Transparency also makes it mandatory to disclose the delegation of voting rights received or granted in general meetings of shareholders. In 2009, 25 notifications of this type were received, corresponding to nine different companies. In 24 cases, the receipt of voting rights was disclosed while the other case referred to the granting of voting rights.

Notifications referring to executives

The Royal Decree on Market Abuse obliges the executives of listed companies to disclose all acquisitions or transfers, whether direct or indirect through closely related third parties, of financial instruments, whose underlying is made up of shares of the listed company in which the executive holds office. Executives are not obliged to disclose their final position. In 2009, 390 notifications were received from executives, involving 41 companies, compared with 480 notifications and 61 companies in 2008.

Disclosure of own shares

According to the Royal Decree on Transparency, issuers of securities listed on an official secondary market or on any other regulated market domiciled in the European Union, when Spain is the Member State of origin, must notify the CNMV of the proportion of voting rights that remain in their possession when they make acquisitions which amount to or exceed 1% of the total voting rights. It should be noted that, since April 2009, the maximum limit of own shares permitted under the Public Limited Companies Act for listed companies has increased from 5% to 10%.

During 2009, a total of 212 notifications of transactions involving own shares were validated (304 in 2008), involving 70 issuers, representing a 30.3% decrease on 2008. Table 10.4 shows the breakdown of notifications grouped by market cap and percentage of final holdings of own shares.

Number of notifications of own shares by final position

TABLE 10.4

	Total issuers	Under 1%	1% to 2%	2% to 3%	3% to 4%	4% to 5%	Over 5%
Ibex	18	11	2	2	2	—	1
Over 1 billion of euros	5	0	2	1	1	—	1
Under 1 billion of euros	47	18	9	13	4	1	2
Total	70	29	13	16	7	1	4

Source: CNMV.

Shareholder agreements

The Transparency Act requires disclosure of any shareholder agreements affecting listed companies or their controlling entities. Notifications are registered as significant events. Such agreements may regulate the exercise of voting rights or restrict the free transfer of shares. In the first case, the CNMV analyses its effect on notifications of significant shareholdings.

During 2009, a total of 22 notifications regarding shareholder agreements were received, affecting 15 listed companies. Five of the notifications correspond to two companies which had merged, two notified the end of agreements, four reported amendments to the agreements and the remaining eleven referred to new agreements affecting eight listed companies.

10.3 Corporate governance

In 2009, 164 listed public limited companies, 43 savings banks, and another 23 fixed income issuers filed the Annual Corporate Governance Report (ACGR) for 2008. In general, there were no incidents affecting the online transmission and reception of the reports, although 25 companies were sent deficiency letters for having filed their reports late or for not having included the management report.

Based on the ACGRs received, the CNMV prepares and publishes an annual report in which it analyses, in aggregate terms, the issuers' main corporate governance practices and a wide range of individual statistical data for each entity. The CNMV is a pioneer among other international securities supervisors in publishing this type of report.

10.3.1 Most significant aspects of listed companies' governance practices

Taken as a whole, the most significant aspects of listed companies' corporate governance practices are as follows:

Observance of the recommendations of the Unified Code of Good Governance (UCGG)

In general, an improvement can be seen in the level of observance of the recommendations of the Unified Code of Good Governance:

- i. On average, listed companies fully comply with 77.1% of the recommendations (75.1% in 2007) and partially comply with 9.8% (10.2% in 2007). Average full compliance rises to 84.8% if only Ibex companies are considered.
- ii. The most significant progress can be seen in the recommendations concerning articles of association and the general meeting of shareholders. This latter category is also the one with the highest percentage of compliance.
- iii. The least implemented recommendations are those relating to the approval and transparency of director remuneration. Compliance slipped back from 64% in 2007 to 62.6% in 2008.

Board of directors

The average size of the boards of directors of the 164 companies studied in 2008 was 10.4 directors (14.5 for Ibex companies). This average is within the range recommended by the Code, but is slightly higher than the average for the three previous years.

In 57.3% of the companies, the chairman of the board is also the CEO. In the last four years this percentage has risen by 9.3 percentage points.

Taken as a whole, the proportion of independent directors (30.2%) is slightly lower than the minimum of one third recommended by the UCGG, while the percentage of companies which fail to comply with this recommendation has increased (from 52.9% in 2007 to 54.3% in 2008).

During 2008 there was a slight increase in the number of female directors on the boards of listed companies (seven more than in 2007), from 7.5% in 2007 to 8.1% in 2008.

Board committees

In the last four years there have always been more executive directors on the executive committee than on the board of directors, but this difference has been gradually diminishing.

The audit committees of 78.7% of the companies are 100% composed of external directors, and in 41.5% of the companies there is a majority of independent directors. Compared with 2007, the number of companies whose committee is chaired by an independent director has increased, as has the number of companies in which all the committee members are external.

84.1% of the companies (78% in 2007) have an appointments and remuneration committee.

Remuneration of the board and senior management

The average remuneration for executive directors rose by 8.8% in 2008, while the average remuneration for external directors increased by 1.9% compared with 2007. Fixed remuneration items (fixed remuneration and attendance fees) increase every year, although in 2008 the rise was more moderate than in previous years. Meanwhile, variable, performance-based remuneration paid annually –variable remuneration and statutory payments– fell for the first time in 2008.

Multi-year remuneration schemes (options and other items) behave in a more cyclical manner. In 2008, there was an increase in the number of option schemes reaching maturity and a reduction in the number of non-share-based, multi-year incentive schemes.

Chapter 2 comments on European Commission recommendations of April 2009 on the remuneration of the executives of listed companies and the proposal to update the UCGG in respect of remuneration, which was presented for public consultation by the CNMV in December. The measures provided for by the Sustainable Economy Bill in respect of executive remuneration are also commented on.

Application of the “comply or explain” principle

The “comply or explain” principle was introduced for the first time at a European Community level by Directive 2006/46/EC, although in Spain it had already been enacted by the Transparency Act in 2003. Article 116 of the Securities Market Act obliges listed companies to include in their ACGRs “an explanation of any lack of compliance with corporate governance recommendations” so that shareholders, investors, and the markets in general can draw their own conclusions.

The first study published on the practical application of the codes in Europe⁸ highlights the need to improve the quality of the information provided by companies on the deviations from the recommendations of the code which applies to them, and the need for improved monitoring, control and supervision by the market makers.

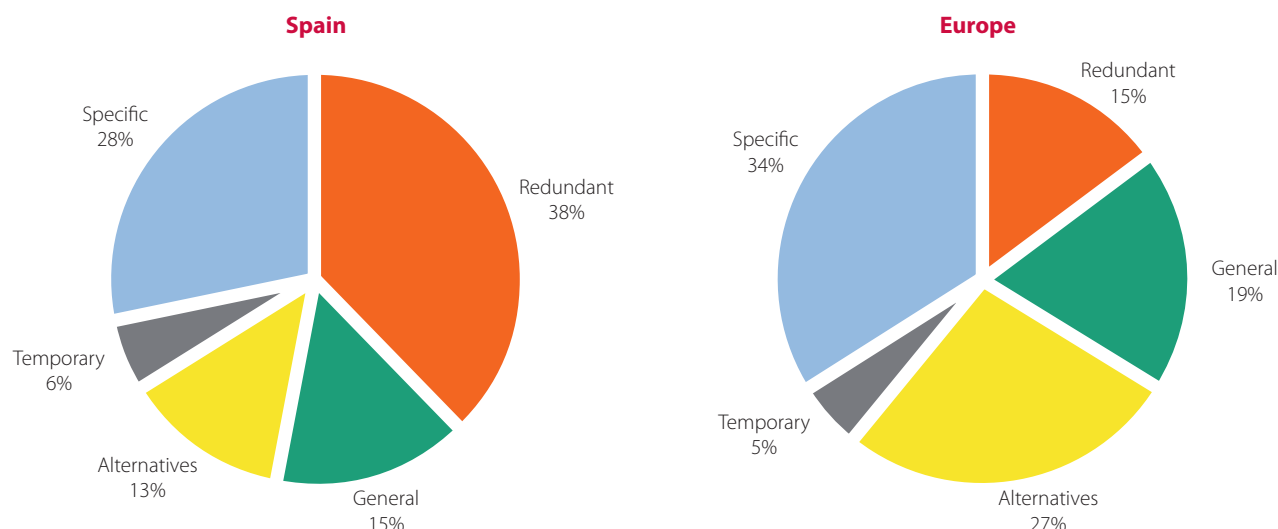
In its corporate governance report on securities issuers listed on official secondary markets for 2008, published in December 2009, the CNMV included for the first time the results of a study similar to the one made at a European level.⁹ Over half of the explanations studied (53.2%) either reiterated the fact of non-compliance, or only mentioned the existence of a deviation from the recommendation without explaining the reason, or expressed a general disagreement with the recommendation. Figure 10.4 compares the percentages corresponding to the explanations provided by Spanish and European companies.

8. See RiskMetrics Group (2009).

9. 382 explanations were studied, from 126 companies, on the lack of compliance with recommendation 12 of the UCGG (proportion between representative directors and independent directors); recommendation 13 (proportion of independent directors); recommendation 14 (explanation of the nature of directors), and recommendations 35 to 41, concerning remuneration.

Classification of explanations

FIGURE 10.4



Source: RiskMetrics Group and CNMV.

After reviewing the criteria used by listed companies in their ACGRs to report on the degree of compliance with the recommendations of the UCGG or to explain, when applicable, the reasons for non-compliance, deficiency letters were sent to 34 companies (50 in 2008), requesting additional information or clarifications concerning 28 of the Code's 58 recommendations (48.3% of the total in 2009, compared with 67% in 2008). The reduction in the number of incidents and, consequently, in the number of deficiency letters sent is largely explained by the high number in 2008, the first year when the ACGRs of Ibex 35 companies were reviewed. Table 10.5 lists the recommendations, broken down by UCGG recommendation group, which were the subject of deficiency letters in 2008 and 2009, together with the number of companies sent deficiency letters. Only four companies were sent letters in both years.

Deficiency letters sent by the CNMV concerning UCGG recommendations

TABLE 10.5

Area to which the recommendation refers	No. of companies	
	2009	2008
Articles of association and general meeting of shareholders	6	4
Board of directors	36	71
Directors	19	29
Remuneration	13	20
Committees	18	42

Source: CNMV.

23.5% of the companies sent deficiency letters changed the information contained in their ACGR as instructed by the CNMV by sending another report. Another 26.5% chose to send a document rectifying or expanding on the information, which was posted on the CNMV's website as further disclosure complementary to their ACGR.

In 50% of the cases no further action was required, since the information provided meant that the company had correctly indicated its degree of compliance with the recommendations in their ACGR.

Classification of members of the board of directors

Compliance with the binding definitions of the various types of directors, in particular independent directors, was analysed. The review of 309 (280 in 2008) directors classified as independent, in a sample of 88 companies, brought to light a number of situations which could raise doubts as to the classification of 25 directors (33 in 2008). This gave rise to the sending of deficiency letters to 15 companies (22 in 2008), requesting further information, clarifications or, as the case may be, the publication of a document with a different classification. Table 10.6 shows a statistical summary of the conditions not met by independent directors who have been the subject of a deficiency letter, together with the number of companies sent deficiency letters for each of the conditions and the total number of directors involved.

Deficiency letters from the CNMV in respect of the binding definition of an independent director in the UCGG¹

TABLE 10.6

Description of the condition not met	No. companies sent deficiency letters		No. directors involved	
	2009	2008	2009	2008
They have been proposed, either for appointment or reappointment, by the Appointment Committee.	3	6	6	14
They do not have or have not had during the last year a significant business relationship with the company or its group, or with a significant shareholder or their group, whether on their own behalf or as a significant shareholder, director, or senior executive of the related company.	7	6	10	6
They are executive directors or senior executives of another company in which an executive director or senior executive of the company is an external director.	1	—	1	—
They have been executive directors of companies of the group, unless it was over five years ago.	3	3	6	3
They are not up to second degree relatives of an executive director or senior manager.	—	1	—	1
They do not hold more than 3% of the company's shares.	—	1	—	1
They have not been executive directors of a subsidiary of a significant shareholder, unless the relationship ended over five years ago.	1	1	1	2
Directors representing significant shareholders will be considered to be representative directors. It is assumed that a director represents a significant shareholder when he or she sits on the board of that shareholder.	1	3	1	3
Directors who perform senior management duties in any of the group's entities are deemed to be executive directors.	—	1	—	3

Source: CNMV. (1) Unified Code of Good Governance.

In 41.7% of the cases in which deficiency letters were sent, the companies published further disclosure complementary to their ACGR in which either the classification of the directors was changed, or it was explained why their relationships with the company, its significant shareholders, or its directors do not prevent them being classified as independent directors. In the other cases, it was not necessary to publish further information. Most of these companies argued that the business relationship about which more information had been requested was not significant.

Transparency of risk control systems

Spanish listed companies include detailed information in their ACGRs about the models on which their internal control systems are based, and identify the theoretical risks facing them. However, most companies do not explain the actual risks which are specifically related to the conduct of their business, or the risks that have materialised during the year. Neither do they report on their risk map, nor explain

which risks are more likely to materialise or which would have the greatest impact on the company. For this reason, 57.4% of the letters sent by the CNMV to listed companies requesting further information or clarifications regarding the ACGR included a specific request regarding risk control systems and, in particular, further information about the risks which have materialised during the period. In answer to these deficiency letters, 23 companies provided more information for their ACGR about risks and their internal control systems.

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Transparency of transactions with related parties

Transactions with related parties made by listed companies during the first half-year of 2009 amounted to 257,365 millions of euros, an increase of 18.2% compared with the same period of the previous year. 49.3% of these transactions were made with significant shareholders, 35.6% with persons, companies or entities belonging to the group, 1.1% with directors and executives, and the rest with other related parties. Table 10.7 shows the different types of transactions made by listed companies in the first half-year of 2009, broken down by item and the nature of the related party.

Transactions with related parties. First half-year 2009

TABLE 10.7

Millions of euros

	Significant shareholders		Directors and executives		Persons, companies or entities of the group		Other related parties	
	Amount	% H1 09/08	Amount	% H1 09/08	Amount	% H1 09/08	Amount	% H1 09/08
Financial expenses	931	-15.2	11	-62.9	244	-39.6	336	87.4
Leases	46	62.4	0	-22.7	6	109.4	5	3.3
Receipt of services	401	3.8	21	1.9	712	2.9	80	-46.7
Purchase of goods (finished or in progress)	1,914	-38.9	7	-64.6	2,609	-8.4	34	122.9
Other expenses ¹	353	-158.4	32	-28.8	104	-9.5	89	19.5
Total expenses	3,646	-32	72	-38.5	3,675	-9.6	544	28.4
Financial income	937	-3.1	12	-31.0	1,002	-29.7	362	7.8
Dividends received	62	-46.8	15	-3.9	247	-5.1	190	70.8
Provision of services	1,155	8.4	5	-70.8	439	-2.1	70	-9.8
Sale of goods (finished or in progress)	1,070	-21.1	3	-56.9	1,378	-40.2	80	2.3
Other income ²	134	-56.5	2	1,683.5	204	-2.6	1,015	187.3
Total income	3,359	-12	38	-35.3	3,269	-29.6	1,717	79.6
Credits and capital contributions	26,217	13.8	632	-10.4	14,911	-14.6	7,649	-15.9
Loans and capital contributions	37,631	2.1	829	52.6	3,571	-15.5	14,652	160.5
Guarantees and sureties granted	2,168	-21.9	205	329.7	2,406	-3.6	3,311	10.4
Guarantees and sureties received	13,732	-26.7	287	-23.7	7,616	-32.4	90	-64.0
Commitments acquired	5,674	20.8	17	44.3	46,853	276.5	1,954	-6.4
Dividends and other benefits	8,076	244.5	46	36.3	12	-96.8	100	421.2
Other transactions ³	26,353	7.7	780	1,031.1	9,315	-24.1	5,957	104.4
Total other transactions	119,851	6	2,795	56.5	84,684	39.9	33,713	46.7
Total	126,857	3.9	2,905	48.0	91,628	32.3	35,975	47.6
% of total	49.3%		1.1%		35.6%		140%	

Source: PPI of listed companies (1st half-year). (1) Comprising management contracts, R&D transfers, value correction for uncollectable debts, losses on derecognition, and other expenses. (2) Comprising management contracts, R&D transfers, leases, gains on derecognition or disposal of assets, and other income. (3) Comprising the purchase of assets, leases, repayment of credits, sale of tangible assets, depreciation, commitments, and other transactions.

41.4% of related party transactions arose from financing agreements (19.2% from credits and 22% from loans).

Most changes compared with the first half-year of the previous year correspond to commitments acquired and dividends. The most significant negative changes affected guarantees and sureties granted and received, while the most significant increase was in commitments acquired.

In terms of the number of companies reporting related party transactions in their periodic financial information, 128 companies reported 559 transactions with significant shareholders, 95 companies declared 291 transactions with directors and executives, 110 declared 504 transactions with persons or entities belonging to the group, and 93 made 380 transactions with other related parties.

10.3.2 Constitution and composition of audit committees

The constitution and composition of the audit committees of all listed companies were reviewed. The requirements were verified and the results obtained were as follows:

- a) Members of the audit committee: practically all the listed companies meet the legal requirements governing the composition of the audit committee. Of the three companies with incidents pending rectification, one of them is in the process of winding up and another is in insolvency proceedings, which makes it difficult to appoint independent directors.
- b) Chairman of the audit committee: all companies who had to reappoint or replace the chairman of the audit committee during 2009 notified the new appointments by means of a significant event disclosure. Only one company has a provisional chairman, who will be replaced shortly by a definitive appointee.

10.4 Significant events and other notifications received by the CNMV

In 2009, the CNMV received 13,012 disclosures of significant events, 14.95% more than in 2008. Table 10.8 shows the breakdown of significant event notifications received. It should be noted that the number of categories used to classify notifications up until now has been reduced and that, in order to make it easier for issuers to categorise significant events correctly, they were provided with a guide explaining the criteria to apply.

As can be seen in the aforesaid table, notifications concerning financial instruments account for the highest number of notifications (69.8% of the total in 2009), with the rest a considerable distance behind. In terms of growth, notifications falling in the "Financial instruments" and "Business and financial position" categories posted significant growth, while the number of events categorised as "Corporate governance and official notices" and "Corporate transactions" diminished.

Significant events received by the CNMV

TABLE 10.8

Type	2008	2009	% var. 08/09
Financial instruments			
Capital increases and reductions	116	149	28,5
Rights offerings and public share offerings	141	230	63,1
Information about dividends	187	161	-13,9
Notification of short positions	71	173	143,7
Trading halts and resumptions	288	322	11,8
Credit ratings	23	129	460,9
Securitisation trusts	4.663	5.986	28,4
Others	1.888	1.932	2,3
Business and financial position			
Interim financial reporting	1.098	1.401	27,6
Insolvency proceedings	460	418	-9,1
Other	169	203	20,1
Corporate transactions			
Transformations, mergers, spin-offs, and liquidations	55	61	10,9
Strategic agreements with third parties	28	77	175,0
Transfers and acquisitions of shareholdings	319	210	-34,2
Other	151	149	-1,3
Corporate governance and official notices			
Notices and resolutions of general meetings and assemblies	635	550	-13,4
Composition of the board of directors	262	213	-18,7
Annual corporate governance report	238	233	-2,1
Other	528	415	-21,4
Total	11.320	13.012	15,0

Source: CNMV.

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Finally, it should be noted that in 2009 the implementation of Section 82 of the Securities Market Act was completed. This section refers to the identification of material information, the parties obliged to disclose it, and the way it is to be disclosed. Box 10.2 below describes the changes to this rule.

Changes to the rules on material information

BOX 10.2

As mentioned above, Section 82 of the Securities Market Act establishes benchmarks for the identification of material information, the parties obliged to disclose it, and the manner of its disclosure. In 2009, the implementation of this rule was completed with the publication of Order EHA/1421/2009 and CNMV Circular 4/2009.

In order to be able to identify information as material, the Order establishes a number of criteria, such as relative magnitude, impact on price volatility, the previous treatment of similar information, listing conditions, the importance that existing external analyses afford the information or the existence of rumours about it. Meanwhile, the appendix to Circular 4/2009 establishes a non-exhaustive and purely indicative list of examples of material information to help issuers interpret the criteria set out in the Order. However, under no circumstances can it be inferred that an event appearing in this list will always be deemed to be material information, nor that, because an event does not appear in this list, it will never be deemed to be material information. The appendix to the Circular also includes certain types of information which, while not material information *per se*, various regulations have determined that they should be treated as if they were, or should be disclosed in the same manner as material information.

With regard to procedures referring to the disclosure of issuers' material information, the Circular establishes that disclosure must be made using the CIFRADO/CNMV service. A channel has also been set up for non-issuer third parties which, being in possession of material information concerning an issuer, decide to disclose it.

The Circular also requires the content of a material information disclosure to be truthful, clear, complete and, whenever possible, quantified. The type of material information chosen to frame the disclosure and the brief description to be included in the notification must be precise and consistent with the nature of the material information disclosed. When disclosing information, issuers must act in a neutral and timely manner, regardless of whether or not the information originated from the issuer's organisation. Following the provisions of Order ECO/3722/2003, issuers will disclose significant events on their websites as well as reporting them to the CNMV.

Of the various categories of significant events, Order EHA/1421/2009 makes special mention of the disclosure of information relating to projections, forecasts or estimates. When disclosing a significant event of this nature, issuers must be especially careful to make it clear that they are referring to estimates or projections which, as such, depend on a number of factors. Also the hypotheses or assumptions on which the material information is based must be consistent with and respect the accounting standards and principles used in the preparation of the annual financial statements, by allowing new data to be compared with data published in the past. Any such hypotheses or assumptions must be sufficiently well explained to ensure a correct understanding of the information. Finally, issuers must state whether the information being disclosed refers to operating targets or mere estimates of the company's expected future performance, and indicate the time frame to which they refer.

One of the main innovations of the new regulation is the figure of authorised liaison, who will act as the CNMV's contact for the purpose of providing immediate answers in response to anomalous changes in the trading price of securities, including any disclosure to the market of material information. The liaison must be locatable one hour before market opening and until two hours after market close. He or she must have the capacity to give official answers on the issuer's behalf, and have access to the entity's directors and executives to check the information if necessary.

The new rules also call for different treatment for disclosures which, up until now, had been classified as "other disclosures" and which could be consulted, under this heading, on the CNMV's website. These disclosures must now be classified as one of the types of significant events set out in the appendix to the Circular, if they meet the conditions set out in Order EHA/1421/2009. Otherwise they will be disclosed to the market directly on the issuer's website.

Finally, it is important to note that Circular 4/2009 does not allow material information already disclosed to the market to be altered. Rectifications must be made by publishing a new significant event. Similarly, issuers cannot retract material information already disclosed, so, prior to making disclosures, they should make sure that their content is correct. Only in exceptional cases will the CNMV be able to annul material information: when this information would lead to an error which could not be rectified by a subsequent disclosure, or when it contains data which had been disclosed inadvertently and which does not constitute material information.

11 Market supervision

11.1 Significant activities of the CNMV in the various markets

The purpose of the CNMV's supervisory activities in secondary markets and derivatives markets is to ensure that these markets operate correctly. To this end, a substantial percentage of the Commission's supervisory activities is focused on the detection of signs of market abuse practices (price fixing and the use of inside information, mainly) and incidents in post-trading processes (clearing, settlement and registration), through the analysis of market transactions.

Summary of market supervision activities in 2009

TABLE 11.1

	Equity income	Fixed income	Derivatives	Settlement	Total
No. of transactions	31,606,663	938,436	5,203,849	29,672,611	67,421,559
Deficiency letters	140	11	10	17	178
Supervisory reports	12	27	16	3	58
Reports sent to other bodies and agencies	1	21	8	0	30
Periodic reports		12	14	24	50

Source: CNMV.

Last year, the CNMV paid special attention to issuers' compliance with the duty of reporting transactions executed by investment services companies and credit institutions, pursuant to the provisions of Section 59 *bis* of the Securities Market Act. While the obligation to report such transactions has been in force since December 2007, its content has undergone two changes since then. Thus, since November 2008, it has been mandatory to identify the beneficial owners on whose behalf the transactions have been made. Meanwhile, in January 2009 it became mandatory to report transactions involving certain instruments which are not traded on regulated markets of the European Union (OTC), but whose underlying is traded. This information is fundamental to the proper supervision of market abuse, and therefore the quality and accuracy of disclosures of this nature is an essential requirement. Since this information has been available, the number of deficiency letters sent to entities to identify the beneficial owners of transactions has fallen drastically.

It should also be pointed out that, since the publication of the "CNMV criteria on the detection and reporting of suspicious transactions" in July 2008, compliance with this obligation established in the Securities Market Act has increased significantly, although the general level of compliance is still very low in comparison with other neighbouring countries (fewer than fifty notifications were received). Of the

total number of notifications received, 85% were sent by Spanish entities and the rest by foreign regulators. The CNMV sent one of the notifications received to another regulator as it concerned a foreign security. 50% of the notifications were due to signs of the use of inside information and 34% due to possible price-fixing practices. Although the notifications referred to different types of securities, 70% corresponded to shares traded on the stock market. It should also be noted that it is proposed to initiate disciplinary proceedings against two Spanish entities for not having reported suspicious transactions.

11.1.1 Equity markets

Supervision in equity markets in respect of market abuse practices is of a dual nature: the first is preventive (*ex ante* supervision) and the second investigative (*ex post* supervision). In the former, the monitoring of issuers' obligations regarding the filing of significant events plays an essential role. In particular, the CNMV may, if it deems it appropriate, temporarily halt the trading of a security until the issuer files the material information or refutes its existence. In the latter, the success of the CNMV's investigative role is dependent on the quality of reporting on transactions and their participants. We have already mentioned the improvement in this respect since the requirement to identify the beneficial owners of transactions executed by investment services companies and credit institutions came into force. In 2009, the CNMV placed special emphasis on ensuring that the daily information on transactions was reported properly, and proposed the initiation of disciplinary proceedings for cases in which non-compliance jeopardises the proper supervision of the market.

In the next part of this section, we highlight some significant supervisory activities in the supervision of equity markets pursued during 2009.

Trading halts due to disclosure of information

The number of temporary trading halts affecting equity securities fell again in 2009, although less so than the previous year. As can be seen in chart 11.2, the decline in 2009 was more marked in terms of the number of trading halts called (-23.5%) than in terms of the number of issuers involved (-12.1%).

Temporary trading halts

TABLE 11.2

	2008	2009
Number of issuers suspended	33	29
Number of halts	51	39
Due to presentation of takeover bids	1	0
Due to disclosure of material information	47	34
Due to expiry of acceptance period for delisting bids	0	2
Other	3	3

Source: CNMV.

As in previous years, the main reason for trading halts was the lack of disclosure of material information; it was the reason for 87% of the total number of halts called. Nevertheless, there is a significant and hitherto unseen reduction in the number of halts for this reason (-27.6%). This decrease may be reflecting the greater care taken by issuers to protect non-public information of a sensitive nature, and the positive impact of the application of the CNMV criteria on the dissemination of news and rumours. However we must also take into account that, due to the financial crisis, the number of corporate transactions generating sensitive information also fell significantly.

Low volume transactions

In 2009, we saw a significant decline in the number of low volume orders entered for low liquidity securities. However, the CNMV continued to pay special attention to this type of order, given that they may not reflect a real interest on the part of the beneficial owner in taking a position in the security, but rather an intent to influence the behaviour of the security in a manner which is in the interest of the beneficial owner. These are low volume orders, in many cases of a single share, for securities which are not normally very liquid, whose prices mean that the order automatically becomes the best bid or ask order. If such orders are actually executed, they would cause a significant change to the last traded price and would create an appearance of market movement, which might induce other brokers to enter further orders in whichever direction the prices had been caused to move.

When the CNMV detects this type of order, it contacts a market member to clarify to what extent it could distort the free formation of prices and constitute a case of market manipulation. In these cases, the requirement to report any possibly suspicious transaction, as set forth in Section 83 *quater* of the Securities Market Act, is of particular importance.

Monitoring of mechanisms to provide liquidity to the market

During 2009, in line with the CNMV's aim to analyse the mechanisms to provide liquidity to listed companies and evaluate their impact on the market in an attempt to avoid discretionary actions which might impact on the formation of prices, the CNMV has monitored compliance with the criteria established in Circular 3/2007, on liquidity contracts. These contracts are aimed at listed companies with a low level of liquidity in order to make it easy for investors to buy and sell shares on the market, provided that they meet a series of requirements intended to prevent or minimise the sending of potentially misleading signals to the market. Generally speaking, the result of this study was satisfactory and the level of compliance with the criteria set out in the circular was high.

In addition, with the same purpose in mind, the CNMV studied own share transactions of issuers which had not signed contracts under the provisions of the above mentioned circular, but instead used other mechanisms to provide liquidity.

Study of additions and deletions of securities in the Ibex 35 index

The CNMV carried out an exhaustive study into the additions and deletions of securities as a result of the various reviews of the Ibex 35 which took place during 2009. This matter deserves consideration due to the importance of this selective index of major companies trading on Spanish markets, and the positive repercussions generated for the companies forming part of it. The study focuses on checking whether the trading of included and excluded securities, and candidates for inclusion or exclusion, proceeded in an ordered and proper manner, without any artificial activity aimed at ensuring that a share remained in or entered the index to the detriment of other candidates. The study also checks whether the changes in the Ibex 35 meet the technical standards regulating the composition and calculation of the index.

Disclosure of short positions¹

On 22 September 2008, the Executive Committee of the CNMV agreed to require the disclosure of short positions in excess of 0.25% of the share capital in 20 financial securities, and of any increase of that position or reduction below the threshold of 0.25%. The Committee also issued a reminder that naked short selling was prohibited for all listed securities and urged market members to use the powers granted to them by Section 39 of the Securities Market Act to ensure that their clients are in possession of the securities before processing sale orders.

11.1.2 Fixed income

Once again the CNMV paid special attention to issues aimed at retail investors, both in the AIAF Fixed Income Market and the Electronic Fixed Income Market.

In this area, the supervision of transactions with preferred shares was particularly important. The increase in the number of issues of this hybrid instrument, driven by financial institutions' desire to strengthen their capital adequacy, called for a close monitoring of such transactions, in both the primary and in the secondary markets (see box 11.1). With regard to the latter, a study was made of the fulfilment of liquidity contracts, checking that the exemptions claimed by liquidity suppliers were in line with the provisions of the contracts entered into. This is of particular importance when we bear in mind that, as this is a bilateral market, it is not easy to access either information about the price at which the transactions are made, or whether or not the liquidity suppliers are eligible for exemption.

With regard to transactions between institutional investors, the CNMV closely monitored transactions made between guaranteed funds and their guarantors. Transactions made at much higher than market prices were detected close to the expiry date of the fund's guarantee, in order to raise its settlement value and thereby prevent the execution of the guarantees. The CNMV considers that these transactions constitute malpractice, since they distort the formation of market prices and may mislead third parties.

1. Chapter 2 describes the various measures adopted at an international level and their performance to date.

The CNMV has also monitored the behaviour of entities which have invested in tranches of subordinated debt initially intended for institutional investors, for the purpose of ultimately placing them with retail investors. The purpose of this monitoring is to detect transactions in which the subscribers to the tranche are not motivated by a genuine desire to invest, but rather by a desire to enable the issuer to reduce the cost of financing by diverting the placement to the retail market.

Furthermore, the process of converting SENAF into a multilateral trading system (MTS) was completed in 2009, making it the first such system registered in Spain. In July of the same year, the State-guaranteed debt issues were admitted to trading on this system. In addition to the normal supervisory activity directed at fixed-income transactions, for these securities a specific study was carried out in order to determine possible differences between the prices of transactions made on AIAF and on SENAF.

Fixed-income issues aimed at the retail market

BOX 11.1

In the last two years, in order to strengthen their capital adequacy, a number of financial institutions have chosen to issue certain debt instruments which, if certain requirements are met, are considered to be regulatory capital. In Spain, entities have mainly opted for subordinated debentures, preferred shares and, as a new option, subordinated bonds mandatorily convertible into the issuer's shares. Given the difficulty encountered in placing these instruments on wholesale markets, a substantial percentage of issues from Spanish entities have been aimed at the retail market and distributed through the entities' own marketing networks.

On 17 February 2009, in view of the conflicts of interest that might arise in the marketing of these issues, the CNMV sent a letter to the organisations representing the financial sector updating the guidelines set out in the study made prior to the registration of these transactions. These guidelines had been sent in a previous letter dated 10 June 2005.

In order to determine whether the terms of issue in the retail segment are comparable to the terms that a similar issue intended for the wholesale or institutional market would enjoy, the CNMV considers that there must be a wholesale tranche in the issue or, failing that, reports from independent experts. The application of this criterion, together with the inclusion, when applicable, of some type of warning from the CNMV, both in the prospectus filed with the CNMV and in the documentation to be delivered to potential investors, has had a positive influence on the financial terms of the issues aimed at the retail tranche. As a result, with the exception of three issues representing 4,463 million euros, in the remaining 32, amounting overall to 11,639 million euros, the terms of issue were not disadvantageous compared with the terms available to the wholesale markets.

From 17 February 2009 until the end of 2009, 35 debt issues were filed with the CNMV by financial institutions aiming to strengthen their capital adequacy (as shown in the breakdown set out in the chart below). In three cases they were accompanied by warnings from the CNMV, alerting investors of the return offered by the issuer.

Issues of preferred shares, debentures, and subordinated bonds filed with the CNMV¹

	Millions of euros	No. of issues
Preferred shares	10,713	21
Subordinated debentures	2,189	11
Subordinated bonds mandatorily convertible into shares	3,200	3

Source: CNMV. (1) Between 17 February 2009 and year end.

In view of the positive impact seen in terms of protecting investors in the case of issues from financial institutions, the CNMV considers it necessary to extend the current disclosure obligation at least to the inclusion of an expert report for all fixed-income issues aimed at the retail market, regardless of whether or not the issuer is a financial institution. Such a report will not be required if part of the issue is placed as an institutional tranche, which will act as a benchmark as to the financial terms offered.

In order to achieve a greater degree of harmonisation in liquidity contracts relating to fixed-income issues aimed at retail investors, the CNMV, in collaboration with the fixed-income market, AIAF, has included in its Activities Plan for 2010 the definition of requirements for model contracts, to serve as a benchmark when agreements with entities providing liquidity to trade issues are being negotiated.

Finally, the AIAF market recently presented a platform for trading fixed-income issues, including preferred shares, on electronic markets, where retail investors can trade the securities admitted to trading on that platform.

11.1.3 Derivative products

MEFF Renta Variable

In 2009, the CNMV, in collaboration with MEFF (the Spanish Financial Futures Market, hereinafter MEFF), continued to study transactions whose purpose is either the transfer of cash between beneficial owners or the discretionary allocation of trades among managed accounts for tax purposes. The CNMV also continued to review trades agreed directly between members, to check that the rules governing such transactions (mainly applications) were being respected.

On the days leading up to the maturity dates of futures and options contracts, an in-depth study was made of the changes in beneficial owners' open positions, paying special attention to the possible impact of such transactions on the spot markets of the underlying assets. On the last trading day (the third Friday of each month), the study focused on the analysis of the relationship between open positions in contracts on the Ibex 35 and trading between 16.15 and 16.45, the time when the settlement price at maturity of the index's 35 securities is set, in order to see whether there were any attempts to manipulate prices.

Specific studies were also made of options trading, especially in cases in which there was a significant volume of day trading of the series in which market makers

are operating. Also studied were certain cases in which early exercise was requested on positions that had been taken in the same session.

As occurred in 2008, in 2009 compliance with the rules governing guarantees provided by members was monitored very closely. Last year, MEF published 11 circulars related to the parameters to use when calculating daily guarantees. Unlike the previous year, during 2009 the number of guarantees fell back to levels similar to those prior to the outbreak of the financial crisis.

Olive oil futures market (MFAO)

As regards the MFAO, supervision was especially focused on studying positions in the weeks prior to maturity and monitoring settlement by physical delivery. During 2009, there were no cases of non-compliance relating to the settlement of contracts by physical delivery. As in past years, there were also cases of delivery outside the clearing house, in accordance with the procedure provided for in the regulations. In the course of the year, the increase in the trading volume and the strategies adopted by the market players meant that on several occasions authorisation had to be requested to exceed the open position limit for certain contracts. This gave rise to the updating of the pre-established levels by means of MFAO Circular 09/09 on open position limits for market participants.

Warrants, certificates and other products

In 2009, supervisory activity in the warrants segment continued to focus on day trading of securities with illiquid underlyings, accompanied by trades on the spot market. Special attention was also paid to the study of certificate trades with highly volatile intraday prices, in order to identify the possible causes of that situation and determine whether they could be the product of market abuse. Finally, transactions carried out immediately prior to the publication of material information were also studied, in order to identify signs of the use of inside information.

In 2009, turbo warrants continued to be traded, and trading also started in other variants such as inLine warrants and Turbo Pro warrants. Trading of this type of product meant that it became necessary to verify compliance with the obligation to disclose to the market (by means of the corresponding sensitive information disclosure) when a barrier is hit causing early redemption, or when these products are first listed.

Finally, corporate transactions giving rise to adjustments were also studied, verifying in each case that the market was provided with appropriate information regarding those transactions.

11.1.4 Registration, counterparty, clearing and settlement

Iberclear-SCLV

The reduction in settlement volumes had a positive influence on the percentage of settlements that were completed on time, both in terms of amounts and number of transactions. Settlement delays for each participant are monitored on a daily basis, including the use they make of the 09:00h multilateral account and the new 13:00h account.²

The detection and monitoring of naked short selling continued to be the focus of special attention. Given the exceptional circumstances that the securities markets were operating in, the CNMV, in parallel with other securities supervisors, closely monitored all high volume past due sales pending settlement on D+3, all sales backed by securities lending registered on the same or subsequent date, and all intraday activity. Among the transactions with delayed settlement, special attention was paid to repos, bearing in mind their potential impact on the price formation of the securities involved.

Iberclear-CADE

The supervision of this settlement platform focused on the monitoring of transactions which remain uncovered at the end of the settlement process and have to make use of the securities lending system. The management companies were also monitored, both in terms of their disclosure of transactions to Iberclear, and their management of the registration of third parties, placing special emphasis on any delay in sending these notifications.

11.2 Market Monitoring Unit

The Market Monitoring Unit of the CNMV (UVM, Unidad de Vigilancia de los Mercados) conducts in-depth investigations into situations which are conducive to practices contrary to market integrity. These investigations are mainly in connection with inside information and market manipulation, in respect of both transactions and disclosure.

When conducting its investigations, the UVM does not only check whether this type of abusive practice exists, but also looks into the level of compliance of other regulations. Thus, for example, among other activities, the UVM checks whether the issuers and the entities which provide investment or investment consultancy services have complied with the practices stipulated by current regulations for this type of situation,³ in order to safeguard restricted information until it is appropriately disclosed to the market. Similarly, in its investigations into market manipulation, the UVM checks whether companies providing investment services should have reported a suspicious transaction in accordance with current regulations.⁴

2. The new multilateral settlement cycle is described in detail in chapter 5.

3. Sections 83 and 83 *bis* of the Securities Market Act and Chapter II of Royal Decree 1333/2005 implementing that Act on market abuse.

4. Section 83 *quater* of Law 24/1988, the Securities Market Act, in accordance with the wording set out in Law 12/2006.

Since its creation, the UVM has approached foreign supervisors and regulators on many occasions to request their collaboration in their investigations. The collaboration is usually provided under multilateral or bilateral consultation, cooperation, and information exchange agreements entered into by the CNMV, and generally consists of:

- Identifying beneficiary owners of transactions made on Spanish securities markets in the name of financial institutions based outside Spain, but on behalf of third parties. During 2009, the UVM requested this type of collaboration not only with the market supervisors of European Union countries but also with those of third party countries, such as Switzerland.
- Conducting investigations into the conduct of entities or persons resident in foreign countries. In 2009, the UVM requested this type of collaboration from the market supervisors of Luxembourg, Switzerland, and Portugal.

Once the UVM's investigations are completed, CNMV's Executive Committee may decide to take further action if they consider that the investigated parties have engaged in practices that are partly or wholly in breach of current regulations. In 2009, the following further actions were taken:

- Two investigations conducted by the UVM into the use of inside information were brought before the Public Prosecutor, as in both cases the UVM felt that there were circumstances indicative of the commission of a criminal offence related to market abuse. A brief summary of these two cases follows:
 - During the process prior to the presentation of a public offering of shares of a listed company, it became apparent that the managing director of a credit institution, who had been contacted with a view to his company financing the transaction, passed on this inside information to a third party. This third party bought shares of that listed company, obtaining a profit of considerably more than 600,000 euros once the offering was announced, 600,000 euros being the threshold above which this conduct may be considered to be criminal.
 - In the period prior to an asset sale transaction, which, after being disclosed to the market impacted very negatively on the company's share price, a member of the board of directors, privy to inside information, proceeded to sell shares of the company before the sale of assets was announced, thereby avoiding a loss far in excess of the aforementioned 600,000 euro threshold.
- Five disciplinary proceedings, brought against twelve persons or entities, were initiated, mainly for the possible use of inside information or for market manipulation. Two of the situations involved gave rise to disciplinary proceedings brought for the first time for these particular reasons:
 - In an investigation related to inside information, it was revealed that a listed company had not complied with all the rules intended to safeguard that information. In particular, the listed company had not properly maintained their insider register, as they had not included the date when each person accessed the information, or the reason why they were included in the register, neither had they monitored the share price trend during the period in which the information was restricted.

- In an investigation into market manipulation, it was revealed that an investment service company performed suspicious transactions with own shares for a listed company (the transactions were suspicious due, among other reasons, to the high percentage of total trading that they represented) without the company making a suspicious transaction disclosure to the CNMV.
- A warning letter was sent to an issuer, warning them to avoid making unfounded statements concerning other matters in press conferences disclosing financial information, since they could send out false signals and so distort the normal trading of the securities involved.

11.3 Supervision of takeover bids

Price

Compliance with fair price rules is supervised by means of a detailed study of all transactions made by the bidder or the persons acting in concert with him during the twelve months prior to the announcement of the bid. The prices agreed with the shareholders for the transfer of their shares are also examined. In the case of a delisting, the valuation report supporting the price offered is also studied. This report must accompany the takeover prospectus.

The prices of bids made in 2009 were, in every case, either the highest price paid in the reference period or the price agreed previously with a shareholder. In the three takeover bids which were accompanied by a valuation report, the price was the same as or higher than the valuation price.

Transparency and equal treatment

The takeover bid procedure must ensure that all the shareholders of the company involved have enough time and information to make their decisions, and that all shareholders of the same class are afforded equal treatment.

One disclosure that may influence the share price is the number of acceptances that a takeover bid is receiving. This information is considered to be particularly important in the case of a partial takeover bid, because if the level of acceptances exceeds the maximum limit, the number of shares offered by each shareholder will be reduced by applying the corresponding *pro rata* rules. For this reason, in order to ensure that all shareholders had the same information about the level of acceptance at the same time, in the partial takeover of Corporation Dermoestética, in 2009, there was a requirement for the information to be disclosed as a significant event disclosure during the last seven days of the acceptance period.

If there are agreements between the bidder and the shareholders of the company involved, their content is examined in detail in order to check the equality of prices, terms and information. In these cases, supervision focuses on the following aspects: any considerations agreed; compensation and payment deferrals; established rights and obligations; regulation of voting rights; corporate governance; preferential acquisition rights, put or call options, and any other restrictions on the free transfer of the shares; obligations relating to prior divestments; business plans and shareholder remuneration policy.

In the two takeover bids made in 2009 whose aim was to effect a change of control, the bidder offered agreements with a number of shareholders of the company involved. In the case of both Unión Fenosa and Itínere Infraestructuras, conditions and undertakings were established for the transfer of shares by certain shareholders and, in the case of the latter transaction, there were also clauses relating to the continuity of some of the shareholders. In both cases, the treatment of those accepting the take-over was considered to be equal. In the Aguas de Valencia delisting tender offer there were agreements between the controlling partners of the company, who agreed on the payment of a certain additional amount if the shares were subsequently transferred at a price higher than the established one. This option was extended to all those accepting the takeover bid.

Dispensations and exemptions

In 2009, the CNMV granted a dispensation of the obligation to make a takeover bid for Compañía Española de Petróleos, S.A. (CEPSA). The dispensation was requested by International Petroleum Investment Company (IPIC), in accordance with the provisions of Article 4.2 of Royal Decree 1066/2007, on acquiring a shareholding equivalent to 47.06% of the voting rights of CEPSA as a result of agreements entered into for the purchase of shareholdings from two of the company's shareholders, while another of the shareholders, the company Total S.A., with which IPIC stated they have made no type of concerted action, held 48.83% of the voting rights. The dispensation was dependent on the company keeping another shareholder with a larger shareholding than IPIC and that this company should not appoint more than half of the members of CEPSA's board of directors.

It was also agreed not to require Iberia Líneas Aéreas de España, S.A. to make a takeover bid for Vueling Airlines, S.A., in accordance with the provisions of Article 8.g) of Royal Decree 1066/2007. In this case, the exemption was requested by Iberia Líneas Aéreas de España, S.A. which had acquired a shareholding equivalent to 45.85% of the voting rights of Vueling as a result of the merger by takeover of Vueling with Clickair, S.A. The application file published as a CNMV significant event included an independent expert report on the industrial or commercial purpose of the transaction and a report from a legal advisor arguing that the main purpose of the merger was not to take control.

Finally, in 2009 the CNMV approved the delisting requested by Itínere Infraestructuras, with an exemption from making a delisting offer. The exemption is based on Article 11.d) of Royal Decree 1066/2007, since there had already been a takeover bid for the entire share capital of the company which stated the intention to delist the shares. The price was justified by means of a valuation report, in accordance with provisions set forth for delisting offers, and the shares were sold by means of a purchase order at the same price as that of the previous offering, which was maintained for a minimum period of a month in the half-year subsequent to the end of the preceding offering.

12.1 Supervision of codes of conduct and organisational requirements in the provision of investment services

12.1.1 Conduct of business rules

The CNMV supervises the codes of conduct in the provision of investment services by both credit institutions and investment services companies. In 2009, the CNMV's supervisory activities followed the line initiated in 2008, after the transposition of MiFID. In general terms, supervision mainly focused on the information to provide to clients or collect from them, and on the practices employed in the provision of sales, advisory and management services for securities market products. In the field of sales and advisory practices, special attention was paid to the marketing of financial instruments to retail investors when issuer and marketer are one and the same, or when, if they are different, there are likely to be conflicts of interest related to the incentives the latter receives from the former. It should be noted that, as a new development proposed in CNMV's Activities Plan for 2009, supervision now includes a review of the degree of observance of the recommendations published in 2008 on the detection and subsequent reporting of transactions suspected of constituting market abuse.

Table 12.1 takes a more detailed look at supervisory objectives in the area of investment services for 2009. In the rest of this section we will look at some of the incidents detected in the various areas under study and the recommendations that were introduced in the sector.

Procedures to assess suitability and appropriateness in respect of investment products and services

Deficiencies were detected in the way in which certain questions were phrased and scored in the questionnaires designed to gather client information. These deficiencies could give rise to a misinterpretation of the information obtained. It is important to check that there are no inconsistencies in the way questions are phrased and that the assessment is not biased.

In the area of suitability, we consider that the combined assessment of the three major aspects (knowledge and experience, financial position, and the client's investment objectives) leading to a single outcome may seriously compromise the assessment. Management or recommendation must be consistent with the three above mentioned aspects.

Supervisory objectives for conduct of business rules for entities providing investment services

TABLE 12.1

Area of examination	Key supervisory objectives
Regulatory category of clients	<ul style="list-style-type: none"> – Assignment of regulatory category to existing clients. – Notification of category assigned. Periodic review of categories and processing of applications to change category.
Assessment of suitability and appropriateness	<ul style="list-style-type: none"> – Data collection to assess objectives, know-how/experience and financial position. Appraisal of the information and notification to the client.
Cataloguing of financial instruments	<ul style="list-style-type: none"> – Complex/non-complex products. – Classification by risk level.
Preliminary information	<ul style="list-style-type: none"> – Content of advertising materials. – Specific information on the nature and risks of financial instruments. – Breakdown of costs, expenses, and incentives.
Receipt, transmission/execution of orders	<ul style="list-style-type: none"> – Execution only vs. appropriateness: complex products and initiative of entity. – Information about execution of orders.
Investment advice	<ul style="list-style-type: none"> – Investment advice vs. marketing work. One-off advice vs. ongoing advice. – Tailoring of recommendations to the client's investor profile.
Discretionary portfolio management	<ul style="list-style-type: none"> – Tailoring of the managed portfolio to the client's investor profile. – Information about the portfolio management service.
Reporting of suspicious transactions	<ul style="list-style-type: none"> – Procedures for the detection and reporting of transactions suspected of constituting market abuse.

Source: CNMV

When assessing previous experience, it is important (i) that open positions or prior transactions refer to the same financial instruments that are being assessed or to others of a similar nature, (ii) that experience is founded on a number of transactions and (iii) that there has been no long period of inactivity since the last transaction was made.

While the regulation makes no reference to the maximum period the information obtained remains valid; in order to ensure that investors are properly protected, the information should be updated on a regular basis.

Complex financial instruments

The differentiation between complex and non-complex financial instruments and the assessment of their risks is essential for determining their appropriateness for a particular investor. It should be noted that an entire family of products (for example, fixed income) should not be classified at the same risk level, since the various instruments comprising the family may have different risk factors depending on the issuer, liquidity, currency, maturity, etc.

'Execution only' services

It is not considered to be an appropriate practice to assume that, in the case of non-complex products, the initiative should always lie with the client and that, therefore, it is not necessary to assess their appropriateness. As a general rule, it should only be considered that a financial instrument is acquired on the initiative of the investor in cases where the client requests a transaction without the entity having made any previous personal approach to the client in connection with the instrument acquired.

Advisory services

Entities usually assume that they are only providing this service if they have signed a contract with the client to that effect. However, in the course of our supervision we have detected the existence of specific commercial structures and processes created for the purpose of selling highly complex instruments of a special nature to a previously selected public with which the entity maintains an on-going relationship through its consultants or managers. In these circumstances, it is difficult to objectively separate commercial promotion from the investment consultancy service. Thus, the CNMV has warned the entities involved that, in such circumstances, the marketing of certain financial instruments – when their nature and complexity so advise – may be considered as the provision of a financial consultancy service, with the obligations that such a service entails.

Also, in the course of supervisory activities relating to investment consultancy services, we have found that there is normally no written or verifiable evidence of the recommendation made, neither is there any proper record of the recommendations made as required by the CNMV Resolution of 7 October 2009, on minimum records to be maintained by companies providing investment services.

Portfolio management

With regard to portfolio management services, in several of the cases studied a low level of implementation of the suitability test was detected. In some cases we also detected that there was no proper correspondence between the client's investment objectives and the risk profile of the portfolios or that, given identical products (for example, classes of shares of foreign UCITS), the one that suited the client best was not always chosen. To prevent this type of incident, it is essential to set up appropriate procedures and controls.

Another noteworthy finding was the fact that there are entities that do not provide their clients with any securities safekeeping and administration contracts. This mostly affects fixed-income instruments and foreign UCITS. Also, with regard to the periodic information that entities send to their clients concerning the status of financial instruments, it is common practice to report on the acquisition value or par value of certain thinly-traded financial instruments. Proper compliance with the rules requires entities to report on the market value or fair value of these instruments, in order to provide their clients with clear and concrete information regarding the situation of their portfolio of securities.

Conditions under which financial instruments are marketed

On 7 May 2009, the CNMV published a set of best practices criteria for the marketing of financial instruments, which are summarised below.

With regard to the information to be provided to clients, entities should provide their clients with information about the characteristics and risks of financial instruments, in clear and simple language, and enough time in advance to allow their clients to make an informed investment decision. The above is regardless of the use of advertising or marketing communications, which must be identified as such and do not obviate this obligation.

When it is the entities themselves who prepare an issue prospectus, the summary should be used as a way of informing clients during the marketing process. If the product is complex, a short additional document should be provided, setting out the risks clearly, unless the summary prospectus already contains a warning in this respect.

In order to strengthen compliance with this obligation to inform, entities should keep a copy of the informative document delivered to and signed by the client, in accordance with the provisions of Rules 4 and 5 of CNMV Circular 4/2008. In this respect, it is not considered good practice to include generic clauses in contract orders as a method of proving compliance with the obligation to provide adequate information.

With regard to the information that entities send to their commercial network in order to place the securities within an issue, documents should be brief, specific to each product, and set out their characteristics and risks, including the overall risk level assigned to the product. The documents should also state whether the product is complex or non-complex, what public the issue is aimed at, and mention the need to assess the appropriateness of suitability.

12.1.2 Organisational requirements

The supervisory activities carried out in this area in 2009 placed special emphasis on the review of the measures adopted by the entities in respect of the protection of their clients' financial instruments and money balances. Strict compliance of the entities' obligations in this respect is particularly important in these difficult times for the markets and the financial industry. In particular, in the case of funds of clients associated with the provision of investment services, the duties set forth in Order EHA 848/2005 should be remembered. This order determines the investment regime of the balances of instrumental and temporary credit accounts which broker dealers and brokers hold with their clients. Along with the obligation to keep these balances to a minimum, as established in other rules, the above mentioned order establishes i) that the balances should be invested in certain categories of low-risk, liquid assets, ii) that the name of the accounts in credit institutions where the cash is deposited must make express mention of the fact that they are client balances, and iii) that there must be a total separation between the entity's own account and that of its clients. It should also be noted that CNMV Circular 5/2009 was approved. This regulates the annual report which the auditors have to send to the CNMV on the protection of clients' assets, and is commented on in the box below.

Annual auditors' report on the protection of clients' assets

BOX 12.1

Article 43 of RD 217/2008, of 15 February, which includes the transposition of Article 20 of Directive 2006/73/EC, requires the external auditors of investment entities to prepare and send to the CNMV an annual report on the appropriateness of the measures adopted to protect clients' assets held in safekeeping and administered. Responsibility for meeting this obligation lies with the entities' senior management. The content of the report was regulated in the course of last year by CNMV Circular 5/2009.

According to this Circular, the report must be separate from the auditing work on the annual accounts and must be based on criteria of proportionality. It applies to all investment services companies and other entities providing safekeeping and administration services for financial instruments and funds received from clients, although clients' funds are exempted in the case of credit institutions. In particular, the report must cover the discretionary and individualised management of portfolios when the entity has a mandate granting it power of disposal over clients' financial assets or funds.

The Circular also requires the auditor to report on the existence of formalised procedures in the entity and their appropriateness for meeting regulatory requirements relating to the protection of clients' assets. The report must also include a summary of the work performed in the various areas of review relating to financial instruments and client funds, which are set out in the Circular's appendixes for the purpose of identifying critical areas from a prudential point of view. The auditors must provide details of any significant weaknesses or exceptions identified, and any scope limitations arising in the course of their work. The auditors must also include any recommendations to the entity in respect of corrections and improvements to the procedures and internal control systems affecting the protection of clients' assets.

The auditors must send the report to the CNMV by telematic means via the CIFRADO system in the first five months of each year.

With regard to the preparation and maintenance of the mandatory registries by investment services companies, the CNMV published a Resolution on 7 October 2009 containing a list of minimum records to be maintained, as required by Titles V and VII of the Securities Market Act, as established in Article 33.3 of Royal Decree 217/2008.

As usual, the prevention of conflicts of interest comprised a significant part of the CNMV's supervisory tasks in 2009. As a result of this work, the CNMV found that in a number of entities their management business was not properly separated from their own portfolio management, client portfolio management, and analysis services, as required by Section 83 of the Securities Market Act. In one particular case, it was revealed that a supervised entity failed to properly identify or manage a conflict of interest that arose during securities placement activities.

Finally, with regard to organisational requirements relating to internal control, the CNMV paid special attention to the delegation of duties in areas critical to the protection of investors (regulatory compliance, internal auditing, and risk management). The CNMV considers that, given their importance, the delegation of duties

in these areas must not lead to a reduction in entities' responsibility and requires entities to take appropriate measures of control over the company and the delegated activity.

12.2 Prudential supervision of investment firms (ESIs)

The CNMV exercises prudential supervision over broker-dealers and brokers, portfolio management companies, and financial consultancy companies. Chapter 8 provides information about the number of such entities and their activities and results in 2009. Supervision is carried out on a consolidated basis, covering a total of 40 consolidatable groups in 2009.

The CNMV carries out an individualised risk assessment for each entity, which enables the supervisor to establish a risk profile for each entity and so identify, in the most objective manner possible, the level of supervisory attention required by each one. Supervision is based on the periodic information sent to the CNMV by the entities themselves and on on-site inspections.

As mentioned in Chapter 8, last year was a difficult one for the sector. The sector's performance in the securities markets and the outlook for 2010 suggests that there is a certain surplus capacity in the sector which will probably require cost structures and business models to be revised and, in extreme cases, the very existence of some companies to be questioned. In any event, entities with a solvency deficit are subject to special scrutiny by the CNMV to ensure that they design appropriate viability plans to remedy the situation, as required by current regulations.

Regulatory changes relating to solvency

In September 2009, the Executive Committee of the CNMV posted on its website a guide to the capital self-assessment report required by CNMV Circular 12/2008, of 30 December, on the solvency of investment services companies and their consolidatable groups. The purpose of the guide is to help supervised entities prepare this report, while setting the supervision criteria applied by the CNMV in this respect, thereby meeting the transparency obligations set out in solvency directives in force since June 2009. A letter of information on this matter was also sent to all entities in the sector subject to prudential supervision, in order to remind them of these obligations and clarify certain related concepts.

In particular, the guide reminds entities of their obligation, set forth in the aforementioned Circular 12/2008, to know, measure, manage and control the risks to which they are or may be exposed, and the Board of Director's obligation to know and plan their capital requirements. All this information on risks and the capital needed to cover them must be summarised every year in the capital self-assessment report, which will be used by the CNMV as supplementary information in its supervisory work.

Meanwhile, the above mentioned letter of information also makes reference to the solvency report which entities have to publish, required, as in the case of the capital self-assessment report, by CNMV Circular 12/2008. This report, which transposes recent EC directives on solvency requirements, obliges entities to provide the public

with information of a general nature on risks and capital adequacy, so that existing or potential clients are aware of basic data concerning entities' solvency.

12.3 Supervision of UCITS

With regard to the supervision of collective investment, 2009 was marked by the implementation of the hitherto unimplemented parts of the 2005 UCITS Regulation, via the approval of CNMV Circular 3/2009, on the content of the half-yearly report on compliance with the duty of monitoring and supervision of the depositaries of UCITS, and CNMV Circular 6/2009, on the internal control of management companies (see box 12.2). Further adaptations of the regulation also came into force, such as the adaptation of UCITS accounting rules to the new Spanish General Chart of Accounts. Therefore, the two main aspects of UCITS supervision (off-site controls and on-site inspections) have been incorporated within a new, much more detailed regulatory framework, which is more appropriate to the present day realities of the market.

Strengthening of control systems in UCITS management companies and depository entities (CNMV Circulars 3/2009 and 6/2009)

BOX 12.2

Among the regulatory initiatives undertaken by the CNMV in the area of collective investment in 2009, one of the most important was that relating to the regulatory development of control systems for both management companies and depository entities. These initiatives culminated in the approval of Circular 3/2009, of 25 March, on the content of the half-yearly report on compliance with the duty of monitoring and supervision of UCITS depositaries, and Circular 6/2009, of 9 December, on the internal control of management companies.

Circular 3/2009 regulates the reporting to the CNMV of incidents detected by the depository as a result of the failure to comply with their duties of monitoring (Section 60 of the Law 35/2003, on UCITS, and Article 93.3 of Royal Decree 1309/2005). Among these obligations, depositaries have to check that transactions are made under market conditions, that they comply with pre-established ratios, legal limits, and investment objectives, monitor liquidation value fluctuations, and review public and confidential returns.

Any incidents detected are included in a half-yearly report stating the accuracy, quality and sufficiency of the information sent to them by the UCITS management company. The report is sent to the CNMV on a digital medium via the CIFRADO service. Without prejudice to this half-yearly report, the depository must report to the CNMV, in writing and in a timely manner, any anomaly they detect in their duties of supervision and monitoring which are of special importance, either due to their impact on the liquidation value or because they constitute a breach of duty. The Circular also elaborates on the scope of the review of the periodic public information from the UCITS management company to be made by the depository, setting out the content of these reports that must be checked both before and after they are sent to the CNMV.

With regard to Circular 6/2009, its main purpose is to implement the content of the internal control obligations of UCITS management companies and investment companies provided for the UCITS Law and Regulation, extending them to all activities related to the management, administration and representation of UCITS. Up until now, the internal control obligations of management companies were only set out in detail for transactions with financial derivative instruments or unlisted securities carried out by UCITS. The Circular conclusively establishes that it is the responsibility of the board of directors of the management company to define, implement and supervise internal control procedures and systems.

Circular 6/2009 defines the risk control and regulatory compliance units that should make up the management company's internal control system. It also defines the internal audit unit, the purpose of which is to examine the appropriateness and effectiveness of internal control systems and procedures, proposing improvement measures in an auditing plan. The circular also defines the information flows of the various units. The organisational structure will be in proportion to the nature, volume and complexity of the activities and the UCITS managed.

This Circular makes special mention of risk management policies and procedures, the purpose of which is to identify, assess and quantify the risks of UCITS. For this purpose, the Circular calls for i) the performance of certain checks in respect of both new and existing investments (due diligence), ii) the verification of compliance with the risk limits of each UCITS, iii) the performance of back testing to gauge the accuracy and quality of risk assessment systems, and iv) the application of stress testing to gauge products' ability to withstand extreme situations, including liquidity stress testing.

Finally, it should be noted that the organisational and internal control requirements set out in the Circular are aligned with criteria recently brought before the European Commission by the CESR in its advice on the implementation of level II rules of the UCITS IV Directive on the organisational requirements of the management companies, which, in turn, coincide with the criteria established by MiFID for investment services companies, with the necessary adaptation to the specificities of the UCITS. Finally, Circular 6/2009 sets out the risk management principles approved by CESR in February of 2009.

As a result of the CNMV's supervisory activity, a total of 1,484 letters were sent to supervised entities, of which 1,378 were prompted by off-site controls, mostly based on information sent by the entities themselves, and the rest by on-site inspections. As can be seen in table 12.2, a large number of deficiency letters were sent as a result of information filed late (853). These delays basically reflect the initial problems the entities had in adapting to the new models for confidential returns and periodic public information of UCITS, which are more comprehensive and more detailed than the previous ones.

Supervision of UCITS: letters sent by the CNMV in 2009

TABLE 12.2

Type	Number		Total
	Off-site controls	On-site controls	
For late filing of information	853	0	853
Requests for information	90	25	115
Corrective measures or recommendations	383	68	451
Other notifications	52	13	65
Total	1,378	106	1,484

Source: CNMV.

12.3.1 Supervision of prudential requirements and conduct of business rules

Periodic controls

In 2009, supervisory activity in this area continued to focus on the periodic checking of basic regulatory precepts for the protection of investors, such as sufficiency of resources, the adequacy of internal controls, the prevention of conflicts of interest, compliance with legal ratios, and the appropriateness of investments, among others. Some of these periodic controls are dealt with in the following paragraphs.

Regarding controls in reference to the resources and procedures of the management companies, it should be noted that many of the potential risk situations detected during the CNMV's supervision were related to the lack of sufficient resources required for the proper performance of the duties and obligations attributed to these entities under current regulations. In respect of the sufficiency of resources of UCITS management companies, in the course of 2009, CNMV Circular 6/2009, of 9 December, on the internal control of UCITS management companies, was approved. This Circular sets out the organisational requirements and internal control procedures to which these companies will have to adapt during 2010. This Circular will constitute a sound and detailed regulatory benchmark for gauging management companies' sufficiency of resources. On the same subject it is also important to mention the supervision of the rules of separation between the management company and depository, when the two form part of the same group, a circumstance which is of special importance given the way the sector is structured in Spain.

The CNMV's activity in supervising the solvency of UCITS management companies is aimed at anticipating possible problems in this area and, when deemed necessary, asking entities for plans to redress the situation. In the monitoring and analysis of UCITS management companies, several parameters relating to the entity's asset position and business performance were considered and sensitivity tests were carried out based on adverse scenarios.

With regard to controls over the legality of UCITS, a significant percentage of CNMV's supervisory efforts were directed at minimum portfolio diversification requirements, liquidity ratios, and limits of debt leverage and the use of derivatives. Special attention was also paid to compliance with the rules governing assets and investors in investment funds and equity funds, and shareholders of open-end funds, including verification of the own share limits.

The CNMV also devoted a considerable effort to checking compliance with the investment policies described in UCITS' information prospectuses. A number of cases of non-compliance detected resulted in the payment of compensation to investors. The proper application of fees in UCITS was also reviewed, and a number of incidents were detected relating to the charging of deposit fees for foreign securities.

Special controls

Alongside the periodic controls described above, one-off supervisory analyses are also conducted, which are normally prompted by special circumstances affecting either the entity or the markets. Thus, in 2009, the financial crisis caused several special studies of a prudential nature to be conducted, some of which are described below.

- Examination of the fixed-income component of UCITS portfolios. This examination was prompted by the major reduction in the liquidity of certain segments of the financial markets, mainly in the private fixed-income segment. On 17 March 2008, the CNMV published a note recommending that management companies should have an express control policy governing the overall liquidity of UCITS portfolios, in order to ensure that requested redemptions can be covered and that all investors receive equitable treatment. Since the start of the crisis, the CNMV's supervisory work in this respect has mainly consisted of examining the valuation that management companies were applying to investments in private fixed income, in order to check their appropriateness and quantify the percentage of the investment fund's assets that corresponded to thinly-traded products. A review was also carried out on all asset purchase and sale transactions performed by UCITS, paying special attention to those made between related parties, in order to check that the transactions were carried out at market prices and in the interest of the investor.
- Suitability of management companies' internal control systems to control market depth in UCITS with high percentages of their portfolios invested in low and medium cap securities. In general, it was found that management companies have adequate control systems for maintaining a prudent relationship between the normal trading values of each security they invest in and the volume invested by all the managed institutions as a whole, in order to allow the orderly liquidation of positions, in most cases within one day.
- Supervision of guaranteed funds. During the year, guidelines were sent to guaranteed management companies in order to ensure the appropriateness of the structures underlying these funds to existing conditions in fixed-income markets. In this context, a number of promoters decided to set up a financial pledge in the form of a deposit of cash or public debt securities, in addition to the guarantee provided by a third party. This guarantee would be executed if the investment fund were obliged to sell certain assets and their realisable value were less than their value for the purposes of calculating the fund's liquidation value. Thus, this mechanism constitutes a fully executable additional or supplementary guarantee which reduces uncertainty in respect of the redemption terms of investment funds.

- Monitoring of UCITS portfolio investments directly affected by the financial crisis, such as the financial instruments issued or guaranteed by Lehman Brothers. While the number of these instruments in Spanish UCITS portfolios was insignificant compared with total assets held, special attention was paid to those UCITS which did have such instruments in their portfolios. As a result of this study it was found that, in general, the instruments were valued at market price and investors were provided with adequate information.
- Examination of the participation of ordinary UCITS in other UCITS with liquidity problems, valuation problems, or problems which have caused redemptions to be suspended. This examination was particularly intensive during the first few months of 2009, in which the financial crisis caused a large number of funds eligible for investment by UCITS (most are European passport funds) to be affected by this type of problem. The examination focused on the liquidation value applicable to subscription and redemption transactions, transparency for investors, and the management of possible conflicts of interest between investors.
- Examination of the consequences of the Madoff fraud. While in Spain the existence of assets affected by the fraud was not particularly significant in quantitative terms in relation to overall assets, as in the case of investments related to Lehman, the UCITS which did have investments affected by the fraud were examined from the point of view of compliance with the rules. Two entities compensated their investors when it was discovered that investments had been made in breach of the policy set out in their prospectuses. The examination performed prompted a reflection on the interpretation of the rule regarding the choice of investments. On 18 March 2010, the CNMV sent out a letter in which it stressed that management companies should set up robust corporate governance systems and an appropriate segregation of assets as criteria for the appropriateness of the underlying UCITS in which they are investing. In the case of investments in master-feeder structures, the practice of due diligence should extend to the master funds, including controls by the depository, since ultimately the investing UCITS will be exposed to the risks inherent to the master fund. Also, in the case of investments in hedge-fund linked structured products, and investments made directly either in harmonised UCITS or in non-harmonised UCITS and hedge funds, the issues set out in Circular 1/2006 on hedge funds should be used as a reference.

As well as special controls of a prudential nature, the CNMV also carried out special controls to check compliance with conduct of business rules by UCITS management companies, especially with regard to the management of conflicts of interest. The most important of these controls are described below:

- Examination of the measures adopted by management companies in connection with the receipt of compensation payments (for example, compensation arising from the bankruptcy of companies such as Enron). This examination is focused on verifying that the management companies are acting in the interest of the investors and that conflicts of interest in the allocation of these compensation payments are managed equitably.
- Examination of the placement of securities in UCITS portfolios, for the purpose of determining whether there are conflicts of interest between the roles of entities as issuers or underwriters.

- Examination of mergers between funds, to ensure the equitable treatment and protection of the investors in those funds.
- Examination of the mechanisms used to pre-allocation of orders, for the purpose of ensuring that the orders are allocated to the UCITS before the result of the transaction is known, thereby preventing discriminatory allocations which would be in breach of the legal obligation to act in the interest of UCITS investors.
- Verification that UCITS transactions are performed under market conditions and at market prices, for the purpose of detecting practices which might prejudice the interests of the UCITS in favour of other entities, particularly other UCITS managed within the group.

12.3.2 Information for investors

UCITS regulations call for auditors' reports and the annual accounts to be sent to the CNMV. This information must also be delivered to investors as part of the annual report. It is complemented by the recommendations made by the auditors and the report on the degree of compliance with the internal control report. All these documents are essential to the performance of CNMV's supervisory work and, therefore, in 2009 special attention was paid to reviewing its form and content, and to checking whether the submission deadlines were met.

In particular, the CNMV placed special emphasis on the review of the auditors' reports for 2008, presented in 2009. The importance afforded to this review is explained by the fact that, in the context of the financial crisis and in the auditors' opinion, there has been an increase in the number of qualifications, uncertainties and emphasis paragraphs referring to investments in troubled or doubtful assets, failure to comply with ratios and legal minimums, UCITS in liquidation, etc.

12.3.3 Supervision of hedge funds and fund of hedge funds managers

In 2009, orderly liquidation processes, which have affected several of these institutions, mainly funds of funds, were closely monitored. With regard to funds of funds not in liquidation, CNMV's supervision paid special attention to the level of concentration in their portfolios of assets with valuation or liquidity problems, and the verification of due diligence procedure in the choice of investments by these entities, mainly in reference to investments such as those affected by the Madoff fraud (see "Special controls" in point 12.3.1).

12.3.4 Supervision of UCITS depositories

In 2009, several supervisory actions were carried out to check whether UCITS depositories had implemented the provisions of Order EHA/596/2008, especially in respect of the duties of monitoring and supervision of UCITS management companies. Special emphasis was also given to ensuring (i) compliance with the duty of safekeeping securities and cash of UCITS, especially in cases where the investment is to be made in other UCITS and when investing in financial derivative instruments; (ii) compliance with the duty of managing securities and cash of UCITS,

especially when the UCITS' current accounts are in third-party entities different from the depository; and (iii) if the management company and the depository belong to the same group, that the department managing the depository of the UCITS holds a hierarchical position within the group which ensures that it has the necessary authority to exercise the duties required of it by current regulations.

In reference to depositaries, CNMV Circular 3/2009, of 25 March, on the content of the half-yearly report on compliance with the duty of surveillance and supervision of UCITS depositaries, was published. This Circular sets out the information that depositaries must send to the CNMV when they detect regulatory breaches or anomalies in the management or administration of UCITS. The rule entered into force on 1 July 2009 and the first information to be sent corresponds to the second half-year of 2009.

12.3.5 Supervision of real estate UCITS

As in 2008, the difficult situation of the real estate sector prompted the CNMV to pay priority attention to the supervision of these UCITS. In particular, the CNMV monitored the orderly sale of properties in two real estate investment funds which had been obliged to suspend redemptions. With regard to the rest of the real estate investment funds, there was a close monitoring of their liquidity position in order to guarantee the coverage of redemptions. As part of these controls, special attention was paid to the examination of auditors' reports. With regard to valuations, CNMV monitoring took into account comparative returns from properties achieved by the various entities, and market trends.

12.4 Supervision of venture capital firms

The entry into force of CNMV Circular 7/2008 on accounting standards, annual accounts, and confidential returns of investment services companies, UCITS management companies, and venture capital management companies and of CNMV Circular 11/2008 on accounting standards, annual accounts, and confidential returns of venture capital firms, has improved and facilitated the supervision of these types of entities by including more comprehensive and detailed information models and new disclosure requirements. Now, with the new models, the information provided by venture capital firms enables a more detailed examination of compliance with the legally established ratios to be performed.

One of the most important new features introduced in Circular 11/2008 is that, if the auditors' reports contain qualifications due to scope limitations as a result of not having had access to sufficient evidence regarding the valuation of the entity's investments, the management company or the venture capital firm, as the case may be, will send a follow-up report, prepared by the auditors themselves, describing how those qualifications are to be resolved. In 2009, special attention was paid to the content of these reports, which increase the transparency of this type of entity.

12.5 Supervision of securitisation fund management companies

In 2008, the programme of on-site supervision of securitisation fund management companies, which had started in 2002 for the purpose of checking that companies

had sufficient resources to engage in their activity, was completed. In 2009, the CNMV's supervisory work shifted its focus to checking the measures adopted by the supervised entities in respect of the incidents that they had detected previously. The results of these checks were, in general, satisfactory.

12.6 Collaboration in the prevention of money laundering

Within the framework of collaboration between the CNMV and SEPBLAC (Executive Service of the Commission for the Prevention of Money Laundering and Monetary Offences), the CNMV sent the latter organisation a report on one UCITS management company's degree of compliance with its obligations in respect of the prevention of money laundering, following a review which had been agreed with SEPBLAC.

13 Investor assistance

13.1 Complaints management

The CNMV handles the complaints filed by investors in connection with the activities it supervises. These complaints should be resolved, in the first instance, by the same entities to which they refer and therefore the investor should address their complaints to the entity's client care service and/or client ombudsman. If the entity does not answer within two months of filing the complaint, or if the reply is not satisfactory, investors may file their complaint with the CNMV, through the Investor Assistance Office (Oficina de Atención al Inversor, OAI). CNMV's resolution of the complaints filed is not binding for the entities, although, in some cases, it may help the investor to redress or obtain compensation for the harm done.

Investors may also file complaints against private entities, which are processed through the Litigation Department of CNMV's Legal Affairs Service (see section 3 of chapter 14 of this report).

In 2009, a total of 2,154 complaints were filed with the CNMV, over twice the number filed the previous year. As can be seen in table 13.1, the number of complaints processed during the year amounted to 1,137, an increase of 26% on the total in 2008. At the end of 2009 there were 1,410 complaints pending resolution.

With regard to the type of complaints received during 2009, there were three significant differences compared with previous years. Firstly, the number of complaints not accepted due to non-compliance with formal requirements rose. Secondly, there was also a significant increase in the number of complaints received which were the competence of other authorities, which may reflect a greater use of the "one-stop window" for complaints related to the financial sector (banking, securities and insurance), but may also reflect the difficulty some investors have in identifying the competent authority due to the complex nature of certain investments. Thirdly, there was a noticeable drop in the number of complaints resolved with an unfavourable report to the claimant: while in 2008 they accounted for half the complaints resolved, in 2009 they represented 30%. There was also an increase in the number of mutual agreements and withdrawals, as can be seen in table 13.1.

The entities with most complaints filed against them were credit institutions, which is simply a reflection of the relative importance of the commercial distribution channel for financial products. More specifically, six entities accounted for nearly 50% of all the complaints. With regard to the breakdown in terms of type of service or subject of the complaints resolved, complaints in connection with the provision of investment services accounted for 64% of the total, up by 35% on 2008, as can be seen in table 13.2. Within this group, the most common complaints were related

to the receipt, transmission and execution of orders, but the type of complaint showing the most significant increase were those relating to a lack of information or incomplete information provided to the clients. Complaints for this reason addressed to banks increased by 124% between 2008 and 2009. Conversely, complaints related to UCITS fell by 11% in the same period.

Complaints processed broken down by type of resolution

TABLE 13.1

	2007		2008		2009		% change 09/08
	Number	% of total	Number	% of total	Number	% of total	
Resolved	610	77.4	722	80.3	823	72.4	14.0
Report favourable to claimant	176	22.3	226	25.1	293	25.8	29.6
Report unfavourable to claimant	342	43.4	365	40.6	254	22.3	-30.4
Report without decision	7	0.9	10	1.1	57	5.0	470.0
Resolved by mutual agreement	76	9.6	112	12.5	198	17.4	76.8
Complaint withdrawn	9	1.1	9	1	21	1.8	133.3
Unresolved	178	22.6	177	19.7	314	27.6	77.4
Competence of other authorities	39	4.9	41	4.6	86	7.6	109.8
Not accepted	139	17.6	136	15.1	228	20.1	67.6
Total complaints processed	788	100	899	100	1,137	100	26.5
Total filed	809	—	1,058	—	2,154	—	103.6

Source: CNMV.

Complaints resolved in 2009. Breakdown by subject

TABLE 13.2

	2007		2008		2009	
	Number	% of total	Number	% of total	Number	% of total
Provision of investment services	338	55.6	388	53.7	525	63.8
Receipt, transmission and execution of orders	173	28.5	200	27.7	256	31.1
Information provided to the client	96	15.8	112	15.5	188	22.8
Fees and charges	59	9.7	59	8.2	63	7.7
Other	10	1.6	17	2.4	18	2.2
Investment funds and other UCITS	272	44.4	334	46.3	298	36.2
Information provided	114	18.7	95	13.2	108	13.1
Subscriptions/redemptions	65	10.4	103	14.3	92	11.2
Transfers	54	8.9	88	12.2	61	7.4
Fees and charges	39	6.4	48	6.6	37	4.5
Total complaints resolved	610	100	722	100	823	100

Source: CNMV.

Monitoring of rectifications by entities

After each complaint filing has been resolved, the entity subject to the complaint is asked for information and documentary evidence of the measures taken if the conclusions of a report called for rectification. If the entity does not answer within the pre-established time, the complaint is considered to be unrectified for statistical purposes.

An improper action is deemed to have been rectified when the entity provides evidence that it has dealt with the subject of the complaint, whether by offering monetary compensation to the claimant (under no circumstances does the CNMV pass judgement on the amount of compensation) or by accepting the criteria set out by the CNMV in its report and taking measures to avoid a repetition of the improper action in the future.

The aim of this monitoring is to prevent the repetition of bad practices and improper actions and encourage entities to take measures to correct any such practices or actions. It also enables the CNMV to assess the effectiveness of the complaints management system and the entities' level of adaptation to the criteria and recommendations arising from the analysis of the complaints.

It should be noted that in 2009 the number of rectifications as a percentage of the total number of complaints resolved with a report favourable to the claimant fell significantly compared with previous years. Of the 292 complaints resolved in this manner, the entities corrected their practice in 18.2% of the cases, as opposed to 34.1% in 2008 and 55% in 2007. In 74.7% of the cases, the entities did not answer and in the remaining 7.2% of the cases they answered in disagreement with CNMV's opinion.

Most significant complaints resolved in favour of the claimant

In terms of the frequency and significance of their content, there are three main groups of complaints resolved in favour of the claimant during 2009: those related to the provision of investment services, those in connection with investment funds, and those arising from inheritance procedures. With regard to the first group, the following should be noted:

- Complaints due to the following continue to be common: failure to execute orders or delays in their execution; mismatch between client's instructions and the transaction finally executed; execution of transactions without the client's consent or knowledge; and incidents involving jointly-held securities accounts. In many cases there was a valid reason for not executing the orders, but the entity which received the order from the client is obliged to advise that the order was not executed and provide an explanation.
- Once again there are incidents involving securities listed on the AIAF market, which evidences the lack of diligence of some members of the market who receive orders in retail tranche and also as depositaries for the securities. In particular, a number of entities were not able to demonstrate compliance with their order processing policy; there was evidence that they did not extend the search for a counterparty to their entire commercial network, nor did they make use of liquidity suppliers for the various issues.

- In the case of jointly-owned securities accounts, once again there have been complaints in relation to entities making alterations to the regime of ownership and usufruct, without the proper authority or right to do so. Also, entities were reminded that the regime whereby any of the co-owners of a securities contract can dispose of the funds must be amended if there is a formal request by any of the co-owners to revoke it.
- In 2009, a significant number of complaints were related to the acquisition and holding of financial instruments issued by entities which were seriously affected by the financial crisis, such as Lehman Brothers or the Icelandic banks. In most cases, these complaints concerned the provision of incomplete information regarding the nature and risks of the securities prior to their acquisition, and the lack of information during the time in which the securities were held in portfolio, even after the declaration of bankruptcy. In several complaints the entities argued that verbal information had been provided, but they could not provide evidence of written information regarding the issues affected. However, a number of entities included information about the nature and risks of the products in the purchase documents.
- It should also be noted that there were a number of complaints regarding financial swaps, in particular concerning the lack of information provided about the cost of early redemption when the swaps were contracted. If clients request early cancellation, the entity should make the calculations and inform the clients of the cost before executing the early redemption order.
- There continued to be complaints regarding the charging of fees. In particular, complaints were received about the incorrect application of the items and accrual periods set out in fee schedules, charging amounts in excess of the set prices, charging for unexplained items, or the lack of proper information about amendments to the fee schedule.

With regard to complaints in connection with investment funds, the most common were as follows:

- The marketing entities did not deliver either the prospectus or the latest half-yearly report until after the participations or shares were subscribed, and did not inform clients of their right to request the full prospectus and latest annual and quarterly reports published.
- Client orders were delayed or not executed due to the fact that the shares of an investment fund were pledged. The release of the pledge is an essential prior step which must be taken as quickly as possible to avoid redemption delays.
- Execution of orders without the consent of the investor or with content deficiencies. In most cases this refers to jointly-owned fund portfolios.
- Application of liquidation values in redemption operations which conflict with the information provided in the fund's prospectus and marketing materials.
- Incidents in transfers of funds between management companies for various reasons, evidencing defects in the conduct of the recipient participants, such as not properly identifying the principal (which triggers the rejection of the request by the originating participant), not properly informing clients of the obligation to

convert products denominated in other currencies to euros, or not notifying the existence of minimum investment requirements in target UCITS. Some complaints also evidence a lack of diligence in the originating participants, which should explain to the recipient participant the circumstances which caused the transfer to be rejected and ensure that the information they are transmitting is correct, in terms of: fiscal age, amount of the transfer, etc.

Finally, with regard to complaints in connection with the processing of inheritances, the most common problem is unwarranted delays in the process. In other cases, entities did not offer the heirs information about specific transactions ordered by the deceased in spite of requests to do so. There were also complaints due to the fact that entities did not allow the heirs to dispose of the assets of an inheritance to pay the tax obligations arising from inheritance and donation tax, even when the change of ownership had not been processed. Meanwhile, there are still complaints regarding changes of ownership due to inheritance which were carried out by entities by means of an application of securities or the sale of the deceased's position and immediate purchase by the heir.

International complaints management networks

In 2009, the CNMV took part in the activities of the Financial Dispute Resolution Network (FIN-NET), the complaint resolution network within the scope of the financial services provided in the European Economic Space (EES). This network was set up in 2001 by the European Commission and at the end of last year had a total of 51 national complaint resolution agencies affiliated.

The purpose of the network is to help investors file complaints in connection with cross-border transactions by means of the intervention of a complaints resolution service domiciled in the claimant's own country. To this end, the network aims to achieve a greater level of visibility and accessibility both for the consumer and for the companies providing financial services, cover all financial services in all the countries of the European Economic Space, and to foster the exchange of information between the various national agencies.

In the course of last year, the CNMV informed FIN-NET of the resolution of a total of six complaints filed by non-resident investors, against firms providing investment services in Spain.

CNMV has also participated in the activities of the International Network of Financial Services Ombudsman Schemes (INFO), which is a national network for the out-of-court settlement of complaints in connection with financial services aimed at promoting cooperation among its members. Unlike FIN-NET, INFO's mission is not to help consumers in cross-border complaints, nor is membership limited to agencies belonging to EES countries.

13.2 Investment Guarantee Fund (FOGAIN)

The number of entities affiliated to the Investment Guarantee Fund (hereinafter FOGAIN) at the end of 2009 amounted to 150, four more than in 2008. More specifically, ten new entities became members during the year (seven UCITS management companies and three brokers) and six dropped out (four brokers, one broker-

dealer, and one portfolio management company). The total number of member entities is broken down as follows: 50 broker-dealers, 50 brokers, nine portfolio management companies, one branch of a foreign investment services firm, and 40 UCITS management companies. As has been happening in recent years, since a rule change allowed UCITS management companies to perform certain investment services, the number of affiliated entities of this type went up once again in 2009.

Last year, FOGAIN continued to process claims for compensation due to insolvencies which occurred several years ago, without there having been any new case of insolvency requiring the intervention of the Fund. It should be noted that most of the compensation payments corresponding to the aforementioned cases have already been settled, so the Fund's activity in that respect is diminishing. In fact, last year only a small number of clients of AVA Asesores de Valores Securities, A.V. and Broker Balear, A.V. were attended for this reason.

With regard to these cases, it should be remembered that current legislation establishes a maximum period of fifteen years for claiming compensation, which means that FOGAIN must be in a position to pay clients with an entitlement to compensation during that period. It should also be remembered that the maximum compensation cover for proceedings initiated prior to the approval of Royal Decree 1642/2008, of 10 October, which extended the coverage of both deposit guarantees and FOGAIN, is still 20,000 euros, instead of the 100,000 provided for under the new legislation.

FOGAIN's management company, in which all investment services firms and a large number of UCITS management companies are represented, is acting increasingly more as a liaison in various matters between entities and the supervisor or European regulators, as the case may be. This activity is crystallised by the fact that the managing director of that management company sits on CNMV's Advisory Committee and CESR's Advisory Committee.

13.3 Information provided to investors

The purpose of the CNMV Investor Assistance Office is to make information available to retail investors. Firstly, the office answers the queries made directly by the investors and, secondly, it provides information in simple language and format on issues of general interest through the Investor Portal, hosted on the CNMV website.

13.3.1 Queries

Through the OAI, investors obtain help in finding and using the information contained in official registers, clarify their doubts regarding regulations, services and products in the securities markets, and find out about their rights and how to exercise them. Queries may be made by telephone (902 149 200), by letter addressed to the OAI, by telematic submission via CNMV's Virtual Office and, since the beginning of 2010, by sending a form over the Internet. This latter form, which has been implemented in order to systematise the procedure and make it more effective, replaces the old e-mail address inversores@cnmv.es, which has been phased out as a consultative channel.

The number of queries attended in 2009 increased by 15.7% on 2008, as can be seen in table 13.3, thus continuing the trend started in 2006. The telephone continued to be the most commonly-used channel (67.1% of all queries are made using this medium) and its use increased significantly (13.6%) last year. Most of the queries received by phone were attended by the call centre operators (80.9% of the total), while those that required the specialised attention of technical CNMV staff (the remaining 19.1%) represented an average of over twelve calls a day. There was also a considerable increase in the number of queries sent in writing which, to a large extent, requested information in connection with the suspension of redemptions of the Santander Banif Inmobiliario, FII fund.

Breakdown of queries by channel

TABLE 13.3

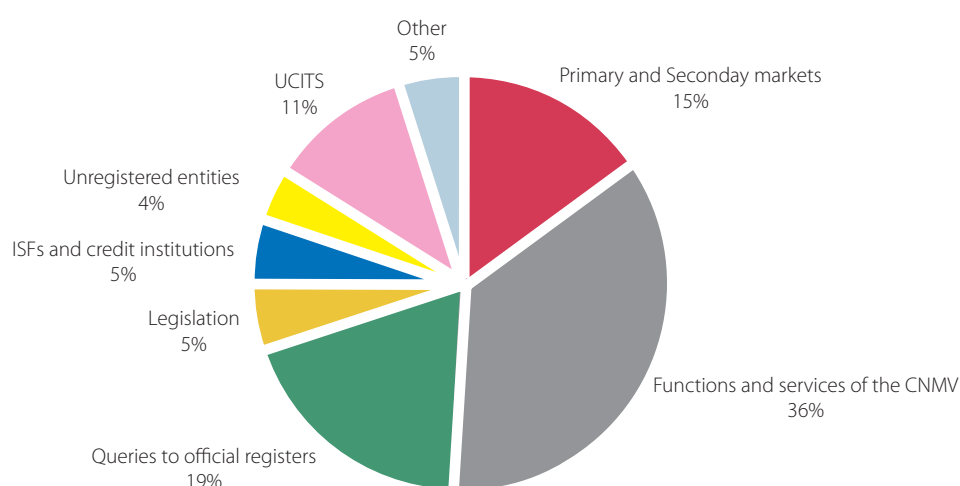
	2008		2009		% change 09/08
	Number	% of total	Number	% of total	
Telephone	8,411	68.3	9,556	67.1	13.6
E-mail	2,903	23.6	2,982	20.9	2.7
Postal mail	234	1.9	1,136	8.0	385.5
In person	765	6.2	574	4.0	-25.0
Total	12,313	100.0	14,248	100.0	15.7

Source: CNMV.

In most of the queries, investors requested information contained in official registers or related to the functions and services of the CNMV (see figure 13.1). This latter category was the one that grew the most in 2009, since it includes queries about the status of complaints proceedings already sent to the CNMV, which, as was stated previously, increased considerably last year.

Queries by subject matter (%)

FIGURE 13.1



Source: CNMV.

The following subject matters of queries are worthy of mention either due to their frequency or the interest of their content:

- The temporary suspension of redemptions by Santander Banif Inmobiliario, FII, announced at the end of 2008.
- The sale of products intended to cover the risk of interest rate fluctuations associated with the contracting of mortgages or loans at a variable interest rate.
- Issues that are not previously checked by the CNMV, due to their not being considered to be a public offering or because they have the European passport. One example of this are certain issues of commercial paper not subject to CNMV verification, since legislation does not call for the filing of a prospectus for issues with a minimum amount per subscriber of 50,000 euros and not listed on an official secondary market. In 2009, this type of issue prompted several CNMV notifications with recommendations for investors, many of which called to ask for information about its regulation and supervision.
- The procedure for selling private fixed-income products (cédulas hipotecarias [covered mortgage bonds], bonds, debentures, commercial paper, etc.) and, in particular, preferred shares. Due to the gaps in investors' knowledge revealed by the queries made, a factsheet was published on preferred shares, stressing their perpetual nature, their illiquidity, and the possibility that their market value at any given moment may be lower than their acquisition price.
- The consequences for investors in guaranteed investment funds of the rating of the guarantors falling below the level required by UCITS rules. The CNMV published a notification on this subject in January 2009.
- As in previous years, there were frequent queries regarding the fees charged for the provision of investment services, non-registered firms providing investment services, the disclosure obligations of financial institutions, and complaints in connection with the swap ratio offered in merger processes or the share price in the event of delisting.

13.3.2 Other information services

In the course of 2009, new services have been introduced, or improvements to existing ones have been made, aimed at optimising information received by investors.

First of all, publication began of an e-bulletin for investors (hereinafter referred to by its Spanish acronym, BEI) on a quarterly basis. The BEI is sent by e-mail to subscribers and is also available on CNMV's website, in the section devoted to investors. The BEI provides information on matters related to the securities markets of interest to the general public. Last year, among other issues addressed, the BEI dealt with preferred shares, interest rate hedges, and the assignment of an investor risk profile and the suitability and appropriateness tests which financial institutions have to perform to tailor their range of products to the investor profile.

Secondly, an SMS alert service was also set up. It is used to warn investors whenever a piece of information considered to be of special importance is posted on the CNMV website.

Finally, since January 2010 the investor area of the CNMV website has had a new design, and is now called the Investor Portal (previously called Investors' Corner, it can now be accessed at <http://www.cnmv.es/portalinversor/>). The Investor Portal is a CNMV channel aimed specifically at retail investors. Its simple structure provides guidance to investors as to how to make a query, how to file a complaint, or how to access other informative or explanatory content.

Within the Investor Portal, the Investor Orientation section provides the basic information which should be considered before making an investment decision. Throughout 2010, work will be done on the development of a virtual classroom with the purpose of enhancing investor education, in order to further investors' understanding of financial information, of the nature of the products, of the functioning of the markets, and of the typical terms used in the investment services provided by firms.

13.4 Investor education

13.4.1 Financial Education Plan

Last year, in collaboration with the National Institute for Consumption (Instituto Nacional del Consumo, INC) the CNMV drew up a special programme for training trainers in the field of financial education. These trainers are to provide training for the staff of Autonomous Region departments responsible for consumption and the staff of municipal consumer offices. This programme will help disseminate financial education throughout Spain and acknowledges the role of the INC and the municipal consumer offices which, on occasions, deal with complaints relating to financial products and services. The INC's collaboration with the Financial Education Plan was crystallised in a formal agreement between the INC, the Bank of Spain and the CNMV, which was signed in March 2010.

In addition to the actions described in Section 2.3.8 of this report, another action within the framework of the Financial Education Plan in 2009 was the decision to produce a set of factsheets on basic family finance matters. The content of these factsheets is simple and they use language which is understandable to the general public, without any need to be familiar with these matters. The factsheets will be distributed throughout 2010.

13.4.2 CNMV training activities

Publications for investors

The collection of factsheets and guides aimed at retail investors produced by the CNMV continued to grow in 2009 with a number of new titles which are set out in table 13.4. The content of several existing publications was also updated.

These factsheets and guides can be downloaded from the CNMV website (www.cnmv.es). Many of the titles are available in both Spanish and English, and one of the factsheets, due to the special interest of the matter addressed ("How to make a complaint in connection with financial services") is also translated into the co-official languages of the country.

In addition to a subscription system, whereby subscribers receive the new publications by post without the need to make any prior express order, each title can be ordered separately, free of charge, by calling the OAI (902 149 200). At the end of the year, there were close to 13,000 subscribers, almost one thousand more than the previous year. Table 13.5 shows the different distribution channels used.

Factsheets and guides of the investor

TABLE 13.4

	Investor factsheets	Investor guides
New releases	Tri-fold leaflet "Investor Assistance Office"	The questions every investor must ask about a listed company
	Preferred shares	
	How to interpret financial advertising	
	Preferential subscription rights	
Updates	Takeover bids. What they are and how they work	
	What investment funds can you find on the market?	
	Investment Guarantee Fund (FOGAIN)	
	Transfers between investment funds	
	Rates and fees for investment services	
Other titles	Contracts for difference (CFD)	Your rights as an investor: discover the protection MiFID gives you
	Guaranteed investment funds	Boiler rooms
	New types of investment funds	Investor protection: complaints services
	How to complain about financial services	Investment funds and collective investment
	Warrants and turbowarrants	Options and futures
	Exchange traded funds (ETF)	Securities orders
	Public share offerings	Fixed-income products
		Investment services firms

Source: CNMV.

Investor factsheets and guides: number of copies distributed

TABLE 13.5

	Collaboration agreements		Factsheets		Guides	
	2008	2009	2008	2009	2008	2009
Markets: stock exchanges & MEFF	5	5	5,800	14,400	5,850	5,600
Investors (direct request)			52,250	92,857	45,016	30,010
Consumer associations	15	19	1,220	19,756	1,714	6,357
Securities market entities	196	199	52,558	16,234	32,133	8,650
Broker-dealers	31	31	10,580	4,653	5,280	1,420
Brokers	45	46	7,405	2,486	4,808	730
Portfolio management companies	20	20	1,800	1,230	1,822	700
UCITS management companies	92	94	31,173	7,360	18,943	5,600
Branches of foreign entities	8	8	1,600	505	1,280	200
Credit institutions	105	106	27,296	41,789	92,296	10,100
Universities and other educational centres	39	39	3,064	4,750	2,338	2,395
Other	4	8	11,888	11,410	16,280	3,956
Total	364	376	154,076	201,196	195,627	67,068

Source: CNMV.

Conferences and seminars

In addition to the major effort made in conjunction with the INC in respect of the Financial Education Plan, the CNMV was involved in various forums aimed at raising the awareness and skills of financial consumers. In 2009, the CNMV took part in a number of events (conferences, seminars, summer courses, stock exchange and financial market trade fairs, etc.) organised by both public bodies and private entities.

International forums on financial education

In 2009, the CNMV continued to take part in international forums related to financial education. Among the activities performed, one of the most important was the CNMV's participation in the meetings of the International Network on Financial Education (INFE), organised by the OECD. This network, composed of public agencies and advised by experts, has created a number of working groups in order to further the analysis of priority issues in the field of financial education.

In particular, the network has examined the success experiences of financial education in schools and has underlined the importance of the assessment of financial education programmes. The INFE is producing a guide so that national managers can receive guidance in the aspects to be monitored in order to gauge the success of financial education programmes. In the course of 2010, special attention is to be given to the problem of "training trainers"; i.e., how to optimise training efforts by aiming them at groups which, due to their proximity to the public, can maximise the effect of the initiatives developed.

13.5 Advertising of investment products and services

Spanish legislation embraces the criteria of EC rules based on the MiFID in respect of the requirements that commercial communication must meet in order to ensure its neutrality. These criteria are used by the CNMV for issuers or marketers who voluntarily choose to submit their advertising to prior review by this authority.

Number of advertising campaigns reviewed by the CNMV

TABLE 13.6

	Preliminary examination		Subsequent oversight posterior		Total	
	2008	2009	2008	2009	2008	2009
UCITS	141	102	0	1	141	103
Foreign UCITS	6	7	0	0	6	7
Issues & IPOs	97	70	1	0	98	70
Financial services	38	50	1	0	39	50
Total	282	229	2	1	284	230

Source: CNMV.

As can be seen in table 13.6, the number of advertising campaigns submitted to ex ante examination by the CNMV fell significantly during 2009, by around 19% compared with 2008, continuing the downward trend also seen the previous year. In table 13.6 we can also see that the decline was especially pronounced in respect of

the marketing of investment funds and of issues and IPOs (down by about 28% in both cases), while there was a significant increase in the advertising of investment services (32%).

It should also be noted that 55 campaigns involving products marketed in Spain under the European passport were reviewed. Due to the fact that, in these cases, the available information is not always so accessible for the investor as in the case of instruments registered in Spain, advertising is an important source of information when deciding whether or not to buy. Hence the advisability of ensuring, as far as possible, that the commercial messages are balanced, clear and not misleading, in accordance with the provisions of the MiFID.

A draft ministerial order is currently in the consultation stage, which will set out the principles governing the advertising of investment products and services and define the CNMV's scope of action in this matter.

14 Disciplinary action

14.1 Disciplinary proceedings

14.1.1 Description of proceedings

In 2009, the CNMV Executive Committee initiated 21 new disciplinary proceedings, investigating a total of 32 possible breaches (see tables 14.1 and 14.2). Most investigations (twelve in total) related to conduct connected to delays in issuers reporting regulated financial information to the CNMV and to the market, or venture capital firms and their management companies failing to report such information. Five proceedings were initiated for market abuse and the rest for defective disclosure of significant holdings in listed companies, breaches of rules of conduct, deficiencies in administrative and accounting organisation, deficiencies in internal control procedures and insufficient technical and human resources in investment services firms, as well as the presentation of a takeover bid with basic deficiencies which prevented the bid being presented.

Proceedings initiated and concluded in 2009

TABLE 14.1

	2008	2009
Number of proceedings initiated	13	21
Number of proceedings concluded	7	9
Of which:		
Initiated in 2002	1	—
Initiated in 2006	1	—
Initiated in 2007	4	—
Initiated in 2008	1	9

Source: CNMV.

In two of the disciplinary proceedings brought for alleged breach of the duty of abstention required of all those who have access to insider information, at the same time as it initiated proceedings, the CNMV reported the events to the tax ministry as it considered that the detected conduct could breach Article 285 of the Criminal Code. Furthermore, in proceedings brought against an investment services firm, the investigators discovered that criminal proceedings were also being conducted for the same, or inseparable, events. The investigators requested the court to inform on whether the administrative proceedings are to be suspended or not until a final court decision.

Breaches addressed in disciplinary proceedings

TABLE 14.2

	Initiated		Closed	
	2008	2009	2008	2009
Very serious breaches	17	19	6	12
Failure to disclose/incorrect disclosure of significant holdings	5	1	—	4
Operating without authorisation	—	—	1	—
Market manipulation	1	1	—	—
Breach of ratios	1	—	—	1
Failure to disclose significant events/provision of misleading, incorrect or materially incomplete information	—	1	1	—
Breach of issuer's periodic disclosure requirements	2	4	—	2
Breach of rules on takeover bids	3	6	—	2
Breach of general investment firm regulations	—	2	—	—
Breach of general UCITS regulations	2	—	—	2
Insider dealing	3	4	3	1
Obstruction of inspection	—	—	1	—
Serious breaches	5	13	3	5
Corporate governance breaches	2	—	1	1
Market abuse breaches	1	1	—	1
Breach of general venture capital firm regulations	—	8	—	—
Breach of rules of conduct	—	2	—	1
Market manipulation	—	—	—	—
Insider dealing	—	2	2	—
Failure to draft/publish/file mandatory reports by the deadlines	1	—	—	1
Failure to respond to CNMV requests	1	—	—	1

Source: CNMV.

Over the year, the CNMV concluded nine proceedings which included a total of 15 breaches, all of which were initiated in 2008. In addition, two serious breaches were closed corresponding to two proceedings not yet concluded at year-end, one initiated in 2008 and the other in 2009. Table 14.2 shows the type of breaches addressed in the different proceedings concluded in 2009 and Annex IV.2 gives a summary of the decisions adopted by the CNMV. As shown in table 14.3, 29 fines were imposed for a total amount of 498,103 euros, one public reprimand and two activity suspensions for a total period of six months.

Penalties imposed

TABLE 14.3

	2008			2009		
	Number	Amount ¹	Period ²	Number	Amount ¹	Period ²
Fine	11	5,279.5	—	29	498.1	—
Removal/general disqualification	—	—	—	2	—	6
Public reprimand	—	—	—	1	—	—

Source: CNMV. (1) Thousands of euros (2) Months.

14.1.2 Public register of penalties for serious and very serious breaches

The following penalties for serious and very serious breaches were incorporated into the public register of penalties in 2009:

- CNMV decision dated 23 April 2009, announcing the penalty for a very serious breach imposed on _____ in accordance with Section 102 of the Securities Market Act.
- CNMV decision of October 2009, announcing penalties for a serious breach imposed on _____ in accordance with Sections 103 and 106 of the Securities Market Act.
- CNMV decision dated 30 December 2009, announcing the penalty for a very serious breach imposed on _____ in accordance with Section 103 of the Securities Market Act.

14.1.3 Criteria of interest

Incorrect maintenance of the register of insiders

In 2009, the CNMV initiated a disciplinary proceeding against a securities issuer and its managers for incorrect maintenance of the register of insiders corresponding to a specific corporate transaction as it did not include the reason and specific date on which the people included in the list of insiders knew about the corresponding insider information.

Section 83 bis.1 of the Securities Market Act requires securities issuers, in certain cases, to adopt measures to safeguard insider information and to prevent its use. These include maintaining an insider register which includes the names of the people who have access to the information (the insiders). Royal Decree 1333/2005, of 11 November, implements the Securities Market Act with regards to market abuse, and which specifies the content required for the aforementioned register. This includes at least, together with other data, the reason for people being included on the insider register and the dates of their entry and, as the case may be, any updates.

It is essential that the register includes the reason and exact date that a person has become aware of the inside information. The aim is that the register acts as a preventative measure for the use of inside information and as a supervision tool for the CNMV. If the register does not contain the reason and date, it is impossible to know whether the information was disclosed to a person for a legitimate and indispensable reason, and it is also impossible to know whether transactions on the securities affected by the insider information were carried out by insiders before or after their knowledge. In this event, the register fails to meet the objective for which it is required.

Presentation of a takeover bid with basic irregularities

In 2009, the CNMV initiated disciplinary proceedings for the presentation of a mandatory takeover bid in which the bidder failed to provide documentation verify-

ing the bid guarantee. Failure to meet this requirement meant that the bid was not considered as presented.

The measures aimed at protecting the shareholders of listed companies subject to a takeover bid include Directive 2004/25/EC of the European Parliament and of the Council on takeover bids, which requires bidders to ensure that they are able to fully meet the consideration included in the bid before announcing it. Following the same line, Royal Decree 1066/2007, of 27 July, on takeover bids establishes that one of the bidder's obligations is to verify to the CNMV the constitution of guarantees which ensure compliance with the obligations resulting from the bid (Article 15) in a maximum period of seven business days following filing of the application (Article 20). This requirement must be met for the CNMV to process the bid (Section 5 of Article 17).

In the case of mandatory takeover bids, not filing the bid, filing it after the deadline, or filing it with basic irregularities breaches Section 60.3 of the Securities Market Act. Section 99 r) of the Securities Market Act regards this breach as very serious, in particular when the bid is filed with basic irregularities which prevent the CNMV from considering it as filed or from authorising it.

Failure of issuing companies to report regulated information

A third case involved the imposition of penalties on an issuing company and its directors for a delay in filing the 2007 financial report. Similarly, disciplinary proceedings were brought against four issuers for not filing their 2008 financial report on time.

The annual financial report is the most important accounting and financial information for listed companies for the purposes of public reporting of the development of its financial/net worth position, its results, its operations and performance. Therefore, filing the report in the established period is especially important. The content and deadline are basic elements of the obligation provided for in the corresponding legislation. The legal rights protected by securities market legislation (transparency, correct price formation and investor protection) require not only that the information is fair, reliable, sufficient and up-to-date, but also that it is complete and reported in a timely manner, that is, with the content and in the period planned and expected by the market.

The basic elements of the legal regime on periodic financial information of issuers is established in Section 35 of the Securities Market Act, while the content and scope is regulated in more detail in the legislation implementing said Act. Specifically, Royal Decree 1362/2007 establishes a maximum period of four months for publishing and disclosing the annual financial information, starting from the end of the issuer's financial year. This may not exceed the date on which the official announcement is made of the general shareholders' meeting or of the body with authority to approve the annual financial information (Section 8.2). In accordance with the aforementioned royal decree, the report must be filed with the CNMV at the same time as it is published (Article 6). Failure to comply with these obligations is a very serious breach pursuant to Section 99 m) of the Securities Market Act "when there is a desire to conceal information or serious negligence relating to the importance of the undisclosed information or in the delay in filing."

14.2 Litigation department: Judicial review of disciplinary proceedings and other actions

In 2009, two appeals to a higher instance and three motions for reconsideration were brought before the Ministry of Economy and Finance and ruled on in the same year. In addition, the Ministry ruled on an appeal to a higher instance and a motion for reconsideration brought in 2008 (see table 14.4). The appealed disciplinary decisions were upheld in all cases.

Twelve appeals were filed with the administrative courts, six of them against penalty decisions, three against authorisation of a redemption suspension of a mutual fund, two against decisions to file a complaint, and one against other CNMV decisions. In addition, fifteen administrative appeals against acts or decisions of the CNMV were ruled on, seven of which involve penalties agreed by the CNMV or, as the case may be, the Ministry of Economy and Finance (see table 14.5 and annex IV.3). Five appealed decisions were upheld, in another the penalty was reduced, and in another one part of the penalties imposed was cancelled. However, for these last two rulings an appeal was brought before the Supreme Court by the Government Law Office. With regard to the appeals brought against non-penalty decisions, except in one appeal which was accepted, the CNMV decisions were upheld. These include two agreements to file a complaint and two relating to claims of pecuniary liability of the CNMV, one of which was ruled on by the Supreme Court, which declared the CNMV was not liable for its actions relating to GESCARTERA.

Similarly, and in compliance with the general principle to provide requested collaboration to judges and courts, the CNMV provides support to judges and courts of all types, particularly for criminal cases mainly relating to fraud, embezzlement or insider dealing.

Within the context of this collaboration, the total number of requests processed in 2009 stood at 142, as shown in table 14.5. The bulk of requests, a total of 54, were from the civil courts. These requests related basically to notices of attachment (which are the competency of governing companies), on the identification of securities owned by people or companies (knowledge of which lies with the securities depositories) and attainment of evidence in proceedings of various types brought before different courts, with a request for data or documentation.

Cases in which the CNMV participated in 2009

TABLE 14.4

	Presented	Decided
Administrative appeals	5	7
Appeals to a higher instance	2	3
Appeals for reconsideration	3	4
Appeals to the courts against administrative decisions	12	15
	Assistance to courts	
Requests received for assistance		142

Source: CNMV.

14.3 Claims

In 2009, a total of 15 claims were presented in the CNMV, most of them against banks or savings banks in the provision of services and actions relating to the securities market. A minority of the claims refer to the actions of other entities (issuers, listed companies or UCITS management companies).

Claims made in 2009		TABLE 14.5
Type of entity claim brought against		
Banks and savings banks		11
Securities issuers/listed companies		2
UCITS management companies		1
Other		1
Total		15
Content of claims		
Accounting obligations		1
Market transactions		4
UCITS		4
Rules of conduct		3
Market abuse		3
Total		15
Situation of claims at 31-12-2009		
In process		10
Filed		5
Total		15

Source: CNMV.

The subject matter of the claims included the following: alleged breach of accounting standards, alleged breach of obligations in market transactions which affected retail investors (lack of information on takeover bids, irregularities in exclusion from listing or subscription of a primary offering), aspects relating to UCITS (irregularities in subscription or transfer of mutual funds) and claims about rules of conduct and market abuse (improper advice, failure to provide client with documentation, investment in unsuitable products in accordance with the risk profile, alleged use of inside information, non-disclosure of significant information).

As at 31 December 2009, and following the appropriate action in each case carried out by the corresponding services in the CNMV, five of the 15 claims have been decided. None of these led to disciplinary proceedings, irrespective of the specific supervision carried out as a result of the claims.

14.4 International Support Unit

The CNMV's Litigation Service and Penalty Regime Department channels cooperation with other investigation supervisors through the international support unit. In 2009, the aforementioned Unit processed 23 collaboration requests to foreign regulators (65 in 2008) and, in turn, processed 27 requests made to the CNMV (28 in

2008). Approximately half of the collaboration requests corresponded to issues relating to the investigation of market abuse practices, while the other half referred to investigations about unauthorised activities in the securities market. Approximately 3/4 of the collaboration requests made to foreign supervisors corresponded to issues related to the investigation of market abuse practices, and the rest to investigations on unauthorised entities.

14.5 Warnings about unregistered firms

Through its website, the CNMV issues warning to investors about unauthorised firms that have been detected by it or by other supervisors.

The following warnings were issued in 2009 (see annex IV.4):

- Ten warnings were issued under Section 13 of the Securities Market Act, which entrusts the CNMV with protecting investors by disseminating any information necessary to that end.
- 358 notifications were received from European and other countries in connection with unauthorised firms, and 14 were included under the heading “Other warnings”, with warnings relating to improper conduct or actions.

Special mention should be made regarding the warning published by the CNMV on 9 March 2009 about System World Investment Corp. (an entity which uses the business name of DEXTRAPLUS). This entity is linked to Evolution Market Group Inc., with business name FINANZAS FOREX, an entity which, together with two individuals, Mr. Germán Cardona Soler and Mr. Santiago Fuentes Jover, was warned by the CNMV on 7 April 2008. The CNMV’s 2008 Annual Report made special mention of this warning due to its scope and content.

15.1 Committee of European Securities Regulators (CESR)

In addition to pursuing its ordinary activities, among which those focused on advising the European Commission on the implementation of legislation and those aimed at ensuring the consistent application of EC regulations are of special importance, the CESR devoted a substantial part of its efforts in 2009 to matters closely related to the reform process affecting European financial regulation and supervision.

15.1.1 Activities directly related to the reform of European financial regulation and supervision

Among the most important of these actions were the start and continuation of work related to the establishment of a disclosure regime on short selling, transparency in markets other than equity markets, and the review of international accounting standards. The CESR also regularly sent the European Commission contributions relating to the establishment of the securities authority provided for in the new architecture of the European supervision system. Also, ahead of the establishment of that authority, the CESR has recently undertaken a major reorganisation of its structure and working methods.

Financial reporting

Through its standing group, CESR-Fin, chaired by the Vice-Chairman of the CNMV, CESR has contributed its analyses and observations to the reform proposals for the international financial reporting standards produced by the IASB. In particular, the CESR has contributed to the reclassification and valuation of financial instruments and the establishment of unified guidelines for reducing the complexity and improving the consistency of the definition of the concept of fair value and its use in related disclosures.

In November 2009, a study conducted by CESR-Fin was published on compliance with transparency standards for complex products by the main European listed financial institutions (see CESR, 2009b). The study, based on these entities' annual reports for 2008, concludes that not all the recommendations made by international authorities are being complied with. This report will be updated in 2010.

Short selling

In 2009, the CESR examined the different measures affecting short selling adopted by the various jurisdictions since autumn 2008, and worked on the development of a pan-European disclosure regime for short positions in listed securities. At the start of 2010, the CESR presented a proposal to establish a common disclosure regime for short positions (see Chapter 2 for more details on CESR's proposal and other measures related with short selling).

Credit rating agencies

In parallel with the regulatory process which culminated with the approval of Regulation 1060/2009 of the European Parliament and of the Council on credit rating agencies, in September of 2009 (see section 2.3.2 of Chapter 2 of this report) CESR worked on the development of procedures and the study of problems related to the registration and supervision of credit rating agencies provided for in the above mentioned regulation. In addition to registration procedures, the CESR's work focused on the following areas: the mediation protocol; the process for the certification and assessment of rating agencies of systemic importance; the analysis of the use of ratings given in third countries in the European Union; and the study of the implementation of a structure for the storage of data related to ratings made by agencies (central repository).

Also, as in recent years, the CESR assessed the degree of compliance of rating agencies in Europe with the Code of Conduct drawn up by IOSCO and reviewed by this same organisation in May 2008. According to the report, the most important agencies (S&P, Moody's, Fitch, DBRS, and AM Best) easily comply with the code and have updated their own codes of conduct to incorporate most of the new provisions introduced by IOSCO in the above mentioned review, in particular those referring to the rating of structured financial products. However, the report also points out that a large percentage of these agencies had not properly adapted their conduct in respect of two stipulations of the revised IOSCO code related to structured financial products: the prohibition of the agencies' analysts to make proposals or recommendations regarding the design of the products they have rated; and the need to state in the rating announcement whether or not all relevant information about the product has been published. With regard to other, smaller credit rating agencies also located in the European Union, the CESR's report says that a third of them had not yet adopted the internal codes of conduct and that most of those that had implemented them had not updated them in line with the revised IOSCO code, and are awaiting the adoption of a European regulation on this matter.

Transparency in the corporate bond, structured products, and credit derivatives markets

In 2009, the CESR continued its review of the standards of transparency for this type of product, which was begun in 2008. In July 2009, a report was published, the main recommendation of which was the adoption of a mandatory transparency regime in respect of transactions carried out in European corporate bonds, structured products, and credit derivatives markets (see CESR, 2009a). In the case of corporate bonds, the regime adopted calls for the inclusion of all issues with a pub-

lished prospectus, and all corporate bond issues listed on a regulated market or trading in a multilateral trading system.

With regard to structured products and credit derivatives, it is recommended that any transparency regime adopted be complementary to existing initiatives, mostly put forward by the industry. Its application should initially be focused on the most standardised products. Also, credit derivatives with a sufficient degree of standardisation should be settled and cleared through a central counterparty.

New supervision architecture

The Larosière Report, presented in February 2009, calls for the establishment of a macroprudential supervision agency (the European Systemic Risk Council) and the conversion of the three current sectoral supervisory committees into supervisory authorities, with direct competencies in certain matters (see Larosière Group, 2009). In particular, the report proposes the conversion of the CESR into the European Securities Markets Authority (ESMA). In May 2009, the European Commission announced its plans regarding the implementation of recommendations in this respect and in September of the same year presented a legislative proposal which has already been admitted by the European Council and is currently at the discussion stage in the European Parliament. In parallel with this process, the so-called Omnibus Directives are being discussed in both the European Council and the European Parliament. These directives will bring together the regulations of current European financial regulations and the new authorities will be able to promulgate binding technical rules.

Given the crucial importance of this process, in 2009 the CESR sent regular contributions to the European Commission relating to the establishment of the new securities authority and the standards to which the binding technical rules were to be attached. For this purpose the CESR has set up an *ad hoc* working group called the Post-Ecofin Task Force.

Also, ahead of the establishment of the new authority, the CESR worked on the design of a new internal operating structure last year, which was approved in January 2010. The new structure is based on standing committees (SC) which replace the previous operational groups. The ultimate purpose is to anticipate the new tasks which the future ESMA will presumably be responsible for, thereby ensuring a smooth transition process. The new SCs will handle issues relating to financial and corporate reporting, and the supervision and inspection of markets, intermediaries, secondary markets, and credit rating agencies. The standing committees will receive support from the CESR Secretariat.

15.1.2 Other tasks

Financial reporting (CESR Fin)

One of the most important of the ordinary tasks carried out during 2009 by this working group was the presentation of comments on IASB proposals regarding the amendment of IFRIC 9 and IFRS 39, relating to financial instruments with embedded derivatives, and the modifications proposed by its opposite number in the USA, the Financial Accounting Standard Board (FASB), on investments in impaired financial debt and equity assets. CESR Fin has also occasionally submitted com-

ments in connection with the consultation on the adoption of international auditing standards and the publication of decisions adopted by European supervisors in respect of IFRS compliant financial reporting by issuers with securities listed on European Union markets.

Market integrity (CESR Pol)

Through CESR Pol, the CESR continued to coordinate the supervision, inspection and sanction activities of the competent authorities of the Member States of the European Union. The most important tasks undertaken by CESR Pol are, firstly, the production of a third set of Level 3 guidelines in relation to the extension of the Market Abuse Directive (insider register, reports of suspicious transactions, and stabilisation and share repurchase programmes) and, secondly, the presentation of comments on the European Commission's review proposals with regard to that directive.

Review of the application of EC rules and standards and CESR guidelines (Review Panel)

Through its Review Panel, the CESR continued to perform self-assessment exercises on the implementation of the European financial regulation. In particular, test exercises were completed on the supervisory powers and the corresponding civil and criminal sanctioning regimes of the Member States, based on the MiFID and the Transparency Directive. In parallel, self-assessment exercises were performed on CESR standards 1 and 2 on financial reporting and a review of the exercise of the discretionary powers provided for in MiFID and in the Market Abuse Directive was begun and is to be published in 2010. The purpose of the two studies is to promote the elimination of as many discretionary powers as possible in order to achieve a uniform application of these directives.

MiFID

The activities of the CESR in connection with MiFID were especially focused on Level 3 measures. Thus, with regard to intermediaries, criteria were produced to facilitate the proper identification of complex financial products, since these products, when they are classified as complex, are subject to more stringent requirements than non-complex products in the marketing process. Protocols for the supervision of branches and notification of the European passport were also reviewed, in accordance with the provisions set out in the MiFID. Consultations with the industry were also set in motion in order to reach a more precise definition of the scope of advisory services.

In addition to the aforementioned examination of the transparency of products other than equity products traded on the markets, other important CESR activities in respect of the markets include the design of a common procedure to allow CESR to assess waivers to the requirements of pre-transparency applicable to regulated markets and multilateral trading systems. It should also be noted that the CESR agreed to extend the capacity of the mechanism currently used for the exchange of information on transactions between regulators, entitled the Transaction Reporting European Mechanism (TREM), so as to include information about derivative instruments traded OTC.

Undertakings for Collective Investment in Transferable Securities (UCITS)

The CESR's activities in connection with collective investment were focused on advising the European Commission on the design of possible measures to be included in a review of the UCITS Directive, also known as UCITS IV. This included work related to the following: the passport for UCITS management companies; the content of the information provided to investors in what is known as the Key Investor Document; mergers of UCITS; structures of master-feeder funds; and cross-border notification of UCITS.

Post-trading

The CESR continued with its work, initiated in 2008, on the adaptation to the European regulatory environment of the recommendations of the Basel Committee on Payment and Settlement Systems (CPSS), and IOSCO recommendations on clearing and settlement systems and central counterparty clearing houses. An important activity in this respect was the updating of recommendations on central counterparty clearing houses so as to include references to OTC derivatives. Also, in line with the European Commission's intention to propose the regulation of the use of central counterparty clearing houses for the settlement of credit derivatives and other complex financial instruments, the CESR started working on storage systems (trade repositories) for the trading data of these instruments. Finally, the zapping exercise, performed at the request of the European Commission on existing access and interoperability agreements in post-trading infrastructures, was finalised (for further information about this and other European initiatives relating to post-trading services, see Chapter 5 of this report).

15.2 International Organization of Securities Commissions (IOSCO)

Since 1990, the CNMV has been an ordinary member of IOSCO and has taken an active part in the Executive, Technical, and European Regional committees of this organisation, whose main objectives are the setting of standards in the regulation of securities markets and international cooperation between supervisors. Its general secretariat is located in Madrid.

As in the case of the CESR, as well as performing its ordinary tasks, a significant part of the work done by IOSCO in 2009 was dictated by the priorities of the financial regulation reform advocated by the G-20 in response to the financial crisis, to a great extent coordinated by the Financial Stability Board. It should also be noted that last year IOSCO began to discuss the strategic plan for the organisation for the next five years. This plan will take into account the need for a greater coordination between the international agencies which play a major role in the regulation and monitoring of financial markets, which is implicit in the reform process sponsored by the G-20.

15.2.1 Activities directly related to the global financial reform

Late in 2008, IOSCO set up a number of working groups within its organisation in response to the broad lines of the international financial reform designed by the G-20 for the securities markets. In 2009, these working groups were involved in the

following initiatives: (i) the establishment of regulation principles applicable to hedge funds; (ii) recommendations concerning securitisation instruments and CDS; (iii) the establishment of general principles for the regulation of short selling; (iv) jointly with the Committee on Payment and Settlement Systems, the launch of a review of recommendations for the use of a central counterparty clearing house in OTC derivatives markets; (v) the start of work to establish new principles governing cooperation in matters of supervision and information exchange in respect of the avoidance of systemic risk and, finally, (vi) the constitution of a new standing committee on rating agencies in order to facilitate the implementation of standards based on the code previously approved by IOSCO. In Chapter 2 of this report, there is a more detailed description of some of these initiatives.

Other tasks related with the global financial reform performed by working groups already set up in the organisation include the following:

- Actions in connection with issuer transparency and due diligence procedures in respect of investors: (i) preparation of principles on the disclosure of periodic public information of listed companies; (ii) disclosure requirements for public offerings of securitised products (iii) examination of the viability of a periodic information system depending on the different structured financial products and (iv) best practice standards for due diligence procedures of investment managers when investing in structured financial products.
- Actions in connection with risk management and the prudential supervision of securities investment services firms: examination and review of liquidity risk management and internal control systems, and a viability study into the application of the investment banking model to these firms.
- Actions in connection with valuation and accounting issues: sending of comments to the IASB in order to improve the standards applicable to fair value and the accounting of off-balance sheet items (IFRS 39).
- Actions in connection with commodities markets: transparency enhancement recommendations, especially through access to information about OTC transactions, and strengthening of supervision.

15.2.2 Other actions

Accounting, auditing, and disclosure

In the field of auditing, in a public statement in mid-2009, the Technical Committee of IOSCO declared their support of the work of the International Auditing and Assurance Standard Board (IAASB) in the development of the International Standards on Auditing (ISA). In this statement, they recommended IOSCO members to accept financial statements audited under ISA for cross-border securities offerings. These standards have been the subject of a radical reform which has significantly improved their content and structure and which now establish in a much clearer manner which procedures are mandatory requirements and which are guidelines that the auditor should consider for each specific circumstance.

In the field of accounting, IOSCO continued to develop two ambitious projects which had begun in 2008: the establishment of principles of a general nature, applicable to

the periodic financial reporting of listed companies, provided on an international scale, and principles relating to the minimum content of the prospectus produced for asset securitisation products. In both cases, the Technical Committee approved the corresponding final reports early in 2010 (see IOSCO 2010a and 2010b, respectively).

Secondary markets

As described in point 2.3.1 of this report, in 2009 IOSCO's secondary markets group examined the viability of a post-transparency system for structured products. The final report is expected to be published in 2010. In addition, in the middle of the year a final report was published on the outsourcing of services by the markets, in which a number of principles and recommendations were established. Finally, it should be noted that this working group is finalising two documents which are to be approved in 2010: one on electronic access to the market and the other on dark pools (trading systems without post-transparency).

Intermediaries

No final document was published in this area in 2009. However, the following work was in progress during the course of the year: (i) production of a document on mandatory disclosure to investors at points of sale of UCITS and other similar products; (ii) examination of suitability criteria in the distribution of complex financial products; and (iii) examination of liquidity risk management during the crisis period and of the customer asset protection measures provided for by the various jurisdictions.

Undertakings for Collective Investment in Transferable Securities

Last year, this working group drew up a set of principles on the regulation of hedge funds, as mentioned earlier in the chapter and commented on in greater detail in Section 2.3.4 of Chapter 2, and a model with various categories of information to be used in the capture of data concerning these institutions for the purpose of assessing systemic risk as from 2010. Last year, IOSCO also worked on the preparation of a report on the mitigation of conflicts of interests in the management of private equity entities. The definitive document is due to be published in 2010.

Cooperation and information exchange: IOSCO multilateral agreement

1 January 2010 was the deadline set by IOSCO in its strategic plan for 2005-2010 for its members to subscribe to the Multilateral Memorandum of Understanding concerning Consultation, Cooperation and the Exchange of Information (hereinafter MMOU). By that date, there were 64 signatory jurisdictions and another 46 which had voiced their commitment to making the necessary efforts to obtain a legislative change in their jurisdiction which would enable the MMOU to be implemented.

A very significant event in 2009 in relation to IOSCO's MMOU was its recognition by the FSB, which deemed that compliance with the requirements of IOSCO's MMOU was equivalent to full compliance with international standards on cooperation and the exchange of information. Also significant in the sphere of interna-

tional cooperation was the decision adopted by the G-20 and the FSB to review the situation of some of the jurisdictions which are not cooperating in this matter. This review is being jointly conducted by IOSCO, the Basel Committee on Banking Supervision (BCBS) and the International Association of Insurance Supervisors (IAIS), together with the International Monetary Fund and the World Bank.

IOSCO's strategic plan for 2010-2015

A working group was set up to design this strategic plan, which is to be completed in two phases. In the first phase, already underway, a number of proposals will be subject to internal consultation, including the following: (i) updating of the organisation's aims, taking into special consideration the experience of the financial crisis; (ii) the establishment of a new period for all members to adapt their national legislation to comply with the international standards on cooperation and the exchange of information set out in IOSCO's MMOU; (iii) the establishment of a service of economic analysts whose work will be focused on the assessment of risk in the securities markets and on the management of projects; and (iv) the establishment of programmes to assess compliance with IOSCO principles. In the second phase, proposals will be implemented in respect of financing options open to the organisation and changes in the structure of its committees.

15.3 Intersectoral international forums

During 2009, the CNMV played an active role in intersectoral forums of financial supervisors, in which the Bank of Spain and the Directorate General of Insurance and Pension Funds also participated.

Joint Forum

The global financial crisis to a large extent also determined the activities of the Joint Forum (JF), which brings together banking, securities and insurance supervisors. It should be noted that the traditional mandates received by the international associations of regulators (BCBS, IOSCO and IAIS) have gradually been replaced by direct mandates from the Financial Stability Board (FSB) and even the G-20.

Among the most important activities of the JF in 2009 were: (i) the examination of the reliability and impact of ratings issued by credit rating agencies, in the context of their use in supervisory regulation or policies; (ii) an informative document on special purpose vehicles (SPV), which describes the varied nature of their structures, the reasons for setting them up, and the effective associated risk transfer, and makes recommendations for consideration by regulators and market players (see Joint Forum, 2009) and (iii) a report on the different nature and scope of financial regulation, which examines the regulatory differences between the three sectors which may give rise to regulatory arbitrage, identifies non-regulated areas, and provides recommendations on the foregoing (see Joint Forum, 2010).

CEBS-CEIOPS-CESR Coordination Committee (3L3)

At a European level, the following joint activities of the three Level 3 Committees in the fields of securities (CESR), banking (CEBS) and insurance and pension funds

(CEIOPS) were undertaken: (i) joint comments and contributions sent to the European Commission in respect of the regulation reform and the new architecture of the supervisory system; (ii) organisation of training courses and seminars aimed at the staff of the members of the three committees; (iii) review of the implementation process of the provisions of the third money laundering directive; (iv) gathering of intersectoral information on differences in organisation and internal governance requirements, and the drawing up of guidelines to promote supervisory convergence in the three sectors, and (v) the start of common tasks aimed at assessing intersectoral risks and the terms under which packaged financial products are marketed, which will continue into 2010.

15.4 Ibero-American Institute of Securities Markets (IIMV)

The IIMV is an institution with legal personality and full operational independence. The CNMV collaborates closely with the IIMV in the task of promoting the securities markets in Latin America, jointly developing training and cooperation programmes. In 2009, the IIMV carried out 13 training and cooperation activities, including courses on the delimitation, scope and responsibilities of safekeeping duties (securities depositories); risk assessment and valuation of assets in Ibero-American markets; and the inspection and oversight of markets and entities. Also, as in previous years, the IIMV continued to offer online courses. More specifically, the IIMV offered the second course on international financial reporting standards (IFRS) and the third course on XBRL interactive data for financial reporting. Finally, as a new development, the founding meeting of the Ibero-American Cooperation Network of IFRS Accounting Experts was held.

15.5 Other forums and activities

15.5.1 Iberian Electricity Market (MIBEL)

In the first half-year of 2009, the CNMV took its turn to assume the rotating chair of the MIBEL Council of Regulators, made up of Spanish and Portuguese energy and securities regulators. This council, which examines and approves derivative contracts traded on OMIP (Operator of the Iberian Energy Market), based in Portugal, studied the launch of new financial contracts with an electrical underlying, linked on the one hand to the introduction of the last resort tariff in Spain and, on the other, to the management of the interconnection between Spain and Portugal by means of financial contracts for difference.

15.5.2 Organisation for Economic Cooperation and Development

As in previous years, the CNMV has been collaborating with the Directorate General of the Treasury and Financial Policy on OECD committees and working groups responsible for the review, development and implementation of the principles of corporate governance. In particular, the CNMV collaborated actively in the assessment of compliance with the OECD principles of corporate governance of Israel and Chile, two countries which are currently in the process of joining the OECD as new members.

15.5.3 Mediterranean Partnership of Securities Regulators

In March 2009 in Paris, the securities regulators and supervisors of the Barcelona Process participant countries agreed to set up the Mediterranean Partnership of Securities Regulators. The partnership originally comprised the securities supervisors and regulators of Algeria, Egypt, Spain, France, Italy, Morocco, Portugal and Tunisia, and in September 2009 the Greek securities supervisor also became a member. The principal objective of this partnership is the convergence of the regulation of Member States with European legislation (CESR directives, standards and guidelines), and the implementation of IOSCO principles in matters of financial reporting, market abuse and UCITS.

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16 Organisation

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Organisation

16.1 Human resources and organisation

The CNMV had 406 employees at the end of 2009, an increase of 37 employees (10%) on 2008. This net growth in the workforce is the result of 45 new hires and eight departures.

CNMV staff: composition by professional category

TABLE 16.1

Number of employees at 31 December 2009

	2008			2009		
	Total	Men	Women	Total	Men	Women
Services	9	8	1	9	8	1
Clerical/Computer operators	66	14	52	71	16	55
Technical	274	131	143	303	145	158
Management	20	13	7	23	16	7
Total	369	166	203	406	185	221

Source: CNMV

Breakdown of CNMV staff by directorate-general and department

TABLE 16.2

Number of employees at 31 December 2009

	2008			2009		
	Total	Men	Women	Total	Men	Women
Directorates-General	234	100	134	263	116	147
Entities	103	42	61	127	52	75
Markets	98	45	53	103	50	53
Legal Service	33	13	20	33	14	19
Departments	119	63	56	126	67	59
Board	16	3	13	17	3	14
Total	369	166	203	406	186	220

Source: CNMV

The process for filling ten new positions in the 2009 Graduate Development Programme will finish in the second quarter of 2010. The two-year programme aims to provide selected candidates with a comprehensive understanding of how the CNMV works. In addition, the selection process to fill the eleven positions corresponding to the Public Sector Hiring Process is expected to finish in the fourth quarter of 2010. Taking into account the 21 aforementioned positions, estimated growth for 2009 would have been 15.7%.

The following human resources policy initiatives were carried out in 2009:

- The Internal Mobility Program was implemented. It aims to facilitate and promote horizontal mobility among employees in the CNMV, thus facilitating professional development and increasing their motivation. Each year the CNMV determines the positions per department which will form part of the Programme and offers them to all employees who meet certain requirements in terms of professional level, languages and length of service in the Department. The programme's efficiency will be assessed annually.
- The training which was identified as priority in the training needs analysis conducted in 2008 was developed and implemented. The courses have been prepared and given both by CNMV staff and in collaboration with specialised training centres. A new edition of the English language training programme was launched, and a summer English language programme abroad was set up.
- Once the selection process for the first Graduate Training Programme was completed, with the hiring of 10 graduates in June, the selected candidates took part in an induction plan prior to their first assignment to a department. The selected graduates participated in introductory sessions entitled "Discovering the CNMV", in order to help them understand the organisation and functioning of the institution, as well as the relations between the different departments.
- Negotiations with the Works Committee of the first Collective Bargaining Agreement for the CNMV workforce continued to make significant progress in 2009.
- The Internal Procedure for Selecting and Hiring Staff was drafted. This regulates the selection procedures to be followed according to the intended candidates, which at all times will be based on principles of equality, merit and capacity. This procedure is expected to be approved in the first half of 2010.
- With regard to workplace risk prevention, the CNMV set up the emergency action team for the centre in Madrid, at Calle Miguel Ángel 11. The training necessary to exercise the functions of each member of the team is planned for January 2010.

With regard to CNMV's organisational chart, in January 2009 the Supervision Department, belonging to the Directorate-General of Entities, was split into two specialised departments according to the type of entity to be supervised: the Investment Firm and Credit and Savings Institutions Supervision Department and the UCITS and Venture Capital Firm Supervision Department. The measure has a three-fold objective: to adapt the CNMV's entity supervision structure to the type of entity supervised, to prevent the risks associated with their activity and to adapt the resources available for supervising the growing number of entities.

16.2 Information systems

The CNMV had three goals for its IT systems in 2009:

- Finish implementing the physical and logistics infrastructure to comply with the Contingency Plan relating to the main IT centre and the backup IT centre.
- Develop new software to comply with the new regulations which have entered into force over the year and to renew those which have become technologically obsolete.

- Transfer the electronic Registry to the new Virtual Office, pursuant to Act 11/2007, on online access for citizens to public services.

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Noteworthy among the new software programs are those relating to the reception, registration and disclosure of significant events, reserved financial statements of venture capital firms, significant holdings in UCITS, reserved financial statements of UCITS management companies, financial statements of investment services firms and financial statements of the governing companies of markets.

In addition, two new XBRL taxonomies have been introduced for receiving and disclosing periodic public information relating to UCITS and asset securitisation funds.

With the introduction of the new virtual office, six new processes have been included in the CIFRADO/CNMV service to strengthen electronic administration. In 2009, electronic entries (97,874) exceeded paper entries (64,704) for the first time in the CNMV's inflows and outflows registry. 67% of total inflows and outflows have been carried out electronically.

Furthermore, the departments have been equipped with new computerised systems to improve the reception and use of the information sent daily by brokers about trading in financial instruments.

The Investor Portal on the CNMV's website has been fully renewed and progress has been made in adapting the different sections to accessibility and use regulations (see chapter 13).

Finally, work has continued on implementing the new comprehensive management system for image-based documents in the Entity Authorisation and Registration Department.

CNMV Plan of Activities 2010: revised and updated

BOX 16.1

In January, the CNMV presented the Plan of Activities for 2010, thus following in its policy of public transparency and commitment in regards to its activities, which began in October 2007. The new plan reports that the objectives of the previous plan were met and gives a breakdown of the objectives set until the first quarter of 2011. For the first time, the plan was presented to the Advisory Committee prior to publication.

The CNMV's activities last year were dependent on the development of the international crisis. Accordingly, the CNMV has had to dedicate unforeseen resources to guaranteeing appropriate valuation of financial assets, especially at the times of greatest instability and loss of confidence. This has required close collaboration with management companies, valuation experts and issuers. Similarly, it has given priority to the need to ensure suitable functioning of stock markets, with special attention to short trading, and to improving their transparency. Finally, the CNMV has greater presence in international forums debating regulation initiatives arising from the crisis, as well as advising the Government on related issues.

Despite such a difficult context, the CNMV has fulfilled most of its commitments. Specifically, 85% of the objectives in the Plan of Activities 2009 which were forecast to be finalised before 31 December (the 2009 Plan covers that year and the first quarter of 2010) were met. 60% of objectives met were achieved in the established time period, and the others with a short delay, although within the period covered by the Plan. Taking into account the objectives which did not solely depend on the CNMV, only 4% of the total were not achieved in the initially set terms.

As in previous years, the 2010 Plan of Activities is based on fulfilling the functions assigned by the Securities Market Act, anticipating as far as possible the development of markets and the regulatory environment which will affect the institution's activities in the coming year. Accordingly, significant regulatory reforms arising as a result of the financial crisis are expected to be implemented in 2010. These will affect securities markets, including an increase in control over systemic entities, the reduction in incentives for conduct which generates systemic risk, an increase in the transparency of financial markets and an extension of the regulatory scope affecting financial activities, as is the case, for example, of the European regulation on credit rating agencies and alternative investment funds. In addition, changes are expected in the design of supervision both worldwide, in the form of progress in agencies such as the Financial Stability Board, the IMF or IOSCO, and at a European level, through execution of the proposals of the Larosière report, with the creation of the European Systemic Risk Council and three sector-specific authorities.

Within this context, the CNMV's Plan of Activities includes various measures for 2010. Firstly, the outstanding regulatory developments relating to investment services firms, UCITS and venture capital firms will be completed. At the same time, the CNMV will maintain an active role in promoting reflection on the regulations regarding clearing, settlement and security registration systems, corporate governance of listed companies and treasury stock transactions. Secondly, priority is given as one of the main objectives to improving transparency, through rigorous supervision of the financial information disclosed by listed companies, special attention to the quality of the information provided for retail investors and the drafting of public criteria and recommendations which will help to encourage appropriate conduct. Thirdly, supervision of the quality of investment service provision and detection of abusive market practices will be strengthened. Fourthly, special impetus will be given to the Financial Education Plan aimed at improving investor education. Finally, the 2010 Plan implements a set of objectives aimed at improving flexibility and effectiveness in the functioning of the CNMV in order to facilitate communication with investors and supervised entities.

17 Finances

17.1 Revenues and expenses

In 2009, the CNMV obtained 53.6 millions of euros in revenues and incurred 43.2 millions of euros in expenses. Therefore, the surplus for the year amounted to 10.4 millions of euros.

The bulk of revenues were from fees, which totalled 51.1 millions of euros, 8.2% down on 2008.

The other revenues were mainly from interest and, to a lesser extent, from the sale of publications and other sources (professional information disseminators, recovery of expenses for announcements of tenders, etc.).

Total expenses increased 2.5% on the previous year. Staff costs, which account for 60.4% of total expenses, rose by 9.6%, with an 8.3% increase in the average headcount.

Other expenses fell 6.8%. This fall was mainly due to “other management expenses”, with a year-on-year reduction of 8% as a result of the fall in acquisitions of non-capitalisable materials compared with 2008, when new offices were rented and adapted in order to relocate CNMV staff. The CNMV continued to rent out these premises in 2009, but it has not been necessary to implement new installations. There was also a slight fall in expenses from hiring external staff and from organising meetings and conferences. Other expenses remained at similar levels to those in 2008.

On 9 December 2009, the CNMV Board made its proposal to the Government to allocate the surplus for the year to the CNMV reserves.

17.2 Fee structure

Table 17.1 shows the types of fees set for the different services performed by the CNMV. The fall in revenue under this heading in 2009 is mainly due to the fall in fees collected for supervising UCITS (-25.7%) and the fees collected for supervising stock-market members (-22.1%), partially offset by the increase in fees collected for supervising firms attached to the Sociedad de Sistemas (5%).

CNMV fee revenues

TABLE 17.1

Amounts in thousands of euros

Activity or service	2008	2009	% change 09 / 08
Registration of prospectuses and market participants	10,755.1	10,651.2	-1.0
Prospectus registration	9,881.0	10,114.8	2.4
Issue prospectuses	7,973.4	7,475.9	-6.2
Listing prospectuses	339.4	666.0	96.2
Vetting of AIAF listing requirements	1,568.2	1,972.9	25.8
Registration of market participants	660.0	346.3	-47.5
Authorisation of takeover bids	214.1	190.1	-11.2
Market supervision	32,739.0	31,037.1	-5.2
AIAF members	270.6	273.1	0.9
Sociedad de Sistemas members	20,093.6	21,090.8	5.0
Stock market members	11,853.8	9,231.8	-22.1
MEFF Fixed Income members	2.4	1.6	-34.8
MEFF Equity members	517.3	438.6	-15.2
MFAO members	1.3	1.3	2.0
Market participant supervision	12,139.7	9,398.1	-22.6
UCITS supervision	10,959.5	8,144.4	-25.7
Mutual funds	9,077.5	6,853.4	-24.5
Investment companies	1,529.1	1,002.5	-34.4
Real estate investment funds	337.3	272.0	-19.4
Real estate investment companies	15.6	16.5	5.6
Supervision of UCITS and securitisation fund management companies	270.6	255.0	-5.7
UCITS management companies	255.8	238.4	-6.8
Securitisation fund management companies	14.8	16.6	12.6
Supervision of investment services firms	909.7	998.6	9.8
Portfolio management companies	14.5	11.2	-22.8
Broker-dealers and brokers	895.1	987.3	10.3
Issuance of certificates	4.2	4.4	4.9
Total	55,638.1	51,090.8	-8.2

Source: CNMV.

18 National Securities Numbering Agency

CNMV: organisation,
finance and institutional
aspects
National Securities
Numbering Agency

The CNMV discharges the functions of the Spanish National Securities Numbering Agency (ANCV), whose main goal is to assign and administer International Securities Identification Numbers (ISIN) and Classification of Financial Instruments (CFI) codes to facilitate their dissemination and use among users. In Spain, the ISIN code is used as the primary identifier in securities trading, clearing and settlement. The CNMV is a founder and full member of the Association of National Numbering Agencies (ANNA), which at 2009 year-end had a total of 79 full members and 25 associates representing 36 countries.

As part of its international activity, in September 2009 the ANCV organised a meeting of ANNA Working Group 2 in Madrid. This group, which is made up of representatives from various national numbering agencies, including the Spanish agency, is responsible for preparing and maintaining the numbering guidelines to be applied worldwide.

In 2009, the ANCV began to review its current regulations: a circular and a technical standard. There are several reasons for this update. Firstly, the ANCV aims to include the amendments in ISO standard 6166 on the ISIN code and international numbering criteria and, secondly, to include the new financial instruments developed in the markets. Both provisions aim to increase clarity, simplicity and understanding.

The number of movements in the ANCV database in 2009 amounted to 29,928, a fall of 13.4% on 2008. This fall was mainly due to the decline in the number of commercial papers, warrants and futures. With regard to coded securities and financial instruments, the primary fixed-income market, both public and private, was very dynamic, especially in medium and long-term issues. There was a significant increase in issues of public debt, bonds and debentures guaranteed by the Central Government and mortgage-backed bonds. However, short-term fixed-income issues (commercial paper) underwent a significant fall. The derivatives market showed a contrasting performance. While the number of options contracts with ISIN increased significantly, the number of futures contracts with ISIN fell. At the end of the year, the number of securities and other financial instruments with a current ISIN totalled 22,302, a slight fall of 0.9% on 2008. Listed securities and financial instruments accounted for 55% of the total (see table 18.1).

The number of queries to the ANCV decreased slightly compared with the previous year, as shown in table 18.2. Queries regarding Spanish codes, which accounted for 67% of the total, increased by 14.4%, while those relating to foreign codes fell by 19.7%.

**Number of securities and other financial instruments
with an ISIN at 31/12/2009¹**

TABLE 18.1

	Listed			Total		
	2008	2009	% change	2008	2009	% change
Public debt ²	263	292	11.0	265	293	10.6
Equity ³	3,578	3,495	-2.3	13,435	13,071	-2.7
Debentures	367	379	3.3	426	424	-0.5
Bonds	1,711	2,068	20.9	1,768	2,123	20.1
Covered bonds	184	235	27.7	238	290	21.9
Commercial paper	2,556	1,563	-38.9	2,556	1,563	-38.9
Warrants	1,480	1,311	-11.4	1,564	1,587	1.5
Treasury Bills	12	12	0.0	12	12	0.0
Options	2,158	2,879	33.4	2,158	2,879	33.4
Futures	73	60	-17.8	73	60	-17.8
Total	12,382	12,294	-0.7	22,495	22,302	-0.9

Source: CNMV. (1) ANCV database. ISIN code. (2) Except Treasury Bills. (3) Shares, mutual fund units and other equity.

Queries handled directly by the ANCV

TABLE 18.2

	2008	2009	% change
Spanish codes	527	603	14.4%
Foreign codes	366	294	-19.7%
Total	893	897	0.4%

Source: CNMV.

19 CNMV Advisory Committee

CNMV: organisation,
finance and institutional
aspects
CNMV Advisory Committee

19.1 Introduction

The CNMV Advisory Committee is the Board's consultative body, pursuant to Section 22 of the Securities Market Act. It is composed of representatives of the official secondary markets: issuers, investors and the Autonomous Regions with an official secondary market. The Committee is chaired by the CNMV's Vice-Chairman.

In accordance with the Securities Market Act, the Advisory Committee must issue a mandatory report in the following cases: i) approval of CNMV Circulars, ii) imposition of penalties for very serious breaches and iii) authorisation, revocation, mergers and takeovers of investment services firms.

In addition to its consultative role to the Board, the Advisory Committee provides advice on draft regulations relating generally to the securities market which are referred to it by the Government or the Ministry of the Economy and Finance. It thus fulfils the principle of consulting the affected sectors when new regulations are being drafted.

In addition, in order to promote greater participation on the part of the industry and in line with international recommendations on analysing the impact of regulation, in 2004 the CNMV decided to enhance the advisory role of the Advisory Committee by extending its scope in international issues and matters related to market workings. As a result, the Committee's agenda regularly includes issues referred to it voluntarily (not by legal mandate) that relate to consultation from international bodies such as the Committee of European Securities Regulators (CESR), as well as initiatives of the CNMV or the Committee itself.

19.2 Actions by the Committee in 2009

In 2009, the Advisory Committee addressed a total of 36 issues (see table 19.2), compared with 41 in 2008 and 49 in 2007. Table 19.1 breaks down the issues by type and shows the low relative weight of mandatory reports on standards in 2009 compared with 2008, when there was a considerable increase in this type of report (amounting to almost 60% of the issues addressed by the Committee) as a result of the considerable regulatory activity arising from the transposition and implementation of European legislation.

Type of issues referred to the Advisory Committee

TABLE 19.1

Number of issues		
	2008	2009
Mandatory reports on standards	24	10
Proposals for very serious penalties	3	8
Authorisations, revocations, mergers and takeovers of investment services firms	4	0
Voluntary consultations (IOSCO, CESR and others)	10	18
Total	41	36

Source: CNMV.

The fall in the number of mandatory reports on standards was partially offset by the significant increase in the number of voluntary consultations from international bodies which the Committee addressed, accounting for half of the issues in 2009. Furthermore, no file was processed for authorisation, revocation or mergers and takeovers of investment services firms in 2009, as a result of the approval of Royal Decree 217/2008, of 15 February, on the legal regime for investment firms, which does not provide for the intervention of the Advisory Committee in this type of procedure.¹

1. Section 23, letter d) of the Securities Market Act establishes that the Advisory Committee report shall be mandatory in authorisations, revocations and mergers and takeovers of Investment Services Firms when established by legislation. Approval of Royal Decree 217/2008 led to the repeal of Royal Decree 867/2001, which did contain this provision.

Mandatory reports on standards

- Draft CNMV Circular on the content of the half-yearly report on the oversight and supervision of UCITS depositories (25/02/2009).
- Draft CNMV Circular on internal control of UCITS management companies (13/07/2009).
- Draft CNMV Circular on significant information (07/09/2009).
- Draft Royal Decree amending the regulations of the UCITS Act (07/09/2009).
- Draft Royal Decree amending Royal Decree 217/2008, of 15 February, on the legal regime for investment services firms, which partially amends the Regulations of the UCITS Act (07/09/2009).
- Draft Royal Decree which amends Royal Decree 1245/1995, of 14 July, on the creation of banks, cross-border operations and other issues relating to the legal regime of credit institutions (07/09/2009).
- Draft CNMV Circular which regulates the annual Auditor's Report on the protection of clients' assets (28/09/2009).
- Draft Royal Decree which modifies the Regulations of the UCITS Act, the Regulation on non-resident income tax, the Regulation on corporation tax, and the Regulation on personal income tax (28/09/2009).
- Draft Ministerial Order on the regulation and control of advertising of investment services and products (10/11/2009).
- Draft Royal Decree which establishes the price and conditions for assigning collection rights to the Securitisation Fund of the Electricity Sector Tariff Deficit, which implements the characteristics of the Fund's Assets and Liabilities and which regulates the Inter-ministerial Committee responsible for overseeing correct compliance with the conditions for executing the tasks assigned to the securitisation fund management company of the Electricity Sector Tariff Deficit (14/12/2009).

Proposals for very serious penalties

- Penalty for reporting significant holdings after the deadline (25/02/2009).
- Penalty for recurring purchase and sale of treasury shares, breaching the legally established limits and conditions (25/02/2009).
- Penalty for use of inside information (13/07/2009).
- Penalty for (i) not reporting significant holdings and (ii) disclosing or providing information and documentation relating to a takeover bid omitting information or including inaccurate, false or misleading information (28/09/2009).
- Penalty for delay in filing the Annual Financial Report (28/09/2009).
- Penalty for use of inside information (28/09/2009).
- Penalty for (i) maintaining an equity level lower than legal requirements for a period greater than six months and (ii) breaching the ban on pledging assets included under the minimum equity of UCITS management companies (26/10/2009).
- Penalty for failure to comply with obligation to adopt measures to safeguard inside information and prevent its use (10/11/2009).

Voluntary consultations (IOSCO, CESR and others)

- Consultation by the EC about hedge funds (26/01/2009).
- Consultation by the CESR and the ESCB on recommendations to clearing and settlement systems and central counterparties (26/01/2009).
- Consultation by the CESR on transparency in private fixed-income markets, structured products and credit derivatives (26/01/2009).
- Consultation by the CESR on short selling (26/01/2009).
- CNMV criteria for managing news and rumours disseminated about listed securities (26/01/2009).
- Consultation about the draft project of the Directive of the European Parliament and of the Council which amends Directive 2003/71/EC on the prospectus to be published when securities are offered to the public or admitted to trading and Directive 2004/109/EC on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market (25/02/2009).
- Guidelines for transmitting inside information to third parties (25/02/2009).
- Consultation by the EC on the Larosière Report on financial supervision in the EU (30/03/2009).
- Consultation by the EC about future legislation to create one post-trade market (25/05/2009).
- Consultation by the EC on initiatives to improve resistance of OTC derivative markets (13/07/2009).
- Consultation by CESR on complex and non-complex financial instruments (13/07/2009).
- Consultation by the IASB on the draft standard on classifying and measuring financial instruments (7/09/2009).
- Consultation by the EC on the function of the depository in UCITS (7/09/2009).
- Consultation by the CESR on the definition of advisory services according to the MiFID (26/10/2009).
- Consultation by CESR on a common definition of European money market funds (10/11/2009).
- Consultation by the EC on incentives (10/11/2009).
- Consultation by the CESR on credit rating agencies (10/11/2009).
- CNMV Plan of Activities 2010 (14/12/2009).

Source: CNMV.

VI Report by the Internal Control Body



AUDIT REPORT PURSUANT TO ACT 44/2002,
ON REFORM MEASURES FOR THE FINANCIAL
SYSTEM-2009



1. Introduction

The CNMV's Internal Control Department has performed the audit relating to adaptation of the decisions adopted by the governing bodies to the procedural regulations applicable in each case, in implementation of the Audit Plan and Internal Control Actions approved by the Commission's Board in its session of 12 February 2010, thus complying with the Additional Second Provision of Act 44/2002, of 22 November, on Reform Measures for the Financial System (Official State Gazette of 23 November).

The work has been adapted to the International Standards for the Professional Practice of Internal Auditing of the IIA (the Institute of Internal Auditors), pursuant to the Internal Audit Rules for the CNMV approved by a Resolution of the Board on 21 January 2009.

2. Aims and scope

The aim of the work is to verify adaptation to the procedural legislation applicable in adopting supervision decisions by the CNMV's governing bodies in 2009.

The basic legislation applicable to CNMV procedures is as follows:

- Securities Market Act (24/1998, of 28 July).
- Legal Regime of Public Administrations and Common Administrative Procedure Act (30/1992, of 26 November).
- The CNMV's Internal Regime Regulations.

It has also taken into account Resolutions about the delegation of powers to the Chairman, the Vice-Chairman and the Executive Committee of the CNMV, of 24 October 2007, 18 March and 4 November 2009.

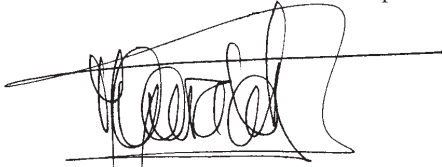
There have been no limits placed on the scope in the performance of the work.



3. Opinion

In our opinion, having completed the audit work, it can be concluded that in 2009 the CNMV's governing bodies have met the requirements established in current legislation relating to the procedure and authority applicable in each case within the scope of the supervision entrusted to it by the Securities Market Act and other legislation.

Madrid, 14 April 2010
Director of the Internal Control Department



Signed: Margarita García Muñoz

VII Financial statements of the CNMV

Summary of financial statements 2009

1 Balance sheet

Account no.	Assets	Current year	Previous year
	A) FIXED ASSETS	35,005,662.6	33,960,081.3
	II. Intangible assets	4,024,432.6	2,531,027.7
215	3. Computer software	7,345,763.4	5,211,709.9
281	7. Amortisation	-3,321,330.8	-2,680,682.2
	III. Property, plant and equipment	30,979,994.2	31,427,817.7
220, 221	1. Land and structures	28,773,979.0	28,748,375.5
226	3. Tools and furniture	3,092,176.5	3,059,881.8
227, 228	4. Other fixed assets	5,973,292.7	5,635,594.2
282	5. Depreciation	-6,859,454.0	-6,016,033.8
	V. Permanent financial assets	1,235.9	1,235.9
250	1. Long-term securities portfolio	935.4	935.4
265	3. Long-term deposits and guarantees provided	300.5	300.5
	C) CURRENT ASSETS	120,738,736.2	134,240,025.5
	II. Accounts receivable	7,560,954.6	5,541,986.1
460, 469	1. Sundry accounts receivable	7,506,428.7	5,522,542.0
471	3. Public authorities	337.7	337.7
555, 558	4. Other accounts receivable	90,012.7	57,268.8
490	5. Provisions	-35,824.5	-38,162.5
	III. Short-term financial assets	109,179,383.7	121,848,325.0
541, 546	1. Short-term securities portfolio	109,152,504.0	121,816,094.2
544, 547	2. Other short-term assets and receivables	26,879.6	32,230.9
57	IV. Cash	3,748,232.2	6,624,250.4
480	V. Accruals	250,165.7	225,464.0
	GRAND TOTAL (A+B+C)	155,744,398.8	168,200,106.8

2 Income statement

Account no.	Debit	Current year	Previous year
	A) EXPENSES	43,215,518.5	42,167,301.3
	3. Service operating expenses	42,697,788.2	41,509,522.2
	a) Personnel expenses:	26,117,912.1	23,830,538.8
640, 641	a.1) Wages, salaries and similar	21,034,231.5	19,195,025.6
642, 643, 644	a.2) Employee welfare expenses	5,083,680.7	4,635,513.1
681, 682	c) Period depreciation and amortisation charge	1,492,848.1	1,248,101.9
	d) Change in operating provisions	7,693.5	47,941.0
675, 694, (794)	d.2) Change in provisions for, and losses on, bad debts	7,693.5	47,941.0
	e) Other operating expenses	15,047,086.8	16,355,245.0
62	e.1) Outside services	14,950,669.7	16,297,707.6
630.632	e.2) Taxes	92,993.3	50,379.9
676	e.3) Other current operating expenses	3,423.8	7,157.6
	f) Financial and similar expenses	31,797.3	27,378.8
669	f.1) On debts	31,797.3	27,378.8
668	h) Exchange losses	450.5	316.7
	4. Transfers and subsidies	436,856.7	403,868.7
651	b) Current subsidies	436,856.7	403,868.7
	5. Extraordinary losses and expenses	80,873.6	253,910.4
670, 671	a) Losses on fixed assets	9,130.9	215,144.3
678	c) Extraordinary expenses	0.0	15,542.6
679	d) Expenses and losses from other years	71,742.7	23,223.5
	SURPLUS	10,424,203.8	19,438,910.8

2 Income statement (continuation)

Account no.	Credit	Current year	Previous year
	B) REVENUES	53,639,722.3	61,606,212.1
	3. Ordinary revenues	51,090,790.2	55,638,111.3
	a) Fee revenues	51,090,790.2	55,638,111.3
740	a1) Fees for the provision of services or the performance of activities	51,090,790.2	55,638,111.3
	4. Other ordinary revenues	2,543,949.7	5,925,766.9
78	b) In-house work	1,268,006.5	843,980.0
	c) Other ordinary revenues	152,837.2	179,595.6
776, 777	c.1) Ancillary and other ordinary revenues	152,837.2	179,595.6
761	e) Revenues from other transferable securities and fixed asset loans	1,029,485.1	4,574,343.1
	f) Other interest and similar revenues	93,615.4	327,765.9
769	f.1) Other interest	93,615.4	327,765.9
768	g) Exchange gains	5.6	82.4
	6. Extraordinary gains and revenues	4,982.4	42,333.8
778	c) Extraordinary revenues	528.0	2,891.1
779	d) Revenues and income from other years	4,454.4	39,442.7

3 Cash flow statement. Source and application of funds

Funds applied	Current year	Previous year
1. Funds applied in operations	41,603,166.0	40,285,976.3
c) Outside services	14,950,363.5	16,297,707.6
d) Taxes	92,993.3	50,379.9
e) Personnel expenses	26,007,844.8	23,412,460.0
g) Transfers and subsidies	436,856.7	403,868.7
h) Financial expenses	32,247.7	27,695.5
i) Other current losses and extraordinary expenses	75,166.5	45,923.7
j) Provision for current assets	7,693.5	47,941.0
4. Fixed asset acquisitions and other additions	2,545,903.7	3,401,838.3
b) I. Intangible assets	2,146,372.7	1,241,273.7
c) I. Property, plant and equipment	399,530.9	2,160,564.6
5. Direct decrease in equity	0.0	22,654,048.9
b) Assignments	0.0	1,126.6
c) Delivered for general use	0.0	22,652,922.3
7. Provisions for contingencies and expenses	200,581.2	355,314.0
TOTAL FUNDS APPLIED	44,349,650.8	66,697,177.5
FUNDS OBTAINED IN EXCESS OF FUNDS APPLIED (INCREASE IN WORKING CAPITAL)	9,290,071.5	0.0

Funds obtained	Current year	Previous year
1. Funds from operations	53,639,722.3	61,606,212.1
e) Fees, charges and special levies	51,090,790.2	55,638,111.3
d) Financial revenues	1,123,106.1	4,902,191.3
h) Other current revenues and extraordinary expenses	1,425,826.1	1,065,909.4
3. Direct increase in equity	0.0	49,869.1
b) Assignments	0.0	49,869.1
5. Fixed asset disposals and other retirements	0.0	22,423.6
c) I. Property, plant and equipment	0.0	22,423.6
TOTAL FUNDS OBTAINED	53,639,722.3	61,678,504.8
FUNDS APPLIED IN EXCESS OF FUNDS OBTAINED (DECREASE IN WORKING CAPITAL)	0.0	5,018,672.7

3 Cash flow statement. Change in working capital

Change in working capital (Summary)	Current year		Previous year	
	Increase	Decrease	Increase	Decrease
2. Accounts Receivable	1,986,224.6	0.0	337.7	6,194,996.4
a) Operational accounts receivable	1,986,224.6	0.0	0.0	6,194,996.4
b) Other accounts receivable	0.0	0.0	337.7	0.0
3. Accounts payable	23,025,632.3	235,442.8	86,974.1	23,456,669.8
a) Operational accounts payable	0.0	235,442.8	86,974.1	0.0
b) Other accounts payable	23,025,632.3	0.0	0.0	23,456,669.8
4. Short-term financial assets	0.0	12,668,941.4	19,511,983.2	0.0
6. Other non-bank accounts	33,915.3	0.0	47,685.6	0.0
7. Cash	3,364.4	2,879,382.6	4,981,723.3	2,424.1
a) Cash on hand	3,364.4	0.0	0.0	2,424.1
c) Cash at banks and other credit institutions	0.0	2,879,382.6	4,981,723.3	0.0
8. Accruals	24,701.7	0.0	6,713.5	0.0
TOTAL	25,073,838.3	15,783,766.8	24,635,417.5	29,654,090.2
CHANGE IN WORKING CAPITAL	9,290,071.5	0.0	0.0	5,018,672.7

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Annexes

Capital increases and public offerings¹								I.1
Million euro								
	Number of Issuers		Number of Issuers		Cash amount			
	2008	2009	2008	2009	2008	2009	% change 09/08	
Capital increases	25	22	34	42	16,339.7	11,390.7	-30.3	
Which are subscription offerings ²	1	0	1	2	292.0	17.4	-94.0	
With domestic tranches	1	0	1	2	292.0	17.4	-94.0	
With international tranches	0	0	0	0	0.0	0.0	—	
Public offerings (IPO)	1	2	1	1	9.5	1.9	-79.6	
Of domestic tranches	1	2	1	1	9.5	1.9	-79.6	
Of international tranches	0	0	0	0	0.0	0.0	—	
Total	26	24	35	43	16,349.2	11,409.9	-30.3	
Note: stock exchange listings								
By means of IPO or subscription offering ²	2	2	2	3	301.5	19.3	-93.6	
Others ³	—	1	—	1	—	879.2	—	

Source: CNMV. (1) Only effective and completed operations are included. (2) Public offering of rights subscription, with the prior waiver of the shareholders to their pre-emptive subscription rights. (3) In 2009, stock exchange listing of all of the share capital of Grupo Empresarial San José, after its merger into Parquesol Inmuebles y Proyectos and other companies of the Udra Group.

Capital increases and public offerings: cash amount

I.2

Million euro

Issuer	Cash amount ¹	Type of transaction	Date registered with the CNMV
Campofrio Food Group, S.A.	406.5	Capital increase for non-monetary consideration	08-01-09
Afirma Grupo Inmobiliario, S.A.	842.2	Capital increase with pre-emptive subscription rights	13-01-09
Avanzit, S.A.	8.6	Capital increase without trading warrants	22-01-09
Banco Santander, S.A.	956.4	Capital increase for non-monetary consideration	30-01-09
Avanzit, S.A.	12.7	Capital increase with pre-emptive subscription rights	17-02-09
Española del Zinc, S.A.	28.1	Capital increase with pre-emptive subscription rights	24-02-09
Gas Natural SDG, S.A.	3,501.6	Capital increase with pre-emptive subscription rights	12-03-09
Mapfre, S.A.	175.9	Capital increase with pre-emptive subscription rights	12-03-09
Mecalux, S.A.	0.0	Bonus issue	24-03-09
Faes Farma, S.A.	0.0	Bonus issue	30-04-09
Avanzit, S.A.	7.0	Capital increase by conversion	12-05-09
Bankinter, S.A.	361.4	Capital increase with pre-emptive subscription rights	14-05-09
Jazztel, Plc.	0.0	Capital increase without trading warrants	02-06-09
Jazztel, Plc.	0.0	Capital increase without trading warrants	02-06-09
Jazztel, Plc.	14.1	Capital increase without trading warrants	02-06-09
Jazztel, Plc.	0.0	Capital increase without trading warrants	10-06-09
Abertis Infraestructuras, S.A.	0.0	Bonus issue	16-06-09
Jazztel, Plc.	0.3	Capital increase without trading warrants	16-06-09
Iberdrola, S.A.	1,325.0	Capital increase without trading warrants	18-06-09
Jazztel, Plc.	90.0	Capital increase with pre-emptive subscription rights	18-06-09
Natra, S.A.	40.5	Capital increase with pre-emptive subscription rights	18-06-09
Banco De Valencia, S.A.	0.0	Bonus issue	23-06-09
NH Hoteles, S.A.	222.0	Capital increase with pre-emptive subscription rights	26-06-09
Avanzit, S.A.	5.8	Capital increase without trading warrants	09-07-09
Avanzit, S.A.	23.0	Capital increase without trading warrants	09-07-09
Papeles y Cartones de Europa, S.A.	0.0	Bonus issue	09-07-09
Banco Popular Español, S.A.	166.3	Capital increase for non-monetary consideration	10-08-09
Vértice Trescientos Sesenta Grados, S.A.	0.0	Bonus issue	11-08-09
Jazztel, Plc.	10.0	Capital increase without trading warrants	20-08-09
Tecnocom, Telecomunicaciones y Energía, S.A.	0.0	Bonus issue	20-08-09
Zardoya Otis, S.A.	0.0	Bonus issue	20-08-09
Gas Natural SDG, S.A.	375.0	Capital increase for non-monetary consideration	07-09-09
Banco Popular Español, S.A.	500.0	Capital increase without trading warrants	11-09-09
Pescanova, S.A.	100.6	Capital increase with pre-emptive subscription rights	06-10-09
Banco Santander, S.A.	3.8	Capital increase by conversion	14-10-09
Inypsa Informes y Proyectos, S.A.	0.0	Bonus issue	15-10-09
Inmobiliaria Colonial, S.A.	2.7	Capital increase by conversion	20-10-09
Sotogrande, S.A.	42.8	Capital increase without trading warrants	22-10-09
Jazztel, Plc.	6.3	Capital increase without trading warrants	27-10-09
Banco Santander, S.A.	0.0	Bonus issue	03-11-09
Mapfre, S.A.	164.2	Capital increase with pre-emptive subscription rights	12-11-09

Capital increases and public offerings: cash amount (continuation)

I.2

Million euro

Issuer	Cash amount ¹	Type of transaction	Date registered with the CNMV
Dinamia Capital Privado, SRC	39.9	Capital increase with pre-emptive subscription rights	19-11-09
Jazztel, Plc.	2.1	Capital increase without trading warrants	24-11-09
Cementos Portland Valderrivas, S.A.	201.9	Capital increase with pre-emptive subscription rights	26-11-09
Obrascón Huarte Lain, S.A.	199.5	Capital increase with pre-emptive subscription rights	26-11-09
Renta Corporación Real Estate, S.A.	4.9	Capital increase with pre-emptive subscription rights	03-12-09
Ferrovial, S.A.	1,334.7	Capital increase for non-monetary consideration	07-12-09
Avanzit, S.A.	6.0	Capital increase without trading warrants	09-12-09
Vueling Airlines, S.A.	185.0	Capital increase for non-monetary consideration	10-12-09
Compañía Levantina de Edificación y Obras Públicas, S.A.	0.0	Bonus issue	17-12-09
Jazztel, Plc.	4.8	Capital increase without trading warrants	22-12-09

Source: CNMV. (1) Issues of new shares not paid for in cash have been valued at market prices.

Delistings in 2009¹

I.3

Company	Market	Reason. Procedure	Date
Banco de Andalucía, S.A.	SIBE	Merged into Banco Popular	10-08-09
Itínere Infraestructuras, S.A.	SIBE	Delisted in accordance with CNMV agreement dated 23/07/09	18-09-09
Parquesol Infraestructuras, S.A.	SIBE	Merged into Grupo Empresarial San José	20-07-09
Unión Fenosa, S.A.	SIBE	Delisted by way of share swap for Gas Natural shares	7-09-09
Aguas de Valencia	Open outcry	Delisted pursuant to the Barcelona and Valencia stock exchanges	20-05-09
Joaquim Alberti	Second market	Financial Policy Directorate-General Resolution dated 20 th July	23-07-09

Source: CNMV. (1) Delistings due to change of market are not included.

Sector indices in the Madrid and Barcelona stock exchanges

1.4

Yield in the period

	2006	2007	2008	2009	2009			
					1Q	2Q	3Q	4Q
Madrid Stock Exchange								
Oil and energy	33.3	13.0	-33.3	-2.7	-18.3	2.9	16.1	-0.3
Commodities, industry and construction	61.9	-3.2	-50.5	22.5	-9.5	28.6	11.7	-5.7
Consumer goods	31.9	6.1	-25.7	26.3	-8.1	17.9	12.6	3.6
Consumer services	8.6	-8.0	-45.1	32.3	-16.3	21.4	28.7	1.2
Financial and real estate services	34.9	-5.5	-49.2	47.3	-23.5	49.5	27.3	1.2
Banking	27.3	-3.6	-49.0	50.0	-24.0	51.3	27.9	2.0
Real estate and others	111.2	-40.6	-68.0	-31.8	-28.1	-6.4	40.2	-27.8
Technology and telecommunications	28.4	34.3	-28.8	22.8	-5.1	7.4	16.8	3.2
Madrid Stock Exchange General Index	34.5	5.6	-40.6	27.2	-16.2	24.4	20.9	1.0
Barcelona Stock Exchange								
Electricity	48.3	12.3	-26.2	-9.1	-16.1	-6.1	15.1	0.3
Banks	26.0	-0.8	-49.6	58.1	-24.0	56.2	28.4	3.7
Chemicals	7.2	-10.4	-41.5	21.5	-13.2	23.3	14.3	-0.7
Cement, construction and real estate	85.6	-32.0	-61.5	20.2	-12.2	25.6	19.1	-8.4
Metallurgy	77.9	8.0	-47.9	6.1	-22.5	41.9	13.9	-15.2
Food, agriculture and forestry	32.4	-14.0	-23.1	2.2	-14.6	3.8	13.4	1.7
Textiles and paper	42.0	-8.5	-30.2	38.1	-6.6	16.2	16.0	9.7
Trade and finance	34.4	-9.6	-37.7	21.0	-19.9	38.7	15.6	-5.8
Sundry services	20.6	23.3	-32.6	23.5	-7.8	10.8	18.2	2.3
BCN Global 100	29.3	5.2	-41.8	34.7	-16.8	29.6	22.5	2.0

Source: Bolsas y Mercados Españoles.

Concentration of capitalisation by sector¹

1.5

Sector	2008				2009			
	25%	50%	75%	100%	25%	50%	75%	100%
Oil	1	1	2	2	1	1	1	2
Energy & water	1	2	4	11	1	2	4	9
Mining & base metals	1	1	3	8	1	1	3	8
Cement and construction materials	1	2	3	5	1	2	3	4
Chemicals	1	2	3	6	1	2	3	6
Textiles and paper	1	1	1	19	1	1	1	19
Metal-mechanical	1	2	4	17	1	2	4	17
Food	1	3	4	14	1	2	4	13
Construction	1	2	3	7	1	2	4	8
Real estate	2	3	7	28	2	5	9	26
Transport and communications	1	1	1	6	1	1	1	5
Other non-financial	2	3	6	22	2	4	7	24
Banks	1	2	2	11	1	1	2	10
Insurance	1	1	1	2	1	1	1	2
Portfolio companies	1	1	1	12	1	1	1	10
SICAV	1	1	3	4	1	1	2	2
Finance houses	0	0	0	0	0	0	0	0

Source: CNMV. (1) Includes only capitalisation of companies that traded at some time during the year. Values do not include Latibex or MAB.

Concentration of variable yield stock market trading

1.6

No. of companies required in order to achieve a specific percentage

	2008				2009			
	25%	50%	75%	100%	25%	50%	75%	100%
All Stock Exchanges	2	3	7	184	1	3	5	170
Continuous market	2	3	7	143	1	3	5	136
Domestic	2	3	7	138	1	3	5	131
Foreign	1	2	2	5	1	1	2	5
Open outcry	2	4	13	32	2	3	6	29
Second market	1	2	5	9	1	1	2	5
ETF	1	2	5	34	2	4	7	32
MAB	21	104	329	3,274	16	90	305	3,267
Latibex	2	5	10	33	2	5	11	33

Source: CNMV

Percentage of capitalisation by sector and the three largest companies within each sector with respect to the overall market¹

1.7

Sector	% sector/market ²	Companies with the largest capitalisation in the sector ³	% company/market ⁴
Oil	5.2	Repsol YPF	4.2
		CEPSA	1.1
Energy & water	18.3	Iberdrola	6.4
		Endesa	4.6
		Unión Fenosa	2.6
Mining & base metals	1.1	Acerinox	0.7
		Cie Automotive	0.1
		Duro Felguera	0.1
Cement and construction materials	0.5	Cementos Portland Valderrivas	0.2
		Cementos Molins	0.1
		Uralita	0.1
Chemicals	0.7	Laboratorios Almirall	0.3
		Zeltia	0.2
		Faes Farma	0.1
Textiles and paper	5.9	Industria de Diseño Textil	4.9
		Grifols	0.5
		Grupo Empresarial ENCE	0.1
Metal-mechanical	2.4	Zardoya Otis	0.8
		Técnicas Reunidas	0.4
		Abengoa	0.3
Food	1.2	Damm	0.4
		SOS Cuetara	0.3
		Ebro Puleva	0.2
Construction	5.4	ACS	2.0
		Acciona	1.1
		Fomento de Construcciones y Contratas	0.8
Real estate	1.1	Metrovacesa	0.2
		Testa Inmuebles en renta	0.2
		Royal Urbis	0.1
Transport and communications	19.7	Telefónica	16.2
		Abertis Infraestructuras	2.0
		Cintra	1.1
Other non-financial	3.4	Gamesa	0.5
		Indra sistemas	0.5
		Telecinco	0.5
Banks	30.7	Santander	17.3
		BBVA	8.7
		Banco Popular	1.2
Insurance	2.0	Mapfre	1.6
		Grupo Catalana Occidente	0.3
Portfolio companies	2.6	Criteria CaixaCorp	2.0
		Corporación Financiera Alba	0.4
		NH Hoteles, S.A.	0.1
SICAV ⁵	0.0	CAT Patrimonis	0.0

Source: CNMV. (1) Capitalisation at year-end. (2) Capitalisation of the sector as a percentage of the overall market. (3) Except in sectors with a reduced number of companies, the three largest in each sector are included. (4) Capitalisation of the companies listed as a percentage of the overall market. (5) Includes open-end securities investment companies traded in the open outcry market at 2008 year-end.

Capitalisation and trading volume of Ibex 35 companies¹

1.8

Million euro

Company	Market capitalisation ²		% ³	Trading volume		
	2008	2009		2008	2009	% ³
Banco Santander Central Hispano	53,959.9	95,042.9	17.3	282,374.9	220,367.3	25.1
Telefónica	74,574.2	89,089.2	16.2	239,510.8	206,244.9	23.5
Banco Bilbao Vizcaya Argentaria	32,457.4	47,711.7	8.7	171,660.1	124,946.7	14.2
Iberdrola	32,715.2	35,033.0	6.4	99,339.0	70,646.5	8.1
Inditex	19,528.9	27,046.3	4.9	26,516.3	16,886.4	1.9
Endesa	30,280.3	25,351.8	4.6	6,962.4	4,519.6	0.5
Repsol YPF	18,435.0	22,860.7	4.2	76,363.7	50,792.8	5.8
Iberdrola Renovables	12,883.4	14,023.9	2.6	10,655.8	7,410.8	0.8
Gas Natural	8,637.6	13,904.7	2.5	11,833.3	10,216.2	1.2
Criteria Caixacorp	9,348.8	11,080.7	2.0	5,515.6	2,517.5	0.3
Abertis Infraestructuras	8,446.2	11,064.5	2.0	10,854.0	6,812.9	0.8
ACS	10,950.5	10,953.5	2.0	14,538.0	8,015.7	0.9
Corporación Mapfre	6,587.6	8,554.8	1.6	6,994.1	4,245.9	0.5
Banco Popular Español	7,513.3	6,839.1	1.2	30,350.9	15,774.2	1.8
Banesto	5,554.1	5,884.0	1.1	2,195.5	1,026.7	0.1
Acciona	5,656.0	5,789.4	1.1	12,147.1	6,093.1	0.7
Red Eléctrica de España	4,869.7	5,251.2	1.0	12,768.1	6,443.7	0.7
Banco de Sabadell	5,820.0	4,650.0	0.8	7,649.1	3,577.2	0.4
Grupo Ferrovial	2,746.4	4,324.4	0.8	11,248.6	4,831.0	0.6
FCC	2,970.0	3,749.1	0.7	6,727.6	3,180.0	0.4
Enagás	3,714.7	3,682.5	0.7	9,719.4	5,976.8	0.7
Acerinox	2,891.4	3,622.4	0.7	7,060.0	3,324.6	0.4
Bankinter	2,561.2	3,385.2	0.6	5,639.9	3,066.4	0.3
Gamesa Corporación Tecnológica	3,099.6	2,867.3	0.5	15,638.3	8,911.7	1.0
Indra Sistemas	2,657.3	2,701.6	0.5	5,272.1	4,288.9	0.5
Grifols	2,622.8	2,600.5	0.5	6,430.9	6,041.0	0.7
Gestevisión Telecinco	1,862.2	2,508.4	0.5	4,908.8	2,531.4	0.3
Sacyr Vallehermoso	1,942.6	2,439.7	0.4	3,087.9	1,428.0	0.2
Técnicas Reunidas	1,029.1	2,243.1	0.4	3,466.6	3,307.0	0.4
Abengoa	1,067.5	2,044.6	0.4	2,102.4	1,488.2	0.2
Obrascón Huarte Lain	871.4	1,884.1	0.3	2,097.8	2,537.7	0.3
BME	1,537.7	1,881.4	0.3	6,486.9	3,852.1	0.4
Iberia Líneas Aéreas de España	1,887.1	1,809.9	0.3	6,056.7	3,377.8	0.4
ArcelorMittal ⁴	212.7	560.3	0.1	640.7	3,270.6	0.4

Source: CNMV. (1) Ibex 35 companies as at 30 December 2009. (2) Capitalisation on the last day of the year. (3) With respect to the market total. (4) Included in the index on 05/05/2009.

Takeover bids authorised in 2009

1.9

Million euro

Company	Offeror	Purpose	% capital addressed by the bid	Cash amount paid	Result (%) ¹
Unión Fenosa, S.A.	Gas Natural SDG, S.A.	Obligatory takeover bid	50.0	5,733.7	34.8
Aguas de Valencia, S.A.	Aguas de Valencia, S.A.	Obligatory takeover bid for delisting	39.3	11.7	4.0
Itínere Infraestructuras, S.A.	Pear Acquisition Corporation, S.L.	Voluntary takeover bid	51.7	1,351.7	47.0
Corporación Dermoestética, S.A.	Corporación Dermoestética, S.A.	Obligatory takeover bid for share capital reduction	47.4	188.9	89.5 (Pro-rated 53.0)
Federico Paternina, S.A.	Inversora Mer, S.L.	Obligatory takeover bid for delisting	9.0	3.6	7.6

Source: CNMV. (1) Percentage of capital. In the event of pro-rating, the coefficient is indicated.

Companies listed on Latibex, by sector

1.10

Million euro, unless indicated otherwise

Sector	No. of companies		Market capitalisation			Trading volume		
	2008	2009	2008	2009	% chg.	2008	2009	% chg.
Oil	2	2	73,215.9	144,947.7	98.0	118.1	81.3	-31.2
Energy & water	4	4	22,599.8	38,860.2	72.0	67.6	40.1	-40.7
Mining & base metals	5	5	47,440.2	117,152.3	147.0	250.7	141.7	-43.5
Chemicals	1	1	540.1	1,903.4	252.4	4.1	3.7	-7.6
Textiles and paper	2	1	421.3	0.0	-100.0	12.7	3.8	-69.9
Metal-mechanical	1	1	918.6	2,443.3	166.0	15.0	10.2	-31.9
Food	2	1	1,784.6	2,493.3	39.7	93.9	26.2	-72.1
Real estate	2	2	503.1	1,102.6	119.2	2.4	1.7	-29.7
Transport and communications	5	5	113,149.4	164,460.3	45.4	112.1	56.3	-49.8
Other non-financial	2	2	2,470.5	2,810.4	13.8	10.3	1.5	-85.8
Banks	5	7	14,960.7	83,736.6	459.7	53.8	40.0	-25.5
Portfolio companies	1	1	2,031.7	5,185.9	155.3	12.4	15.4	24.7
Finance houses	1	1	7,153.0	8,734.2	22.1	4.9	12.8	163.6
Total	33	33	287,188.9	573,830.1	99.8	757.7	434.7	-42.6

Source: CNMV.

Gross issues by the public authorities

l.11

Nominal amount in million euro

	Amount				% year-on-year change		
	2006	2007	2008	2009	07/06	08/07	09/08
Central Government	57,962	52,091	115,181	228,341	-10.1	121.1	98.2
Short term	25,891	26,971	52,657	109,999	4.2	95.2	108.9
Long term	32,071	25,120	62,523	118,342	-21.7	148.9	89.3
Autonomous Regions	9,523	7,553	9,087	19,623	-20.7	20.3	115.9
Short term	4,586	4,004	5,054	7,109	-12.7	26.2	40.7
Long term	4,937	3,548	4,033	12,514	-28.1	13.7	210.3
Local government	590	496	208	51	-16.0	-58.1	-75.3
Short term	—	—	—	—	—	—	—
Long term	590	496	208	51	-16.0	-58.1	-75.3
Total	68,075	60,139	124,475	248,016	-11.7	107.0	99.2

Source: Bank of Spain and CNMV.

Net issues by the public authorities

l.12

Nominal amount in million euro

	Amount				% year-on-year change		
	2006	2007	2008	2009	07/06	08/07	09/08
Central Government	-4,789	-4,716	50,208	119,397	1.5	—	137.8
Short term	-1,993	1,144	19,630	33,439	—	1,616.6	70.3
Long term	-2,796	-5,860	30,578	85,958	-109.6	—	181.1
Autonomous Regions	1,827	223	1,386	8,496	-87.8	520.8	512.9
Short term	-141	283	430	-168	—	51.8	—
Long term	1,968	-60	956	8,664	—	—	805.8
Local government	228	131	-14	-139	-42.4	—	-878.3
Short term	0	0	0	0	—	—	—
Long term	228	131	-14	-139	-42.4	—	-878.3
Total	-2,734	-4,362	51,580	127,753	-59.5	—	147.7

Source: Bank of Spain and CNMV.

Public debt trading between account holders. Outright transactions, repos and sell-buybacks/buy-sellbacks

l.13

Nominal amount in million euro

	Amount						% year-on-year change	
	2004	2005	2006	2007	2008	2009	08/07	09/08
Treasury Bills	472,518	484,161	480,711	339,956	534,919	862,448	57.3	61.2
Outright	85,222	82,515	64,164	35,894	63,959	83,501	78.2	30.6
Spot	84,833	82,389	63,694	35,868	63,915	81,441	78.2	27.4
Maturity	389	126	470	27	44	2,060	64.9	4571.2
Repos	1,990	411	0	0	0	0	—	—
Sell-buybacks/Buy-sellbacks	385,306	401,234	416,547	304,062	470,959	778,947	54.9	65.4
Bonds and Debentures	7,308,084	7,260,528	7,062,437	7,142,097	6,459,838	6,519,727	-9.6	0.9
Outright	562,627	491,550	447,211	418,761	362,239	557,039	-13.5	53.8
Spot	552,418	481,854	444,083	417,749	359,638	551,874	-13.9	53.5
Maturity	10,209	9,696	3,128	1,012	2,602	5,165	157.2	98.5
Repos	94,254	69,327	96	0	0	0	—	—
Sell-buybacks/Buy-sellbacks	6,651,203	6,699,650	6,615,129	6,723,337	6,097,598	5,962,688	-9.3	-2.2
Total	7,780,602	7,744,688	7,543,148	7,482,053	6,994,757	7,382,175	-6.5	5.5

Source: Bank of Spain and CNMV.

Public debt trading by account holders and third parties. Outright transactions, repos and sell/buybacks and buy/sellbacks

l.14

Nominal amount in million euro

	Amount						% year-on-year change	
	2004	2005	2006	2007	2008	2009	08/07	09/08
Treasury Bills	1,800,846	1,746,209	1,214,841	1,254,600	1,687,359	2,229,395	34.5	32.1
Outright	30,328	33,963	29,168	22,030	51,352	119,088	133.1	131.9
Spot	30,119	33,698	29,137	21,496	50,695	116,061	135.8	128.9
Maturity	209	265	31	534	657	3,027	22.9	360.8
Repos	1,768,729	1,709,341	1,185,339	1,230,166	1,635,437	2,107,507	32.9	28.9
Sell-buybacks/Buy-sellbacks	1,789	2,905	334	2,404	570	2,800	-76.3	391.3
Bonds and Debentures	13,252,235	12,729,047	13,857,369	13,927,674	11,262,380	8,910,888	-19.1	-20.9
Outright	1,571,265	2,040,064	2,690,033	2,994,352	1,989,753	1,860,227	-33.5	-6.5
Spot	1,469,329	1,740,267	2,366,230	2,702,273	1,727,881	1,720,908	-36.1	-0.4
Maturity	101,936	299,797	323,803	292,079	261,872	139,320	-10.3	-46.8
Repos	10,613,122	9,631,174	9,850,322	9,741,672	8,474,523	6,537,836	-13.0	-22.9
Sell-buybacks/Buy-sellbacks	1,067,848	1,057,808	1,317,014	1,191,650	798,104	512,825	-33.0	-35.7
Total	15,053,081	14,475,256	15,072,210	15,182,274	12,949,739	11,140,284	-14.7	-14.0

Source: Bank of Spain and CNMV.

Number of issuers and issues filed with the CNMV: detail by instrument I.15

	Number of issuers ¹		Number of issues	
	2008	2009	2008	2009
Long term	135	142	249	439
Non-convertible bonds and debentures	30	50	76	244
of which, subordinated debt	9	19	12	23
Convertible bonds and debentures	1	3	1	6
Mortgage covered bonds	19	27	47	75
Territorial covered bonds	7	1	8	1
Securitisation bonds	88	68	108	76
asset-backed (ABS)	87	66	107	74
mortgage-backed (MBS)	1	2	1	2
Preference shares	8	23	9	37
Other	0	0	0	0
Short term²	77	69	88	73
Commercial paper	77	69	88	73
of which, asset-backed	2	2	2	2
Total	179	168	337	512

Source: CNMV. (1) In the case of the issuers, the totals do not necessarily coincide with the sum, given that the same issuer may issue various types of instruments. (2) Shelf registrations.

Main fixed-income issuers¹ registered with the CNMV in 2009 I.16

Nominal amount in million euro

Name of issuing company	Nominal amount issued		
	Total	Short term ²	Long term
Caja de Ahorros y de Pensiones de Barcelona	21,890	12,000	9,890
Caja de Ahorros y Monte de Piedad de Madrid	18,178	7,000	11,178
Banco Popular Español, S.A.	17,316	9,900	7,416
Caja de Ahorros de Valencia, Castellón y Alicante, Bancaja	14,338	6,000	8,338
Bankinter, S.A.	11,016	7,000	4,016
Banco de Sabadell, S.A.	10,714	6,500	4,214
BBVA Banco de Financiación, S.A.	10,000	10,000	0
Santander Consumer Finance, S.A.	10,000	10,000	0
Caja de Ahorros del Mediterráneo	9,671	3,000	6,671
Banesto Banco de Emisiones, S.A.	7,500	7,500	0
Caixa d'Estalvis de Catalunya	6,932	2,100	4,832
Foncaixa Empresas 1, Fondo de Titulización de Activos	6,630	0	6,630
Caja de Ahorros de Galicia	6,604	3,000	3,604
AYT Cédulas Cajas Global, Fondo de Titulización de Activos	6,568	0	6,568
Fondo de Titulización de Activos Santander 2	6,000	6,000	0
Banco Pastor, S.A.	5,530	3,000	2,530
Montes de Piedad y Caja de Ahorros de Ronda, Cádiz, Almería, Málaga y Antequera	5,028	2,500	2,528
Bankinter Sociedad de Financiación, S.A.	5,000	5,000	0
Sol-Lion, Fondo de Titulización de Activos	4,500	0	4,500
Barclays Bank, S.A.	4,400	500	3,900
Caja España de Inversiones, Caja de Ahorros y Monte de Piedad	4,400	4,000	400
Banco Español de Crédito	4,047	0	4,047

Source: CNMV. (1) Issuers that registered issues exceeding 4 billion euro. (2) Shelf registrations.

Main fixed-income issuers¹ registered with the CNMV in 2009. Detail by instrument

1.17

Million euro

Type of asset ²	Issuer	Amount
Non-convertible bonds and debentures	Caja de Ahorros y Monte de Piedad de Madrid	7,106
	Caja de Ahorros de Valencia, Castellón y Alicante, Bancaja	7,021
	Caja de Ahorros y Pensiones de Barcelona	4,655
	Caja de Ahorros del Mediterráneo	4,654
	Caixa d'Estalvis de Catalunya	4,419
	Banco Popular Español	4,402
	Caja de Ahorros de Galicia	2,984
	Bankinter	2,273
	Banco de Sabadell	1,625
	Banco Cooperativo Español	1,561
Convertible bonds and debentures	Banco Bilbao Vizcaya Argentaria	2,000
Mortgage covered bonds	Caja de Ahorros y Monte de Piedad de Madrid	4,072
	Barclays Bank	3,900
	Banco Español de Crédito	3,547
	Caja de Ahorros y Pensiones de Barcelona	3,235
	Banco Popular Español	3,014
	Caja de Ahorros del Mediterráneo	2,017
	Bankinter	1,743
	Banco de Sabadell	1,589
	Montes de Piedad y Caja de Ahorros de Ronda, Cádiz, Almería, Málaga y Antequera	1,528
	Banco Santander	1,500
Preferred shares	Caja Madrid Finance Preferred	3,000
	Santander Finance Capital	2,000
Commercial paper ³	Caja de Ahorros y Pensiones de Barcelona	2,000
	Caja de Ahorros y Pensiones de Barcelona	12,000
	BBVA Banco de Financiación	10,000
	Santander Consumer Finance	10,000
	Banco Popular Español	9,900
	Banesto Banco de Emisiones	7,500
	Bankinter	7,000
	Caja de Ahorros y Monte de Piedad de Madrid	7,000
	Banco de Sabadell	6,500
	Caja de Ahorros de Valencia, Castellón y Alicante, Bancaja	6,000
	Bankinter Sociedad de Financiación	5,000
	Caja España de Inversiones, Caja de Ahorros y Monte de Piedad	4,000
	Banco Pastor	3,000
	Iberdrola	3,000
	BBK Empréstitos	3,000
	Caja de Ahorros del Mediterráneo	3,000
	Caja de Ahorros de Galicia	3,000
Montes de Piedad y Caja de Ahorros de Ronda, Cádiz, Almería, Málaga y Antequera	2,500	
Caja de Ahorros de Murcia	2,500	
Caja de Ahorros de Salamanca y Soria	2,250	
Caixa d'Estalvis de Catalunya	2,100	
Gas Natural SDG	2,000	
Telefónica	2,000	
Repsol YPF	2,000	
Endesa Capital, S.A.	2,000	
Caixa de Aforros de Vigo, Ourense e Pontevedra, Caixanova	2,000	
Caixa d'Estalvis del Penedès	1,500	
Caja de Ahorros y Monte de Piedad de Navarra	1,500	
Caja de Ahorros y Monte de Piedad de Zaragoza, Aragón y La Rioja, Ibercaja	1,500	
ABCP ³	Fondo de Titulización de Activos Santander ²	6,000

Source: CNMV. (1) Issuers which issued more than 1.5 billion euros in the corresponding financial instrument. (2) Territorial covered bonds do not appear as no issuer issued more than 1.5 billion euros in these instruments. (3) Amount of shelf registrations.

Commercial paper issuers: largest outstanding balances at 31 December 2009¹

I.18

Million euro

Issuer	Amount	% of total	% accum.
Banesto Banco de Emisiones, S.A.	5,558	12.2	12.2
Santander Consumer Finance, S.A.	4,066	9.0	21.2
Banco Popular Español, S.A.	2,993	6.6	27.8
Banco de Sabadell, S.A.	2,771	6.1	33.9
BBK Empréstitos, S.A.U.	2,397	5.3	39.1
Fondo de Titulización de Activos Santander 2	2,239	4.9	44.1
Bankinter Sociedad de Financiación, S.A.	1,950	4.3	48.4
BBVA Banco de Financiación, S.A.	1,946	4.3	52.6
Bankinter, S.A.	1,828	4.0	56.7
Caja de Ahorros y Pensiones de Barcelona	1,716	3.8	60.4
Caja de Ahorros y Monte de Piedad de Madrid	1,565	3.4	63.9
Banco Pastor, S.A.	1,284	2.8	66.7
Montes de Piedad y Caja de Ahorro de Ronda, Cádiz, Almería, Málaga y Antequera	1,273	2.8	69.5
Caixa d'Estalvis de Catalunya	1,007	2.2	71.7

Source: CNMV. (1) Issuers with an outstanding balance greater than 1 billion euros

Main securitisation bond issuers¹ in 2009

I.19

Million euro

Issuer	Amount	Assets securitised
Foncaixa Empresas 1, Fondo de Titulización de Activos	6,630	Corporate loans
AYT Cédulas Cajas Global, Fondo de Titulización de Activos	6,568	Mortgage covered bonds
Sol-Lion, Fondo de Titulización de Activos	4,500	Mortgage loans
BBVA Empresas 2, Fondo de Titulización de Activos	2,850	Corporate loans
BBVA Empresas 3, Fondo de Titulización de Activos	2,600	Corporate loans
CEAMI Guaranteed Bonds I, Fondo de Titulización de Activos	2,559	Treasury Bonds
Santander Empresas 6, Fondo de Titulización de Activos	2,497	Corporate loans
IM Grupo Banco Popular Empresas 3, Fondo de Titulización de Activos	2,250	Corporate loans
Santander Empresas 7, Fondo de Titulización de Activos	2,220	Corporate loans
Rural Hipotecario XI, Fondo de Titulización de Activos	2,200	Mortgage loans
Cédulas TDA 14, Fondo de Titulización de Activos	2,200	Mortgage covered bonds
Cédulas TDA 15, Fondo de Titulización de Activos	2,190	Mortgage covered bonds
Cédulas TDA 16, Fondo de Titulización de Activos	2,170	Mortgage covered bonds
Empresas Banesto 4, Fondo de Titulización de Activos	2,075	Corporate loans
TDA Ibercaja 7, Fondo de Titulización de Activos	2,070	Mortgage loans
AYT Kutxa Hipotecario IV, Fondo de Titulización de Activos	2,000	Mortgage loans
TDA CAM 12, Fondo de Titulización de Activos	1,976	Mortgage loans
Cédulas TDA 17, Fondo de Titulización de Activos	1,950	Mortgage covered bonds
Santander Financiación 4, Fondo de Titulización de Activos	1,695	Consumer Loans
Bankinter 19, Fondo de Titulización de Activos	1,650	Mortgage loans

Source: CNMV. (1) Issuers with CNMV-registered issues of more than 1.5 billion euros in 2009.

Securitisation bonds in 2009, by type of collateral

1.20

Nominal amount in million euro

	2004	2005	2006	2007	2008	2009
Mortgage-backed securities (BTH)	4,890	6,850	4,300	4,740	800	817
Asset-backed securities (FTA)	45,635	62,194	87,308	136,887	134,453	80,835
Mortgage-backed FTA	33,127	47,325	60,333	84,205	98,015	39,784
Mortgage loans	13,967	22,314	34,663	57,550	63,615	24,706
Mortgage covered bonds	18,685	24,280	25,670	26,655	34,400	15,078
Real estate developer loans	475	730	0	0	0	0
FTA companies	8,964	10,027	18,331	32,730	27,279	31,886
SMEs ¹	0	1,250	2,979	2,485	1,350	1,010
FTPME ¹	8,964	2,944	7,956	6,474	7,276	0
FTGENCAT ¹	0	2,177	1,860	2,020	3,391	1,356
Loans to companies ²	0	3,100	5,536	19,250	10,500	25,762
Corporate loans ³	0	556	0	0	1,682	2,158
Financial leases	0	0	0	2,500	3,080	1,600
FTA others	3,544	4,843	8,643	19,953	9,159	9,165
Subordinated debt	0	0	298	0	0	0
Treasury bonds	0	1,180	1,450	0	765	2,559
Government loans	1,850	0	0	0	0	0
Territorial covered bonds	0	665	0	0	450	965
Consumer loans	235	0	5,527	3,592	6,459	3,725
Auto loans	1,000	1,000	1,360	2,840	1,485	1,916
Accounts receivable	0	0	0	0	0	0
Rights to future loans	0	0	0	0	0	0
Asset-backed bonds	0	1,598	0	0	0	0
Other loans	458	400	8	13,521	0	0
Total asset-backed bonds	50,525	69,044	91,608	141,627	135,253	81,651
Total asset-backed commercial paper⁴	3,724	2,767	1,993	465	2,843	4,758
Total bonds and commercial paper	54,248	71,811	93,600	142,092	138,096	86,410

Note

Mortgage subtotal	38,017	54,175	64,633	88,945	98,815	40,601
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Source: CNMV. (1) Includes trusts whose pools include almost all loans to SMEs. (2) Includes trusts whose pools include loans to any type of business: self-employed, micro-enterprises, SMEs, and larger companies. (3) Includes trusts whose pools are comprised only of loans to large companies. (4) Asset-backed commercial paper programmes registered by the FTAs.

Proprietary trading on AIAF

1.21

Nominal amount in million euro

	2004	2005	2006	2007	2008	2009	% change 09/08
Commercial paper	9,440	28,474	41,916	41,243	84,841	129,828	53.0
Bonds and debentures	122,989	249,375	155,960	231,942	1,606,100	3,635,802	126.4
of which, asset-backed securities	102,885	219,722	130,624	205,044	1,570,686	3,426,089	118.1
Mortgage covered bonds	5,950	5,651	7,071	14,572	84,033	210,273	150.2
Territorial covered bonds	4	111	23	1,050	1,413	767	-45.7
Matador bonds	3,519	2,363	2,915	1,363	0	16	—
Total	141,902	285,975	207,885	290,169	1,776,388	3,976,687	123.9

Source: CNMV.

Statistical Annexes II: Financial entities and investment services

Annexes
Statistical Annexes II

Numbers, investors, assets and breakdown of variation in assets of securities and real estate mutual funds											
Million euro											
Category	No. of funds		No. of investors		Assets		Change in assets due to subscriptions and net yield ²			Pro-memoria:	
	2009	Change	2009	Change	Amount	Total variation (%) ¹	Amount	Net subscrip	Net yield	Distribution net subscriptions FI (%)	
Fixed income ³	582	-47	2,041,487	-163,165	84,657	-8.8	-5,351	-7,479	2,128	-57.3	
Mixed fixed income ⁴	169	-26	290,151	12,522	8,696	49.9	2,991	2,543	448	19.5	
Mixed equity ⁵	165	-37	182,542	-27,240	3,880	-2.0	-1	-461	460	-3.5	
Euro equity ⁶	182	-55	299,353	-78,192	6,322	6.5	1,032	-274	1,306	-2.1	
Foreign equity ⁷	242	-88	458,097	-9,594	5,902	38.7	1,714	764	950	5.9	
Guaranteed fixed-income	233	-27	570,963	32,164	21,033	-1.2	-3,523	-3,249	-273	-24.9	
Guaranteed equity ⁸	561	-29	1,188,304	-214,644	25,666	-16.5	-4,555	-5,402	847	-41.4	
Global funds	187	-282	88,337	-355,963	3,873	-65.0	445	206	239	1.6	
Passive management ⁹	69	69	85,403	85,403	3,217	100.0	326	-173	499	-1.3	
Absolute return ⁹	146	146	270,766	270,766	7,303	100.0	1,046	822	224	6.3	
Total mutual funds	2,536	-376	5,475,403	-447,943	170,548	-3.0	-5,875	-12,702	6,827	-97.3	
FICIL (Funds of hedge funds)	37	-2	5,204	-3,312	631	-38.2	-347	-401	54	-3.1	
Hedge funds	28	5	1,890	301	646	19.7	109	46	62	0.4	
Total securities funds	2,601	-373	5,482,497	-450,954	171,825	-3.2	-6,113	-13,057	6,944	-100.0	
Real estate funds	8	-1	83,583	-13,807	6,465	-12.7	-932	-321	-610.3	—	
Foreign UCITS¹⁰	582	19	680,983	89,394	24,340	35.2					

Source: CNMV. (1) Variation in assets is due to net subscriptions, net yields on assets and the net asset balance resulting from changes in investment policy. (2) The figure for the investment funds for passive management and absolute return correspond to the final three yearly quarters. (3) Until 1Q09 includes: Short-term fixed income, Long-term fixed income, foreign fixed income and monetary fixed income. From 2Q09 includes: Euro fixed income, Foreign fixed income and monetary fixed income. (4) Until 1T09 includes Mixed fixed income and Foreign mixed fixed income. From 2Q09 includes: Euro fixed income and Foreign mixed fixed income. (5) Until 1Q09 includes: Mixed equity and Foreign mixed equity. From 2Q09 includes: Euro mixed equity and Foreign mixed equity. (6) Until 1Q09 includes: Spanish equity and Euro equity. From 2Q09 includes Euro equity (that now includes RVN). (7) Until 1Q09 includes: RVI Europe, RVI Japan, RVI USA, RVI Emerging Countries and RVI Others. From 2Q09: RVI. (8) Until 1Q09: GRV. From 2Q09: GRV y and Partial Guarantee. (9) New categories from 2Q09. All absolute return funds were previously classified in Global Funds. (10) The line on foreign UCITS includes both companies and funds. The asset data for foreign UCITS refer to the volume of investment, i.e. the product of the number of shares and units commercialised in Spain and their year-end value.

Fund portfolio as a percentage of the outstanding balance of Spanish securities II.2

%	2004	2005	2006	2007	2008	2009
Listed equities ¹	5.2	4.9	4.1	3.8	2.8	2.4
Private sector fixed income ²	11.2	10.2	8.8	8.1	4.8	4.1
Short term	43.7	46.5	40.2	38.1	28.4	31.3
Long term	5.5	4.8	4.5	3.6	2.5	2.8
Public sector fixed-income	4.8	4.2	3.8	3.3	3.6	3.9
Short term ³	11.7	12.1	9.0	6.6	14.5	7.8
Long term	3.9	3.3	3.3	2.9	1.9	3.1

Source: CNMV and Bank of Spain. (1) Realisation value. The outstanding balance figures are the capitalisation of domestic securities in the electronic market, open outcry market and MAB. (2) Fixed-income figures are nominal values. (3) Repos are not included.

Expenses charged to financial mutual funds II.3 % of average daily assets

	Management fees			Depository fees ¹		
	2007	2008	2009	2007	2008	2009
Total investment funds	1.00	0.87	0.87	0.09	0.08	0.09
Fixed income	0.61	0.58	0.63	0.08	0.08	0.08
Mixed fixed income	1.13	1.14	1.14	0.09	0.09	0.09
Mixed equity	1.54	1.54	1.58	0.10	0.11	0.10
Euro equity	1.65	1.60	1.75	0.10	0.10	0.10
Foreign equity	1.79	1.69	1.79	0.12	0.12	0.12
Guaranteed fixed-income	0.62	0.49	0.65	0.08	0.07	0.08
Guaranteed equity	1.30	1.29	1.26	0.10	0.11	0.11
Global funds	1.16	1.04	1.08	0.10	0.09	0.08
Passive management ²	—	—	—	—	—	—
Absolute return ²	—	—	—	—	—	—
FIICIL (Funds of hedge funds)	1.15	1.63	1.34	0.06	0.11	0.10
Hedge funds ³	1.39	2.50	2.45	0.33	0.16	0.10

Source: CNMV. (1) Except in hedge funds that constitute financing fees. (2) The fees are not included given that this requirement came into force under Circular 1/2009, as from the second quarter of 2009. However, the information is used for the calculation of the fees from the total investment funds. The historical passive management funds are the ETF, the fee of which was 0.18% of the average daily assets in 2009, three basis points higher than that of 2008, and the depository fee was 0.03%, one basis point higher than that of 2008. (3) The fees shown are a percentage of the average monthly assets.

Yields and net subscriptions of mutual funds

II.4

Yield (%) and net subscriptions (million euro)

	2005		2006		2007		2008		2009	
	Yield	Net subs.	Yield	Net subs.	Yield	Net subs.	Yield	Net subs.	Yield	Net subs.
Fixed income ¹	1.8	5,323	2.0	-9,423	2.7	-5,852	2.1	-22,333	1.9	-7,479
Mixed fixed income ²	5.0	2,346	4.2	1,539	2.0	-1,942	-7.1	-6,222	6.9	2,543
Mixed equity ³	11.9	-545	10.3	-855	2.8	-1,277	-22.2	-3,325	16.5	-461
Euro equity ⁴	21.3	620	27.3	-4,058	6.1	-5,071	-39.8	-5,759	32.4	-274
International equity ⁵	25.0	2,310	13.2	2,972	1.3	-586	-41.7	-5,348	37.3	764
Guaranteed fixed-income	1.7	-354	0.8	1,019	2.8	2,715	3.3	2,438	3.8	-3,249
Guaranteed equity ⁶	4.0	4,694	4.7	-3,021	2.5	-3,605	-2.6	-11,672	3.6	-5,402
Global funds	6.2	3,928	4.0	7,302	1.6	-6,259	-8.6	-15,181	10.9	206
Passive management ⁷	—	—	—	—	—	—	—	—	—	-173
Absolute return ⁷	—	—	—	—	—	—	—	—	—	822
Total securities funds	6.1	18,322	5.6	-4,525	2.7	-21,878	-4.2	-67,402	5.7	-12,702
Funds of hedge funds	—	—	—	1	-1.0	1,006	-15.4	351	7.4	-401
Hedge funds	—	—	—	—	2.2	378	-5.4	131	15.1	46
Total funds	6.1	18,322	5.6	-4,525	2.7	20,494	-4.3	-66,921	5.8	-13,057
FIAMM (money market)	1.2	-739	1.2	-3,878	2.1	-54,629	—	—	—	—
Real Estate Funds	6.7	1,304	5.4	1,808	6.0	1,673	1.6	-1,267	-8.3	-321
Pro memoria: amount commercialised by Spanish firms and Spanish-resident foreign firms										
Foreign UCITS	—	6,766	—	11,770	—	6,435	—	-10,016	—	3,291

Source: CNMV. (1) Until 1Q09 includes: Short-term fixed income, Long-term fixed income, foreign fixed income and monetary fixed income. From 2Q09 includes: Euro fixed income, Foreign fixed income and monetary fixed income. (2) Until 1T09 includes Mixed fixed income and Foreign mixed fixed income. From 2Q09 includes: Euro fixed income and Foreign mixed fixed income. (3) Until 1Q09 includes: Mixed equity and Foreign mixed equity. From 2Q09 includes: Euro mixed equity and Foreign mixed equity. (4) Until 1Q09 includes: Spanish equity and Euro equity. From 2Q09 includes Euro equity (that now includes RVN). (5) Until 1Q09 includes: RVI Europe, RVI Japan, RVI USA, RVI Emerging Countries and RVI Others. From 2Q09: RVI. (6) Until 1Q09: GRV. From 2Q09: GRV y and Partial Guarantee. (7) New categories from 2Q09. All absolute return funds were previously classified in Global Funds.

Foreign UCITS commercialised in Spain			II.5
	2008	2009	Var. (%)
Number of institutions	563	582	3.4
Number of investors	591,589	680,983	15.1
Volume of investment (million euro)	18,001.8	24,339.5	35.2
Distribution per country of origin			
Austria	28	27	-3.6
Belgium	5	5	0.0
France	161	178	10.6
Germany	16	17	6.3
Ireland	63	64	1.6
Luxembourg	274	275	0.4
Netherlands	1	1	0.0
Malta	1	1	0.0
UK	14	14	0.0

Source: CNMV.

UCITS operators (SGIIC): registrations and deregistrations in 2009		II.6
UCITS operators	Controlling group	
Registrations		
Altamar Gestión Alternativa, SGIIC, S.A.	Altamar	
Neila Capital Partners, SGIIC, S.A.	Independent	
Deregistrations		
Gestifondo, SGIIC, S.A.	Nordkapp	
Harcourt Investments, SGIIC, S.A.	Vontobel	

Source: CNMV.

Foreign investment firms with community passport: Home Member State ¹	II.7	
	2008	2009
No. of firms operating in Spain		
Free provision of services	1,781	1,886
Branches	37	36
Breakdown according to origin		
Free provision of services		
Austria	28	25
Belgium	9	9
Bulgaria	0	1
Cyprus	15	17
Denmark	9	11
Estonia	0	1
Finland	5	4
France	44	45
Germany	31	33
Greece	8	8
Hungary	0	1
Ireland	39	46
Italy	5	5
Liechtenstein	1	3
Luxembourg	15	16
Malta	1	2
Netherlands	60	63
Norway	23	24
Portugal	8	8
Romania	0	1
Slovenia	1	1
Sweden	9	9
UK	1,470	1,553
Branches		
France	2	3
Germany	1	1
Luxembourg	2	2
Netherlands	2	1
Poland	1	1
Portugal	2	2
UK	27	26

Source: CNMV. (1) Countries stated in the communiqués by investment firms from EU Member States and in authorisations of investment firms from non-EU countries.

**Registrations and deregistrations of broker-dealers, brokers
and portfolio management companies, financial consultancy firms
and foreign investment firms with branches. 2009**

11.8

Firm	Controlling group
Broker-dealers and brokers	
Registrations	
OMEL Mercados, A.V., S.A.	Independent
Talenta Gestión, A.V.	Independent
Able & Baker, A.V., S.A.	Independent
Harcourt Investments, A.V., S.A.	Vontobel Holding AG
Deregistrations	
Skandia Multigestión, A.V., S.A.	Skandia
Mutuactivos, S.A., S.V.	Mutua Madrileña
Winvalor, A.V.	Axa
Rothschild Gestión A.V., S.A.	Rothschild Bank
Aviva Valores, A.V., S.A.	Aviva
Portfolio management companies	
Deregistrations	
Baninver, S.A., SGC	Independent
Financial consultancy firms	
Abante Consejeros Financieros Independientes EAFI, S.A.	Independent
Javier Kessler Saiz, EAFI	Independent (natural person)
Capitalia Familiar, EAFI, S.L.	Independent
Troy Consultores Asociados, EAFI, S.L.	Independent
Ad-Hoc Asesores Financieros, EAFI, S.A.	Independent
Wealth Management Solutions, EAFI, S.L.	Independent
360 Alfa Partners Advisors, EAFI, S.L.	Independent
Valor Óptimo, EAFI, S.L.	Independent
Quantica Empresa de Asesoramiento Financiero Independiente, EAFI, S.A.	Independent
Afinet Global, EAFI, S.A.	Independent
Asesores Patrimoniales Navarra C2, EAFI, S.L.	Independent
Lamothe & Zunzunegui EAFI, S.L.	Independent
Salvador Cervilla García, EAFI	Independent (natural person)
Dracon Partners, EAFI, S.L.	Independent
Diverinvest Asesoramiento, EAFI, S.L.	Independent
Iadvise Partners, EAFI, S.L.	Independent
Foreign investment firms with branch	
Registrations	
EdRIM Solutions, S.A., Sucursal en España	Edmond de Rothschild
Novus Capital Markets Limited, Sucursal en España	Novus
Deregistrations	
Daiwa Securities SMBC Europe Limited, Sucursal en España	Daiwa Securities
WestLB Mellon Asset Management (UK) Limited, Sucursal en España	WestLB AG/The Bank of New York Mellon
ABN AMRO Asset Management (Netherlands) BV, Sucursal en España	ABN AMRO Holding

Source: CNMV.

Changes of control at broker-dealers, brokers and portfolio management companies. 2009 II.9

Firm	Buyer
Acquisition of control by Spanish financial institutions	
Fineco, S.V., S.A.	BBK ¹
Acquisition of control by foreign financial institutions	
Capital at Work, A.V., S.A.	Foyer, S.A. ²

Source: CNMV. (1) Acquires 60% of the company. (2) Country of origin: Luxembourg.

Spanish investment firms with community passport. Host Member State¹ II.10

	2008	2009
Number of firms with cross-border transactions		
Free provision of services	33	36
Branches	2	2
Breakdown of Spanish investment firms providing cross-border services²		
Free provision of services		
Austria	5	6
Belgium	12	13
Denmark	5	5
Finland	5	5
France	13	16
Germany	16	18
Greece	6	7
Iceland	3	3
Ireland	9	9
Italy	12	14
Liechtenstein	1	1
Luxembourg	11	12
Malta	0	1
Netherlands	11	13
Norway	3	3
Portugal	19	21
Sweden	6	6
UK	12	16
Branches		
Sweden	1	1
UK	1	1

Source: CNMV. (1) Countries stated in the communiqués relating to free provision of services and in authorisations of branches. (2) Number of Spanish investment firms providing services in other countries. A single firm may provide services in more than one country.

Foreign credit institutions authorised to provide investment services in Spain at 31 December 2009. Home Member State

II.11

	2008	2009
Number of non-EU credit institutions providing investment services in Spain		
EU credit institutions		
Free provision of services	348	359
Subsidiaries of EU credit institutions under the free provision of services regime	1	1
Branches	56	53
Non-EU credit institutions		
Free provision of services	1	1
Branches	8	8
Breakdown by home state		
Free provision of services		
EU credit institutions		
Austria	25	29
Belgium	7	8
Cyprus	3	3
Denmark	9	9
Finland	6	6
France	47	47
Germany	39	39
Greece	1	1
Hungary	4	4
Iceland	1	1
Ireland	27	29
Italy	7	8
Liechtenstein	2	3
Luxembourg	47	48
Malta	4	5
Netherlands	26	26
Norway	3	3
Poland	1	0
Portugal	11	11
Sweden	4	5
UK	74	74
Non-EU credit institutions		
Switzerland	1	1
Subsidiaries of EU credit institutions under the free provision of services regime		
Ireland	1	1
Branches		
EU credit institutions		
Belgium	3	3
Denmark	1	1
France	14	12
Germany	6	5
Netherlands	5	5
Iceland	1	0
Ireland	3	3
Italy	2	2
Luxembourg	4	4
Portugal	8	8
Sweden	1	1
UK	8	9
Non-EU credit institutions		
Argentina	1	1
Brazil	1	1
Japan	1	1
Switzerland	1	1
United States	4	4

Source: Bank of Spain.

Statistical annexes III: Regulation and supervision

Annexes
Statistical Annexes III

Number of shareholders of the Ibex 35¹ companies with significant shareholdings

III.1

Entities	Shareholdings				
	3%-5%	5%-10%	10%-25%	25%-50%	50%-100%
Abengoa	—	—	—	—	1
Abertis	—	1	—	2	—
Acciona	1	—	—	—	1
Acerinox	3	1	3	—	—
ACS	—	3	3	—	—
Arcelor Mittal	—	1	—	—	—
BBVA	3	—	—	—	—
B. Sabadell	—	4	—	—	—
Banesto	—	—	—	—	1
B. Popular	—	3	1	—	—
B. Santander	1	1	—	—	—
Bankinter	—	1	2	—	—
BME	2	4	—	—	—
Criteria	—	—	—	—	1
Ebro Puleva	—	5	1	—	—
Enagás	—	6	—	—	—
Endesa	—	—	—	—	1
Ferrovial	—	—	—	1	—
FCC	1	1	—	—	1
Gamesa	1	2	1	—	—
Gas Natural	—	1	—	—	1 ²
Gestevisión Telecinco	—	2	—	—	1
Grifols	—	4	1	—	—
Iberdrola Renovables	—	—	—	—	1
Iberdrola	—	2	1	—	—
Iberia	1	1	2	—	—
Indra	—	4	2	—	—
Inditex	1	1	—	—	1
Mapfre	1	—	1	—	1
OHL	—	—	—	—	1
REE	1	—	1	—	—
Repsol YPF	3	—	2	—	—
Sacyr Vallehermoso	2	4	3	—	—
Técnicas Reunidas	1	—	—	1	—
Telefónica	2	2	—	—	—
Total	24	54	24	4	11

Source: CNMV. (1) Composition of Ibex 35 as at the close of the financial year. (2) Agreed action between La Caixa and Repsol.

Outcome of disciplinary proceedings in 2009

III.2

Reference	Resolutions
(1/09)	Ministerial Order of 9 February 2009 Resolution on disciplinary proceedings brought against a British UCITS management company for the alleged commission of a very serious breach of Section 99 p) of the Securities Market Act, for the late notification of significant shareholding in a listed company in connection with an investment fund managed by that company. The company was fined 15,000 euros.
(2/09)	Resolution of the Board of the CNMV of 18 March 2009 Resolution of the disciplinary proceedings brought against a legal person, a member of the board of directors of a listed company, for the alleged commission of a very serious breach of Section 99 p) of the Securities Market Act for the failure to notify the CNMV of option rights on shares of that listed company. It was concluded that there had been a serious breach of Section 100 j) of the Securities Market Act due to failure to comply with Section 83 bis 4) of the same legal text –disclosures of directors of listed companies in connection with market abuse-, and a fine of 30,000 euros was imposed.
(3/09)	Resolution of the Board of the CNMV of 18 March 2009 Resolution of the disciplinary proceedings brought against an investment services company for the alleged commission of a serious breach of Section 100 x) <i>ter</i> of the Securities Market Act –failure to comply with rules regarding recommendations for securities issuers-. A fine of 24,000 euros was imposed.
(4/09)	Ministerial Order of 22 April 2009 Resolution of the disciplinary proceedings brought against a natural person for the alleged commission of a very serious breach of Section 99 p) Securities Market Act -late notification of significant shareholdings-. A fine of 150,000 euros was imposed.
(5/09)	Ministerial Order of 24 April 2009 Resolution of the disciplinary proceedings brought against a SICAV (open-end investment company) and its chairperson for the alleged commission of a very serious breach of Section 80 f) of the LIIC (Collective Investment Institutions Act) for transactions with own shares, in breach of the legally established limits and terms. The SICAV was given a public reprimand, and the chairperson was fined 90,000 euros.
(6/09)	Resolution of the Board of the CNMV of 15 September 2009 Resolution of the disciplinary proceedings brought against an issuer and the members of its board of directors for the alleged commission of a very serious breach of Section 99 m) of the Securities Market Act for providing the CNMV with regulated financial information containing inaccurate or untruthful data. A ruling of no liability was given.
(7/09)	Resolution of the Board of the CNMV of 15 September 2009 Resolution, in relation to the serious breach and the absence of very serious breaches, of the disciplinary proceedings brought against three natural persons for the alleged commission of the following breaches: against all three for a very serious breach of Section 99 r) of the Securities Market Act –inaccuracies in a takeover prospectus-, against two of them for a very serious breach of Section 99 p) of the Securities Market Act –failure to notify significant shareholdings-, and against one of them for a serious breach of Section 100 b) of the Securities Market Act for not answering CNMV deficiency letters. The person accused of the serious breach was fined 10,000 euros while the breach of Section 99 r) involving two of the accused, and the breach of 99 p) involving one of them, were found to be non-existent.
(8/09)	Resolution of the Board of the CNMV of 15 September 2009 Resolution, in relation to the serious breaches of Sections 100 b) bis –failure to return the corporate governance report within the established time frame- and 100 j) –incomplete regulated financial information-, both of the Securities Market Act, of the disciplinary proceedings brought against an issuer and the members of its board of directors. The company was fined a total of 3,000 euros and the board members a total of 21,000 euros.
(9/09)	Ministerial Order of 2 November 2009 Resolution of the disciplinary proceedings brought against a natural person for the alleged commission of a very serious breach of Section 99 o) of the Securities Market Act -use of insider information-. A fine of 31,103 euros was imposed.
(10/09)	Ministerial Order of 2 November 2009 Resolution, in relation to the very serious breach of Section 99 m) of the Securities Market Act –failure to send the annual financial statements within the established time frame-, of the disciplinary proceedings brought against an issuer and its members of the board of directors. The company was fined 3,000 euros and the board members were fined a total of 30,000 euros.
(11/09)	Resolution of the Board of the CNMV of 25 November 2009 Resolution, in relation to the serious breach of Section 100 t) of the Securities Market Act -failure to comply with standards of conduct-, of the disciplinary proceedings brought against an issuer and the members of its board of directors. The company was fined 25,000 euros and the board members were fined a total of 20,000 euros.
(12/09)	Ministerial Order of 9 December 2009 Resolution of the disciplinary proceedings brought against a UCITS management company and its chairperson for the alleged commission of two very serious breaches -letters d) and q) of Section 80 of the LIIC (Collective Investment Institutions Act) – for breaches in connection with shareholder equity. The company was fined a total amount of 6,000 euros and its chairperson was fined a total of 40,000 euros and suspended from the exercise of his office for a total of 6 months.

Source: CNMV.

List of rulings on contentious-administrative appeals against penalties in 2009

III.3

No.	Date	Tribunal	Appeal no.	Ruling appealed
1	27/01/2009	Supreme Court	379/2002	Ruling AN 14/03/2005
Rules against the admissibility of the appeal lodged against the ruling of the Central Criminal Court of 14 March 2005 which confirms the resolution of the Minister of Economy and Finance of 23 May 2002 which, in turn, upholds on appeal the ruling of the Board of the CNMV of 29 November 2001 on the penalty for a serious breach of Section 100 x) of the Securities Market Act.				
2	05/03/2009	National Court	238/2008	Order MEH 16/04/2008
Upholds the penalty imposed by the Ministry of Economy and Finance Order of 7 February 2008 for a very serious breach of Section 99 o) of the Securities Market Act, upheld on appeal by a ruling from the same Ministry, dated 16 April 2008.				
3	10/06/2009	National Court	323/2008	Order MEH 04/02/2008
Upholds the penalty imposed by the Ministry of Economy and Finance Order of 4 February 2008 for a very serious breach of Section 99 o) of the Securities Market Act, upheld on appeal by a ruling from the same Ministry, dated 30 May 2008.				
4	21/07/2009	Supreme Court	683/2005	Ruling AN 28/12/2007
Upholds the appeal–doctrinal unification– of the resolution of the Ministry of Economy and Finance of 18 October 2005, which, in turn, upholds on appeal the ruling of the Board of the CNMV of 29 June 2005 on the serious breach of Section 100 t) Securities Market Act, overturning the ruling of the National Court of 28 December 2007.				
5	23/09/2009	National Court	229/2007	Order MEH 24/04/2007
Upholds the penalties imposed by the ruling of the Board of the CNMV of 29 December 2006 -for serious breaches of Section 100 b) of the Securities Market Act-, upheld on appeal by the Ministry of Economy and Finance of 24 April 2007, at the same time overturning the penalties imposed for very serious breaches of Section 99 e) of the Securities Market Act by Ministry of Economy and Finance Order of 29 January 2007, upheld on appeal by a ruling from the same Ministry, dated 24 April 2007.				
6	12/11/2009	National Court	216/2008	Order MEH 24/01/2008
Partially finds in favour of the appeal lodged against the Ministry of Economy and Finance Ruling of 2 April 2008, upholding the Order from the same Ministry, dated 24 January 2008, on the imposition of a penalty for a very serious breach of Section 99 q) of the Securities Market Act, reducing the amount of the penalty imposed.				
7	18/11/2009	National Court	187/2009	Order MEH 17/02/2009
Upholds the penalties imposed by the ruling of the Board of the CNMV of 26 November 2008, upheld on appeal by the Ministry of Economy and Finance of 17 February 2009, in relation to a serious breach of Section 100 b) bis of the Securities Market Act.				

Source: CNMV.

Public warnings in respect of non-registered entities			III.4
Date	Company to which the warning relates	Regulator / Supervisor	
Warnings from the CNMV regarding non-authorised entities			
12/01/09	WWW.GESTIONFOREX.COM	CNMV	
16/02/09	ASSOCIACIÓ CORPORATIVA D'EMPRESARIS IMMOBILIARIS	CNMV	
09/03/09	SYSTEM WORLD INVESTMENT CORP. (DEXTRAPLUS) EVOLUTION MARKET GROUP INC (FINANZAS FOREX)	CNMV	
16/03/09	PESMIR TRADING, S.A. WWW.PESMIRTRADING.COM BANCO DE PESMIR TRADING	CNMV	
27/04/09	STRATEGIC INVESTMENT GROUP	CNMV	
04/05/09	MORGAN FINCH INTERNATIONAL MORGAN FRANKLIN CONSULTANTS, S.L. HTTP://WWW.MORGANFINCH.NET/ MARTIN HOWARD ASSOCIATES, S.L.	CNMV	
04/05/09	GLOBAL VALORES HTTP://WWW.GLOBALVALORES.ES	CNMV	
21/12/09	RECOBOLSA, S.A. HTTP://WWW.RECOBOLSA.ES	CNMV	
21/12/09	CAPITALSYS	CNMV	
21/12/09	EUROPEAN MARKETING TEAM, S.L.	CNMV	
Public warnings forwarded to the CNMV by foreign regulators / supervisors			
14/01/09	MURRAY MILLER & JACOBSON DONALD WELSI (DR) RENEE GOSH, ESQ (MRS.) EVERTON TRUST BANK PLC CANARY TRUST SECURITY SKY PRIVATE SKY PRIVATE BANKING WWW.SKYPRIVATE.NET TAYLOR AND GRANT ASSOCIATES WWW.TAYLORANDGRANTASSOCIATES.COM UBALDI CHAMBERS UBALDI DINO ANDY GOZNY GREGORY COLE UBALDI DINO GREGORY COLE ANDY GOZNY UBALDI CHAMBERS CORPORATE FINANCE CHARLES BURNHAM FIRST UNION SECURITIES STEVEN PORTER	FSC - ISLE OF MAN	
14/01/09	AXIOM INTERNATIONAL WWW.AXIOMEXCHANGEFUND.COM CORE MARKET RESEARCH JAMES B. CLARKE ET CO. LTD JEFFERSON CARTER KINGSWAY FINANCIAL GROUP MORGAN CAPITAL PARTNERS TAYLOR AND GRANT ASSOCIATES ZIMMERMAN CONSULTANTS WAKEFIELD LIBERMAN BLUE NILE CONSULTING DAWSON JAMES SECURITIES	FSA - UK	

Public warnings in respect of non-registered entities (continuation)		III.4
Date	Company to which the warning relates	Regulator / Supervisor
14/01/09	GARRARD ASSOCIATES GLOBAL INVESTMENT ADVISORS HAWKES BARRATT ROSSI TRADING A/K/A HBR TRADING HUGO NUE CORP JACKSON BERNSTEIN ASSOCIATES LINCOLN VENTURES MATTHEWS & MEYERS GPS OIL (PETROLEUM UNLIMITED) NEW YORK FINANCIAL CORP NORTH POINT M & A ADVISORS LLC SWISS ATLANTIC SECURITIES AG	FSA - UK
14/01/09	BAKER WHITFIELD ASSOCIATES WWW.BAKERWHITFIELD.COM THOMAS & HYDE CONSULTING WWW.THOMASANDHYDE.COM WEST RIDGE LIMITED WWW.WESTRIDGELIMITED.COM	SFSA - SWEDEN
14/01/09	FX RUN LTD. RICHARD BURGER DIRK HENDRIK REERINK	SSMA - SLOVENIA
14/01/09	ACM ADVANCED CURRENCY MARKETS (ACM SA) FX GREECE LTD	HCMC - GREECE
14/01/09	FELDMAN, MACKIE & CHAN LLC WWW.FELDMANMACKIECHAN.COM MAYNARD & BREEN INVESTMENT SERVICES WWW.MAYBRN.COM OMEGA CAPITAL MANAGEMENT WWW.OMEGACM.COM	SFC - HONG KONG
21/01/09	NOR FINANS HTTP://WWW.NOR-FINANS.COM/	FSAN - NORWAY
21/01/09	KRISTEN HEATHER INVESTMENT PLC (ISLE OF MAN) KRISTEN HEATHER INVESTMENT FINANCE PLC WWW.LADBONLINE.COM KRISTEN HEATHER INVESTMENT FINANCE PLC KRISTEN HEATHER INVESTMENT PLC (ISLE OF MAN) WWW.LADBONLINE.COM	FSC - ISLE OF MAN
28/01/09	LONG TERM FINANCIAL LTD.	HCMC - GREECE
28/01/09	ALEXANDER SOLUTIONS	DFSA - DENMARK
28/01/09	ALEXANDER SOLUTIONS WWW.ALEXANDERSOLUTIONS.COM	SFSA - SWEDEN
28/01/09	QFX ABOLUTE RETURN FUND (JERSEY) LIMITED BBA CAPITA QFX (VARIOS FONDOS JERSEY) BBA CAPITA QFX (VARIOS FONDOS JERSEY) QFX ABOLUTE RETURN FUND (JERSEY) LIMITED	JFSC - JERSEY
04/02/09	STEED AND ASSOCIATES, INC. WWW.STEEDANDASSOCIATES.COM ATLANTIC EQUITY MANAGEMENT WWW.ATLANTICEM.COM	SFSA - SWEDEN
04/02/09	BAER INNES WWW.BAERINNES.COM INTER CREDIT GROUP HTTP://INTERCREDITGROUP.COM WWW.INTER-CREDIT-GROUP.DE.PN	FMA - AUSTRIA

Public warnings in respect of non-registered entities (continuation)			III.4
Date	Company to which the warning relates	Regulator / Supervisor	
04/02/09	PALMER BROWN MANAGEMENT, INC. WWW.PALMER-BROWN.COM	SFSA - SWEDEN	
11/02/09	COOPER AND YORK WWW.COOPERANDYORK.HK	SFSA - SWEDEN	
11/02/09	FRASER RICHECOEUR AND FONDRE LLP	JFSC - JERSEY	
11/02/09	NEWBURGH CAPITAL TRUST WWW.NEW-BURGH.COM NOBLE ADVISORY GROUP WWW.NOBLE-ADVISORYGROUP.COM CORNERSTONE WORLDWIDE WWW.CORNERSTONE-WORLDWIDE.COM	SFSA - SWEDEN	
11/02/09	FAIRFIELD & HAYS WWW.FAIRFIELDHAYS.COM	CBFA - BELGIUM	
11/02/09	HUNTER ROWE FINANCIAL	IFSRA - IRELAND	
18/02/09	STANFORD GROUP ASSOCIATES WWW.STANFORDGA.COM SATELLITE ACQUISITION CORP. WWW.SATACQCORP.COM	SFSA - SWEDEN	
18/02/09	OFFSHORE CAPITAL CONSERVATORS (JERSEY) LTD	JFSC - JERSEY	
25/02/09	GUARDIAN ASSET MANAGEMENT LONDON EQUITIES	IFSRA - IRELAND	
25/02/09	CORNERSTONE WORLDWIDE HMG HOLDINGS LTD	SFC - HONG KONG	
11/03/09	HCS WORLDWIDE HSC	AMF - FRANCE	
11/03/09	HSBC DUBAI TRADE LTD GAZ FIN WWW.GAZFIN.COM	FMA - AUSTRIA	
18/03/09	GREEN VALLEY VENTURE CAPITALIST WWW.GVVENTURE.COM HARRISON FAIRMOUNT GLOBAL MERGERS & ACQUISITIONS INC WWW.HARRISONFAIRMOUNT.COM	SFSA - SWEDEN	
18/03/09	HG VENTURES	DFSA - DENMARK	
18/03/09	JACOBY & ASSOCIATES PLC WWW.JACOBYASSOCIATESPLC.COM	SFSA - SWEDEN	
18/03/09	LEGACY GLOBAL WEALTH WWW.LEGACYGLOBALWEALTH.COM	CBFA - BELGIUM	
18/03/09	LEGACY GLOBAL WEALTH WWW.LEGACYGLOBALWEALTH.COM OLYMPIA LAW FIRM MERGERS & ACQUISITIONS WWW.OLYMPIA-LAWFIRM.COM	SFSA - SWEDEN	
18/03/09	PORTWAY CAPITAL WWW.PORTWAYCAPITAL.COM PRIVATE EQUITY PLACEMENT WWW.PRIVATEEQUITYPLACEMENT.COM PENINSULA CAPITAL LTD.	FMA - AUSTRIA	
25/03/09	LONDON EQUITIES WWW.LONDON-EQUITIES.COM	CBF - BELGIUM	
01/04/09	LEGACY GLOBAL WEALTH WWW.LEGACYGLOBALWEALTH.COM MYCREDITBROKERS HTTP://MYCREDITBROKERS.COM	FMA - AUSTRIA	

Public warnings in respect of non-registered entities (continuation)		
Date	Company to which the warning relates	Regulator / Supervisor
01/04/09	HIS COMMODITIES WWW.HISCOMMODITIES.COM IRS & PARTNERS WWW.IRSPARTNERS.COM NEXT FUTURES CO. LTD WWW.NEXTFUTURES.COM PENINSULA CAPITAL LTD. WWW.PENINSULACAPITALHK.COM WWW.YC28.COM	SFC - HONG KONG
01/04/09	WWW.GLOBALVALORES.ES	CONAVAL - PANAMA
15/04/09	GOLDSMITH & HARRIS WWW.GHASSET.COM MIDAS INTERNATIONAL WWW.MIDASWORLDWIDE.COM NEW YORK CAPITAL INVESTMENT WWW.NYCAPITALINVESTMENT.COM PARTNERS & RU ASSET MANAGEMENT WWW.PARTNERSRUASSETMANAGEMENT.COM SUMITOMO INTERNATIONAL WWW.SUMITOMOINT.COM	SFSA - SWEDEN
15/04/09	FLAGSHIP CONSOLIDATED WWW.FLAGSHIPCSLD.COM HONG KONG FINANCIAL SECURITIES BOARD WWW.HKFSB.ORG HONG KONG FINANCIAL SERVICES AUTHORITY WWW.HKFSB.ORG HUA-TONG FINANCE AND INVESTMENT COMPANY LIMITED WWW.HK-HUATONG.COM NORTH POINT CAPITAL WWW.NORTHPOINTCAPITALHK.COM WWW.AMTMARKETS.COM	SFC - HONG KONG
15/04/09	OVERSEAS CREDIT COMMISSION UBP PRIVEE FINANCIAL GROUP	JFSC - JERSEY
22/04/09	INTRA TECH CAPITAL WWW.INTRATECHCAPITAL.COM	SFSA - SWEDEN
22/04/09	LEHMAN BROTHERS & ASSOCIATES CORP. HTTP://LEHMANBROTHERSCORP.COM	DFSA - DENMARK
29/04/09	GLOBAL ASSET GROUP WWW.GLOBAL-ASSET-GROUP.COM	SFSA - SWEDEN
29/04/09	BRENTWOOD GROUP LTD VEREIN ZUKUNFT NEU WWW.ZUKUNFT-NEU.EU	FMA - AUSTRIA
29/04/09	ALLIANCE TRANSFER INC WWW.ALLIANCETRANSFERINC.COM GLOBAL FUTURES TRANSACTION INVESTMENT LIMITED WWW.GFTINVESTMENT.COM WORLD POINT INTERNATIONAL INVESTMENTS LIMITED WWW.ITGFX.COM WWW.ZFJHGOLD.COM	SFC - HONG KONG
29/04/09	REALITY NATIONAL BANK	JFSC - JERSEY
06/05/09	DUFRESNE AND ANDY INTERNATIONAL WWW.DUFRESNEANDANDYINT.COM KNOLL RIDGE GROUP	SFSA - SWEDEN

Public warnings in respect of non-registered entities (continuation)			III.4
Date	Company to which the warning relates	Regulator / Supervisor	
06/05/09	WWW.KNOLLRIDGEGROUP.COM MILTON WILLARD FINANCIALS WWW.MILTONWILLARD.COM MORGAN SINGLETON ASSOCIATES WWW.MORGANSINGLETON.COM PACIFIC RIM WEALTH MANAGEMENT WWW.PACIFICRIMWEALTHMGMT.COM	SFSA - SWEDEN	
06/05/09	AHMPORN THONGPUU AMPAY KANOKNATHKHUN ATJAMAE POR-ORN CREDIT VERGADAIN KEB CREDIT LOAN EXCHANGE PATCHAREE PRECHARUN PATCHARI PRITCHAKUN SURIN WAANAA SURIN WANA T.Y.I.B WORRAPONG CHAMTJAIWONG	AFM - NETHERLANDS (HOLLAND)	
13/05/09	DAMON AND CALLUS WWW.DAMONANDCALLUS.COM EUROPE VENTURES WWW.EUROPEVENTURES.COM FLAGSHIP CONSOLIDATED WWW.FLAGSHIPCSLD.COM GARDNER FINANCIAL TRADING WWW.GFINANCETRADING.COM	SFSA - SWEDEN	
20/05/09	ALL PROPERTY LIMITED	FMA - AUSTRIA	
20/05/09	ALLCONI BANK ADMINISTRATION LTD DUFRESNE AND ANDY INTERNATIONAL INVESTOR RELATIONS CORP. INTRADAY INVESTMENT GROUP	IFSRA - IRELAND	
20/05/09	FIRST PRIME GROUP LTD WWW.FIRSTPRIMEGROUP.COM FIRST PRIME INTERNATIONAL LTD WWW.FIRSTPRIMEGROUP.NET GARANT PARTNERS WWW.GARANTPARTNERS.COM HEATHWAY LIMITED WWW.HEATHWAYESCROW.COM PACIFIC WEALTH GLOBAL LTD WINSLOW TRADE WWW.WINSLOWESCROW.COM	SFC - HONG KONG	
27/05/09	FIRST NEVADA SECURITIES LTD. WWW.FIRSTNEVADASECURITIES.COM	SFSA - SWEDEN	
27/05/09	FIRST PRIME GROUP WWW.FIRSTPRIMEGROUP.COM	AFM - NETHERLANDS (HOLLAND)	
27/05/09	ROTHMAN CAPITAL WWW.ROTHMANCAPITAL.COM	SFSA - SWEDEN	
10/06/09	ATLAS EQUITIES WWW.ATLASEQUITIES.COM	SFSA - SWEDEN	

Public warnings in respect of non-registered entities (continuation)		III.4
Date	Company to which the warning relates	Regulator / Supervisor
10/06/09	SPARTACUS PRIVATE EQUITY GROUP WWW.SPARTACUS-GROUP.COM EAST FINANCIAL GROUP INC. WWW.EASTFINANCIALGROUP.NET WELLESLEY INTERNATIONAL GROUP WWW.WELLESLEYINTERNATIONAL.COM OMEGA GLOBAL TRADING INC WWW.OMEGAGLOBALTRADING.COM ARMSTRONG&KNIGHT WWW.ARMSTRONGKNIGHT.COM YOUNG CHOW FENG CORP. LTD. OPTION ONE INTERNATIONAL WWW.OPTIONONEINTERNATIONAL.COM	SFSA - SWEDEN
10/06/09	BIRCHMORE GROUP WWW.BIRCHMOREGRP.COM ATLANTIS FINANCIAL WWW.ATLANTIS-FINANCIAL.COM	SFC - HONG KONG
10/06/09	GLENBURNIE INVESTMENTS LIMITED PORTLAND SERVICES LIMITED	GFSC - GIBRALTAR
24/06/09	CENTURY TRUST AND FINANCE (CFT) VIVIAN WISENECK ANTIQUES SUPERMARKET.COM HTTP://WWW.ANTIQUESSUPERMARKET.COM INTERCOM CORPORATE AND TRUST SERVICES WWW.INTERCOMFINANCE.COM CONSTRUCTION BANK LOVECHILDREN CHARITY & ORPHANAGE MARKETING SERVICES INTERNATIONAL	FSC - ISLE OF MAN
24/06/09	PLUS500 LTD, UNIVERSAL ENGINE LTD WWW.PLUS500.GR	HCMC - GREECE
24/06/09	ATLAS EQUITIES WWW.ATLASEQUITIES.COM	FMA - AUSTRIA
24/06/09	DOYLE JOHN JOSEPH LLP WWW.DOYLEJOHNJOSEPH.COM AFFINITY GROUP SOLUTIONS WWW.AFFINITYGROUPSOLUTIONS.COM	SFSA - SWEDEN
24/06/09	MCLEOD WALKER CAPITAL LTD WWW.MCLEODWALKER.COM	CBFA - BELGIUM
24/06/09	SMART TRADE GROUP WWW.SMARTTRADEGROUP.COM	DFSA - DENMARK
01/07/09	CARTER SINCLAIR LTD WWW.CARTER-SINCLAIR.COM HONG KONG YA-TONG FINANCE AND INVESTMENT CO. LTD. WWW.HK-YATONG.COM JADE ASIA INTERNATIONAL LTD WWW.JADE-ASIA.COM MARKETING SERVICES INTERNATIONAL WWW.MARKETINGSERVICESINTERNATIONAL.COM SUN BILLION LIMITED	SFC - HONG KONG
01/07/09	SULLIVAN INVESTMENT GROUP WWW.SULLIVANINVESTMENTS.CO.UK	CBFA - BELGIUM

Public warnings in respect of non-registered entities (continuation)			III.4
Date	Company to which the warning relates	Regulator / Supervisor	
01/07/09	UMBS ONLINE BANK LIMITED	JFSC - JERSEY	
01/07/09	AFFINITY GROUP SOLUTIONS HTTP://WWW.AFFINITYGROUPSOLUTIONS.COM COMMERCE INVESTMENTS GROUP HTTP://WWW.COMMERCEINVESTMENTS.US	FSAN - NORWAY	
15/07/09	UNITED TRUST SOCIEDAD LIMITADA UNITED TRUST TRAINING & COACHING, SOCIEDAD LIMITADA BANQUE ROYALE LIMITED	FMA - AUSTRIA	
15/07/09	MYERS-BRÜNING ASSOCIATES WWW.MYERS-BRUNING.COM	SFSA - SWEDEN	
15/07/09	SWISS KEY EQUITY CONSULT AG (SWITZERLAND) BAUER & WEISS ASSOCIATES (SWITZERLAND AND THE UNITED KINGDOM)	IFSRA - IRELAND	
15/07/09	BRADLEY HILL HOLDINGS LIMITED WWW.BRADLEYHILLHOLDINGS.COM CRESTON FINANCIAL GROUP GMBH TAKAHASHI NAKAMURA ASSOCIATES WWW.TAKAHASHINAKAMURA.COM WORLD ASIAN TRADING LIMITED	SFC - HONG KONG	
22/07/09	GOLDENBERG LIMITED HONG KONG FINANCIAL TRADING AUTHORITY WWW.HKFTA.ORG OPTIONS AND FUTURES EASTERN TRADING LIMITED WWW.OFEASTERN.COM PACIFIC RIM WEALTH MANAGEMENT WWW.PACIFICRIMWEALTHMGMT.COM WWW.KGTOUSHIN.COM	SFC - HONG KONG	
22/07/09	HCS WORLDWIDE WWW.HCSWORLDWIDE.COM	FMA - AUSTRIA	
29/07/09	SULLIVAN INVESTMENT GROUP WWW.SULLIVANINVESTMENTS.CO.UK	CBFA - BELGIUM	
29/07/09	ANGLO IRISH ASSOCIATES WWW.ANGLOIRISHASSOC.COM	JFSC - JERSEY	
29/07/09	CAPITAL FINANCE (CHANNEL ISLANDS) LIMITED WWW.CAPITALFIN.ORG BTF WEALTH MANAGEMENT BTF WEALTH MANAGEMENT CAPITAL FINANCE (CHANNEL ISLANDS) LIMITED WWW.CAPITALFIN.ORG	FSC - ISLE OF MAN	
12/08/09	PARKER & BOYD LTD. WWW.PARKERBOYD.COM	SFSA - SWEDEN	
12/08/09	HE-XIN FINANCE AND INVESTMENT WWW.HEXINCOPY.COM	SFC - HONG KONG	
12/08/09	EUROPE VENTURES WWW.EUROPEVENTURES.COM UNITED OPEC BANKS/ORIGINAL FINE MINT WWW.BRITISHMINT.COM WWW.BRITISHPETRO.COM WWW.LLOYDSFUNDS.COM WWW.UNITEDOPECBANKS.ORG WWW.OPECFUNDS.COM WWW.OPECBANKERS.ORG	FMA - AUSTRIA	

Public warnings in respect of non-registered entities (continuation)		III.4
Date	Company to which the warning relates	Regulator / Supervisor
19/08/09	CD EQUITIES GLOBAL EQUITIES PARTNERSHIP GREEN CARE INVESTMENTS	IFSRA - IRELAND
19/08/09	OCEANICKY CORPORATION INC DR ARUN RAAJ PHULL	FSC - ISLE OF MAN
19/08/09	FILEAMIN INVEST LTD. FILEAMIN LIMITED FILEAMIN LIMITED FILEAMIN INVEST LTD.	FSAN - NORWAY
19/08/09	CAPITALSYS WWW.CAPITALSYS.COM	SFSA - SWEDEN
02/09/09	GLOBAL INTERNATIONAL TRADING WWW.GLOBALINTERNATIONALTRADING.COM	AFM - NETHERLANDS (HOLLAND)
02/09/09	INTER EURO CREDIT HTTP://INTEREUROCREDIT.COM JAMES B. CLARKE & CO LTD. WWW.JBC.SITE90.COM WORLD CAPITAL SOLUTIONS WWW.WORLDCAPITALSOLUTIONS.COM MERIDIAN CAPITAL ENTERPRISES LTD. WWW.MERIDIAN-CAPITAL.COM	FMA - AUSTRIA
09/09/09	HONG KONG FOREIGN FINANCIAL FUND COMPANY WWW.FOREIGNFINANCIAL-HK.COM MIDAS INTERNATIONAL WWW.MIDASWORLDWIDE.COM PLUS 500 WWW.PLUS500.COM WWW.500AFFILIATES.COM SMART INTERNATIONAL HONG KONG LIMITED WWW.SMART8888.COM WWW.SUNLONGHK.COM	SFC - HONG KONG
16/09/09	PBBC FINANCE, MALI AMOH Y SURIN FINANCING	AFM - NETHERLANDS (HOLLAND)
16/09/09	DAVENPORT CHADWICK & CO. LTD RMN (CYPRUS) LTD ZAMMIT FINANCIAL MANAGEMENT GROUP NIKKIMATT LTD ORION FINANCIAL SERVICES LTD AQUILA FINANCIAL SERVICES COMPANY CONSTANT FINANCIAL SERVICES (OVERSEAS) LTD	CYSEC - CYPRUS
16/09/09	DUBAI INTERNATIONAL INVESTMENT & TRADING HTTP://WWW.DUBAIFINANCIALTRUST.COM/ HTTP://WWW.DUBAI-INT.COM/	FMA - AUSTRIA
23/09/09	CLT SOLUTIONS HTTP://WWW.CLTSOLUTIONS.COM	FSAN - NORWAY
23/09/09	MJM INVESTMENTS MONTGOMERY BLAKE & ASSOCIATES THE MORGAN STERN GROUP	IFSRA - IRELAND
23/09/09	BBA CAPITA ASSET MANAGEMENT (JERSEY) LIMITED	JFSC - JERSEY
30/09/09	PEREGRINE CAPITAL LIMITED	SSMA - SLOVENIA
30/09/09	AGROMICRON LIMITED WWW.AGROMICRON.COM ANGLOASIA CAPITAL MANAGEMENT LIMITED	SFC - HONG KONG

Public warnings in respect of non-registered entities (continuation)		
Date	Company to which the warning relates	Regulator / Supervisor
30/09/09	WWW.CHOSUNFUND.COM WWW.KORYOASIA.COM CHOSUNFUND LIMITED WWW.CHOSUNFUND.COM WWW.KORYOASIA.COM KORYO ASIA LIMITED WWW.KORYOASIA.COM WWW.CHOSUNFUND.COM LOGICAL CLEARING LIMITED LOYAL RELATIONS (HONG KONG) THE BRIDGEWAY GROUP INTERNATIONAL WWW.BRIDGEWAYGROUPINTI.COM THOMAS MOORE WWW.THOMASMOORE.BIZ	SFC - HONG KONG
07/10/09	HAMLAND BANK (ISLE OF MAN) HTTP://WWW.HAMLANDBANK.COM MCDUGLAS CONSTRUCTION (HOLDING) LTD JOHN K NICHOLAS WWW.MCDUGLASCONSTRUCTION.CO.UK THE PACIFICWEST FINANCIAL CLEARING HOUSE BRITISH FINANCIAL SUPERVISION COMMISSION POTENTIAL OIL ENERGY AND GAS INC DR GRAY BEN WWW.POTENTIALOIL-ENERGYGAS.CO.UK	FSC - ISLE OF MAN
07/10/09	INDEX EASY WWW.INDEX-E.COM MORRIS AND KENT MERGERS AND ACQUISITIONS WWW.MORRISKENT.COM THE STERN GROUP WWW.THESTERNGRP.COM UNITED SUCCESS FINANCIAL LIMITED WWW.USF-ONLINE.COM WWW.ZFZQTZ.COM	SFC - HONG KONG
07/10/09	NFINVEST HTTP://WWW.NFINVEST.COM/SI/	SSMA - SLOVENIA
07/10/09	NEWORLD WEALTH MANAGEMENT WWW.NEWORLDWEALTH.COM	CBFA - BELGIUM
07/10/09	NSCB LUXEMBOURG S.A. HTTP://WWW.NSCB-BANK.LU	CSSF - LUXEMBOURG
07/10/09	LEMANIUM SA HTTP://LEMANIUM.COM	FSAN - NORWAY
14/10/09	PENN CAPITAL MANAGEMENT, LTD.	FMA - AUSTRIA
14/10/09	SMITH SHORE & JENKINS, LLC WWW.SMITHSJ.COM	SFSA - SWEDEN
14/10/09	INTERNATIONAL CONSULTING SERVICES WWW.INTCONSERV.COM	JFSC - JERSEY
14/10/09	TRANEN CAPITAL, LTD. HTTP://TRANENCAPITAL.COM QUALITY INVESTMENTS B V NUF	FSAN - NORWAY
14/10/09	SIGMA FOREX WWW.SIGMAFOREX.COM	GFSC - GIBRALTAR

Public warnings in respect of non-registered entities (continuation)		III.4
Date	Company to which the warning relates	Regulator / Supervisor
14/10/09	RICHARD-BLENDMONDE WWW.RICHARDBLENDMONDE.COM SWIFT TECH CAPITAL WWW.SWIFTECHCAPITAL.COM FINANCIAL SERVICES REGULATOR OF HONG KONG WWW.FSRHK.ORG HENTSCH & MULLER WWW.HENTSCH-MULLER.COM	SFC - HONG KONG
21/10/09	PARK EAST CAPITAL WWW.PARKEASTCAPITAL.COM	FSAN - NORWAY
21/10/09	PGM MERGERS & ACQUISITIONS WWW.PGMADVISORY.COM	SFSA - SWEDEN
21/10/09	ALPHA GROUP WWW.AG-ALPHAGROUP.COM BELTWAY M & A WWW.BELTWAYMA.COM DAWSON AND RAYMOND M & A WWW.DAWSONANDRAYMONDMA.COM ROCKWOOD M & A WWW.ROCKWOODMA.COM SIGMAFOREX.COM WWW.SIGMAFOREX.COM THE CASTLETON GROUP WWW.CASTLETONGRP.COM	SFC - HONG KONG
21/10/09	DIRECT EURO CREDIT WWW.CAPITALDIRECT4YOU.E7.TO WWW.DEPO12H.US.PN COBA EURO CREDIT WWW.TANCE24.DE.PN WWW.RONNI24H.CH.PN	FMA - AUSTRIA
28/10/09	DENKO GROUP WWW.DENKOGROUP.COM ORACLE EQUITY MANAGEMENT WWW.ORACLEEM.COM	SFSA - SWEDEN
28/10/09	ABACUS MARKETING SERVICES WWW.ABACUSMARKETINGSERVICES.COM MONTGOMERY BLAKE & ASSOCIATES WWW.MONTGOMERYBLAKE.COM MORRIS COMMODITIES WWW.MORRISCOMMODITIES.COM THE HONG KONG COMMODITY TRADING BOARD WWW.HKCTB.ORG WWW.KGSLD.COM	SFC - HONG KONG
04/11/09	SIGMA FOREX WWW.SIGMAFOREX.COM THE PACIFICWEST FINANCIAL CLEARING HOUSE BRITISH FINANCIAL SUPERVISION COMMISSION LOVECHILDREN CHARITY & ORPHANAGE CONSTRUCTION BANK	FSC - ISLE OF MAN
04/11/09	FUKUMOTO, TOSHIHIRO & PTNRS. FUT. TRAD. (FTP FUTURES) WWW.FTPFUTURES.COM MORRIS COMMODITIES WWW.MORRISCOMMODITIES.COM	SFC - HONG KONG

Public warnings in respect of non-registered entities (continuation)			III.4
Date	Company to which the warning relates	Regulator / Supervisor	
04/11/09	PARAGON INTERNATIONAL WWW.PARAGON-INTERNATIONAL.COM STEMARK LIMITED	SFC - HONG KONG	
04/11/09	ALPHA SECURITIES S.A.	HCMC - GREECE	
04/11/09	VANTAGE EQUITY WWW.VANTAGEEQUITY.COM MJM INVESTMENTS WWW.MJMINVESTMENTS.NET BUSINESS COORDINATION SERVICE - TRADING BVBA PARKER & BOYD LTD. WWW.PARKERBOYD.COM	CBFA - BELGIUM	
04/11/09	CAPITALSYS WWW.CAPITALSYS.COM TRUST SOLUTIONS LTD.	FMA - AUSTRIA	
11/11/09	EASY EURO CREDIT WWW.ERIM123.C4.TO WWW.CANADA.C4.TO WWW.MORVEDRE.6X.TO	FMA - AUSTRIA	
11/11/09	BRIDGE INVESTMENT NETWORK HTTP://WWW.BRIDGEINVEST.DK/	DFSA - DENMARK	
11/11/09	INTERNATIONAL EQUITIES ORGANIZATION WWW.INTL-EQUITIES.ORG THE MOLLINS GROUP WWW.THEMOLLINSGROUP.COM	SFC - HONG KONG	
11/11/09	SHIGESUKE WWW.SHIGESUKE.NET	CBFA - BELGIUM	
18/11/09	PARK EAST CAPITAL WWW.PARKEASTCAPITAL.COM FUNK VERSICHERUNGMAKLER AG WWW.TOPFONDS.BIZ	FMA - AUSTRIA	
18/11/09	PHILIP KNIGHT & CO BVBA BORSA FINANCIAL WWW.BORSAFINANCIAL.COM	CBFA - BELGIUM	
18/11/09	MEVIDEOCY LTD. HTTP://WWW.PLUS500.COM HTTP://WWW.500AFFILIATES.COM POSREDOVANJE, ONASSIS ALEX, S.P. HTTP://WWW.ONASSIS.SI/INDEX.HTML	SSMA - SLOVENIA	
25/11/09	HARVEY CAPITAL PARTNERS HTTP://HARVEYCPT.COM/	DFSA - DENMARK	
25/11/09	GREENINDEX INTERNATIONAL LTD. WWW.GREENINDEX-INTERNATIONAL.COM	CBFA - BELGIUM	
02/12/09	IFOREX HTTP://IFOREX.COM FOREX CAPITAL MARKETS HTTP://HTTP://FXCM.COM FOREX MACRO HTTP://FGINFOCLS.COM AVA FINANCIAL LTD HTTP://WWW.AVAFX.COM STARTFOREX HTTP://WWW.STARTFOREX.COM FX DIRECT DEALER	CVM - BRAZIL	

Public warnings in respect of non-registered entities (continuation)

III.4

Annexes
Statistical Annexes III

Date	Company to which the warning relates	Regulator / Supervisor
02/12/09	HTTP://WWW.FXDD.COM INTERBANK FX HTTP://BR.IBFX.COM FINEXO GLOBAL INVESTMENTS WWW.FINEXO.COM FOREXWEB TRADER GLOBAL INVESTMENTS WWW.FOREXWEBTRADER.COM FXYARD LIMITED WWW.FOREXYARD.COM ACTIVTRADES PLC WWW.ACTIVTRADES.COM RETAILFX LIMITED WWW.ETORO.COM ONLINE-PLACE AND/OR FOREX PLACE WWW.4XP.COM IFC MARKETS CORP WWW.IFCMARKETS.COM COMPANHIA INTERNATIONAL FOREX CLUB FOREX CLUB INTERNATIONAL BUSINESS COMPANY WWW.FXCLUB-BRAZIL.COM UFXBANK WWW.UFXBANK.COM	CVM - BRAZIL
02/12/09	GRUPO INMOBILIARIO VERHOME S.A. DE C.V. (INVERGROUP) MXBK GROUP S.A. DE C.V. MEXBANK S.A. DE C.V. MEXBANK FINANCIERA S.A. DE C.V. W.M. ADVISORS YAKEY MX, S.A. DE C.V. SUES CONSULTORES Y ASOCIADOS, S.C. (GRUPO SUES) FOREX.COM MEXFOREX S.A. DE C.V. CONSTRUCCIONES MAURI SA DE CV (SITMA, GRUPO INMOBILIARIO) FONDOS DE INVERSIÓN DOT FONDOS CAPITAL INSTITUTE, S.C. DE R.L. (CAPITALBANK) IMPULSA ZION, S.A. DE C.V. (INVERZIÓN) INVERBAN, S.A. DE C.V.	CNBV - MEXICO
02/12/09	IBERIA SECURITIES WWW.IBERIASECURITIES.COM PELL FUTURES WWW.PELL-FUTURES.COM	FSAN - NORWAY
02/12/09	STANLEY BRIGHTMORE WWW.STANLEYBRIGHTMORE.COM CD EQUITIES	CBFA - BELGIUM
09/12/09	ETERNITY FUNDS WWW.ETERNITYFUNDS.COM EUROWORK LTD WWW.EUROWORKFINANCE.COM	AMF - FRANCE
09/12/09	ALMA FOREX WWW.ALMAFOREX.COM ASIA DRAGON GROUP WWW.ASIADRAGONGROUP.COM CHERRYSHARES WWW.CHERRYSHARES.COM	SFC - HONG KONG

Public warnings in respect of non-registered entities (continuation)			III.4
Date	Company to which the warning relates	Regulator / Supervisor	
09/12/09	OLYMPIA LAW FIRM WWW.OLYMPIA-LAWFIRM.COM	CBFA - BELGIUM	
09/12/09	ALLIED PARTNERS FINANCIAL GROUP INC. WWW.ALLIEDPARTNERSFG.COM	SFSA - SWEDEN	
16/12/09	ALPHA FINANCE WWW.ALPHAFINANCEUK.COM	HCMC - GREECE	
16/12/09	MASTERSEEK CORP. WWW.MASTERSEEK.COM WWW.MASTERSEEK.SE	SFSA - SWEDEN	
23/12/09	EVERCREST LAW FIRM & MANAGEMENT WWW.EVERCREST.US	SFSA - SWEDEN	
23/12/09	ALLIED FINANCE AND DEVELOPMENT BANK HTTP://ALLIEDFINANCE.AFDBS.COM/ACCESS BLACK DIAMOND EQUITY GROUP	JFSC - JERSEY	
Other public warnings forwarded by foreign regulators			
14/01/09	HTTP://THOMASHYIPINVEST.COM/ WWW.ZURICHPLC.ORG.UK/HOME/EBANKING.HTM VARIOS ISLE OF MAN SOPHIE BARNES MICHAEL FERRELL / MICHAEL FERRAR MARGARET MOORE	FSC - ISLE OF MAN	
14/01/09	SEVERAL UNITED STATES (SEC)	SEC - UNITED STATES	
24/06/09	WWW.ALIL-IM.COM VARIOS ISLE OF MAN	FSC - ISLE OF MAN	
29/07/09	VARIOS ISLE OF MAN VARIOS ISLE OF MAN	FSC - ISLE OF MAN	
19/08/09	HTTP://WWW.IOSC-US.COM/ WWW.CNBANTC.COM	FSC - ISLE OF MAN	
09/09/09	VARIOS UNITED STATES (SEC)	SEC - UNITED STATES	
07/10/09	VARIOS ISLE OF MAN	FSC - ISLE OF MAN	
28/10/09	VARIOS MEXICO	CNBV - MEXICO	
16/12/09	MR RICHARD DAVID ARTHUR	JFSC - JERSEY	

Source: CNMV.

A. Spanish legislation

A.1 Spanish Securities Market Commission

CNMV Resolution of 21 January 2009, amending the Internal Regulations of the CNMV.¹

This Resolution modifies the CNMV's Internal Regulations, splitting the Supervision Department into two departments specialising in the type of entity to be supervised: the Investment Services Firm and Credit and Savings Institution Supervision Department, and the UCITS and Venture Capital Firm Supervision Department. The reform aims to adapt the structure of supervision of entities by the CNMV to the type of entity supervised, anticipating the risks in their activities in a more effective manner and adapting the available supervisory resources to the growing number of entities.

The Investment Services Firm and Credit and Savings Institution Supervision Department is given functions relating to: i) the supervision and inspection of investment services firms, their branches and agents or representatives, and ii) the supervision and inspection of credit institutions, their branches and agents or representatives, in their activities relating to the securities market.

The UCITS and Venture Capital Firm Supervision Department is given functions relating to: i) the supervision and inspection of UCITS, their management companies, agents or representatives, as well as their depositories, and ii) the supervision and inspection of venture capital firms and their management companies.

A.2 Primary markets

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

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

1. <http://www.boe.es/boe/dias/2009/01/27/pdfs/BOE-A-2009-1314.pdf>.

2. <http://www.boe.es/boe/dias/2009/05/02/pdfs/BOE-A-2009-7352.pdf>.

and conditions are set out under 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.

- The conditions are specified, furthermore, under which mortgage loans and credits must comply and 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 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 the basis for issues of mortgage bonds, shares and securities cannot serve as the basis for issue of mortgage transfer certificates.

A.3 Official secondary securities markets and other trading systems

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.³

This legislation implements the Securities Market Act regulation of relevant information, which is defined as that whereby 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.

3. <http://www.boe.es/boe/dias/2009/06/02/pdfs/BOE-A-2009-9109.pdf>.

- The listing conditions of securities issued.
- The fact that information of a 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.

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

Fourthly, the Order 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 breached 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.

CNMV Circular 4/2009, of 4 November, on communication of relevant information.⁴

The Circular implements the powers granted to the CNMV by the Ministerial Order on relevant information, which in turn implements Section 82 of the Securities Market Act, all of which is legislation relating to the conduct of issuers when communicating relevant information to investors.

To date, undertakings have been sending significant events and other communications based on the content of the information which is communicated; as from now the possibility disappears of sending the information through the “Other Commu-

4. <http://www.boe.es/boe/dias/2009/11/12/pdfs/BOE-A-2009-18005.pdf>.

nications” procedure, since the sending of information must be adapted to cases which can have a significant influence on the quotation of a security.

The form and procedure for making these communications is also established and a direct real-time communications channel introduced between the issuer and the CNMV, through the figure of the “interlocutor”, who must be appointed by issuer undertakings before 12 December 2009, and who will facilitate provision of relevant information to the public immediately and with a certain, complete and clear content, and whenever possible quantified. Issuers must preferably make their communications through a remote system.

Provision is made for the modification of significant events already notified and, on an exceptional basis, the possibility of eliminating the communication of a significant event. The Circular also incorporates a non-exhaustive list for guidance of possible significant events.

A.4 Securitisation funds

CNMV Circular 2/2009, of 25 March, on accounting standards, annual accounts, public financial statements and reserved statistical information statements of Securitisation Funds.⁵

By means of the Circular, specific rules are issued relating to the accounting, format and content of the annual accounts and management reports of securitisation funds in order to enhance their regime of transparency. The Circular, which is adapted, in general, to the accounting principles of the Commercial Code and Spanish General Chart of Accounts (*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 Securitisation Funds is nil, as established in Act 19/1992, of 7 July, on the regime of Real Estate Investment Funds and Companies and Mortgage Securitisation 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 Chart of Accounts. In section three, the Circular includes other specific rules which take into account the legal and operating structure of securitisation funds.

With respect to the periods in which financial information must be sent, it provides that those securitisation funds whose constitution requires a prospectus must submit financial information on a half-yearly basis, 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.

A.5 Investment services firms and other securities market entities

CNMV Resolution of 7 October 2009, on minimum records to be maintained by undertakings which provide investment services.⁶

This Resolution contains a list of the records which must be maintained by undertakings which provide investment services, published pursuant to Section 32.1 of Royal Decree 217/2008, on the legal regime of investment services firms. It will

5. <http://www.boe.es/boe/dias/2009/03/31/pdfs/BOE-A-2009-5317.pdf> <http://www.boe.es/boe/dias/2009/06/27/pdfs/BOE-A-2009-10578.pdf>.

6. <http://www.boe.es/boe/dias/2009/10/21/pdfs/BOE-A-2009-16730.pdf>.

be the undertakings themselves in any event, however, which must analyse whether the records proposed are sufficient, firstly to facilitate due compliance with the obligations imposed on them by current legislation, and secondly in order that the supervisory authority can duly carry out its work, and they may not consequently rely on maintenance of the records contained in this Resolution to exonerate themselves from any liability which may result from them being insufficient or inadequate based on the particular characteristics of each undertaking.

The Resolution provides for the following records: activity and organisation, clients, contracts, assessment of suitability, evaluation of desirability, orders, transactions, confirmations, cumulative transactions, periodic statements, client financial instruments, client cash, advertising communications, investment reports, conflicts of interest, legislative compliance reports, risk management and internal auditing, claims management, listed prices, personal transactions, information on incentives, investment advice, representative relationships, and compliance procedures.

CNMV Circular 5/2009, of 25 November, regulating the Annual Auditor's Report on protection of client assets.⁷

The Circular implements Royal Decree 217/2008, on the legal regime of investment services firms in relation to the annual auditor's report on protection of client assets that must be provided to the CNMV, which obliges external auditors to formulate an opinion on the adequacy of the control systems and procedures which entities must have implemented. As well as being applicable to investment services firms, the report is also applicable to credit institutions in relation to the financial instruments of clients, but not in relation to cash funds.

The Circular defines the structure of the report, the methodology and areas which the external auditor must review in order to verify compliance with the requirements laid down by legislation. The auditor must summarise the tests carried out on client funds and instruments, and indicate significant weaknesses and exceptions identified, limitations in scope and the recommendations made by the auditor. The auditor must send the report directly to the CNMV.

Royal Decree 1819/2009, of 27 November, amending Royal Decree 948/2001, of 3 August, on investor compensation systems.⁸

This Royal Decree derives from the modification of amounts guaranteed by the Investment Guarantee Fund which took place by means of Royal Decree 1642/2008, of 10 October. In order to prevent the increase in coverage per investor up to the amount of 100,000 euros giving rise to an increase in the contribution which institutions must make for each client to the Investment Guarantee Fund, a new calculation system is now established under Royal Decree 948/2001, of 3 August, whereby a percentage of the amount guaranteed which was legally increased as a calculation element is used when fixing these contributions.

Royal Decree 1820/2009, of 27 November, amending Royal Decree 361/2007, of 16 March, in implementation of the Securities Market Act, 24/1988, of 28 July, in the field of participation in the capital of companies which manage secondary securities markets and companies which administer systems for registration, clearing and settlement of securities, and Royal Decree 217/2008, of 15 February, on the legal regime of investment services firms and other entities which provide investment services and partially

7. <http://www.boe.es/boe/dias/2009/12/08/pdfs/BOE-A-2009-19770.pdf>.

8. <http://www.boe.es/boe/dias/2009/11/28/pdfs/BOE-A-2009-18972.pdf>.

amending the Regulations under Act 35/2003, of 4 November, on collective investment undertakings promulgated by Royal Decree 1309/2005, of 4 November.⁹

This Royal Decree implements, in relation to investment services firms (ISF), Act 5/2009 of 29 June relating to the regime of significant shareholdings in financial institutions. The regime of significant shareholdings in financial institutions, as is well known, constitutes a prior administrative control, in the case of ISF for which the CNMV is responsible, which has the purpose of evaluating for prudential purposes the identity, integrity and solvency of the most significant shareholders in entities. In this respect, in parallel with other similar decrees promulgated for other types of financial entity, this legislation regulates how shareholdings must be computed in ISF in order to determine what is considered a significant shareholding. The criteria are also listed in accordance with which the CNMV will prepare and publish a list determining the content of the information which may be required in order to evaluate the acquisition of a significant shareholding. This information will relate to the potential acquirer, the proposed acquisition, financing of the acquisition and aspects relating to the commercial and professional integrity of directors and executives who will direct the activities of the ISF as a result of the proposed acquisition; in those cases in which there is a change of control, a business plan must be drawn up detailing the impact of the acquisition on corporate governance, structure and available funds, internal control bodies and procedures for the prevention of money laundering and the financing of terrorism.

Furthermore, this legislation contains various additional specific provisions for investment services firms. The capital required of agents which are legal entities is adapted and model reserved information statements established those entities which provide investment services must send to the CNMV in relation to their operations in the securities market.

Finally, the regime of significant shareholdings in companies which manage secondary securities markets and companies which administer systems of registration, clearing and settlement of securities is modified in order to adapt it to the general regime of financial institutions, even though certain particular features are maintained such as the possibility for the CNMV to object to significant shareholdings in these companies by acquirers whose country of origin does not guarantee reciprocity.

A.6 UCITS

CNMV Circular 1/2009, of 4 February, on categories of UCITS based on their investment profile.¹⁰

In implementation of Section 30.2 of the UCITS Act 35/2003, the CNMV establishes categories of UCITS in this Circular based on their investment profile with a two-fold objective: statistical information and investor information regarding the risk profile of the UCITS and the assets in which it invests.

The category of a UCITS is established in accordance with a twin classification: classification by type of UCITS and classification by its investment profile. The types of UCITS are as follows: ordinary investment funds and companies, subordinated

9. <http://www.boe.es/boe/dias/2009/12/07/pdfs/BOE-A-2009-19672.pdf>.

10. <http://www.boe.es/boe/dias/2009/02/18/pdfs/BOE-A-2009-2742.pdf>.

UCITS, UCITS which principally invest in other UCITS, UCITS which replicate or reproduce a particular stock exchange index or fixed-income index, and finally, listed funds. The different investment categories of UCITS are defined in the Annex to the Circular and are as follows: monetary, euro fixed income, international fixed income, euro mixed fixed income, international mixed fixed income, euro mixed equity, international mixed equity, euro equity, international equity, passive management UCITS, guaranteed fixed return UCITS, guaranteed equity UCITS, UCITS with partial guarantee, absolute return, and finally with global investment profiles, which is configured as a residual category in relation to the others. The investment profile of the UCITS is determined by the investment policy defined in its explanatory prospectus and not by the composition of its portfolio.

CNMV Circular 3/2009, of 25 March, on the content of the half-yearly report on compliance with the oversight and supervision function of UCITS depositaries.¹¹

This Circular implements Section 60 of the UCITS 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 UCITS 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.

Royal Decree 1818/2009, of 27 November, amending the Regulations under the UCITS Act 35/2003, of 4 November, promulgated by Royal Decree 1309/2005, of 4 November.¹²

This Royal Decree, in relation to UCITS management companies (“SGIIC”), implements Act 5/2009, of 29 June, on the regime of significant shareholdings in financial institutions. The regime of significant shareholdings in financial institutions, as is well known, constitutes a prior administrative control in the case of SGIIC for which the CNMV is responsible, which has the purpose of evaluating for prudential purposes the identity, integrity and solvency of the most significant shareholders of undertakings.

In parallel with other similar decrees promulgated for other types of financial entity, the legislation regulates how holdings must be computed in UCITS management companies in order to determine what is considered a significant shareholding. The criteria are also listed in accordance with which the CNMV will prepare and publish a list determining the content of the information which may be required in order to evaluate the acquisition of a significant shareholding. This information must relate to the potential acquirer, the proposed acquisition, financing of the acquisition and aspects relating to the commercial and professional integrity of the directors and executives who will direct the activities of the management company as a result of the proposed acquisition; in those cases in which a change of control takes place, a business plan must be drawn up detailing the impact of the acquisition on corporate governance, structure and available funds, internal control bodies and procedures for the prevention of money laundering and the financing of terrorism.

11. <http://www.boe.es/boe/dias/2009/04/20/pdfs/BOE-A-2009-6555.pdf> <http://www.boe.es/boe/dias/2009/05/12/pdfs/BOE-A-2009-7831.pdf>.

12. <http://www.boe.es/boe/dias/2009/12/07/pdfs/BOE-A-2009-19671.pdf>.

CNMV Circular 6/2009, of 9 December, on internal control of UCITS management companies and investment companies.¹³

This legislation derives from Section 43 of the UCITS Act 35/2003, of 4 November, which requires that their management companies (“SGIIC”) have good administrative and accounting organisation with adequate technical and human resources and internal control procedures and mechanisms. The Circular, which is applicable to SGIIC and to self-managed variable capital investment companies (“SICAV”) broadly develops the internal control obligations for all activities of these entities and establishes the need to adopt policies and procedures in relation to the calculation of net asset value, valuation of assets, selection of financial intermediaries, activities of members of their boards of directors, employees, representatives and authorised representatives, system of remuneration and fixing incentives, internal and external communications, related transactions, risks associated with delegation of functions, use of UCITS assets, custody and administration by depositaries, securities lending activities, customer care department, commercialisation of holdings and shares in UCITS, prevention of money laundering, risks deriving from unexpected interruption in essential functions, security of information and exercise of rights inherent in securities making up the portfolios of UCITS.

The Circular provides that internal control of these entities includes the functions of risk management, legislative compliance and internal auditing and details the contents of these functions, which must be exercised maintaining a principle of separation from other activities of the entity. Furthermore, delegation of these functions is permitted subject to certain rules, and thus the function of risk management or that of legislative compliance may not be delegated to the depositary or the same entity to which the depositary has in turn delegated its functions, nor can the function of internal auditing be delegated to the external auditor or to the entity to which the function of risk management has been delegated.

The Circular provides that the board of directors of these entities has an obligation to organise its internal control policies effectively. It also provides for an obligation for entities to have internal manuals detailing internal control policies which must be approved by the management body of the entity.

A.7 Measures against the economic crisis

Royal Decree-Law 3/2009, of 27 March, on urgent measures in the tax, financial and bankruptcy field on evolution of the economic situation.¹⁴

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 its activity in the short and

13. <http://www.boe.es/boe/dias/2009/12/21/pdfs/BOE-A-2009-20499.pdf>.

14. <http://www.boe.es/boe/dias/2009/03/31/pdfs/BOE-A-2009-5311.pdf>

medium term and which mean a significant increase in the credit available or modification of its 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 of the BA in respect of acts prejudicial to the bankruptcy estate carried out by the debtor within 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 the conclusion of any challenges which may have been made.

- *Publication.* The system of publishing 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.
- *Procedural aspects.* The abbreviated procedure is made more widespread.

Royal Decree-Law 6/2009, of 30 April, adopting certain measures in the energy sector and approving the social bond.¹⁵

This Royal Decree-Law 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-Law 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 Securitisation Fund, which will issue its corresponding liabilities by means of a competitive mechanism in the financial market with State guarantee.

Royal Decree-Law 9/2009, of 26 June, on bank restructuring and strengthening of own funds of credit institutions.¹⁶

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-Law 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-Law 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.

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

15. <http://www.boe.es/boe/dias/2009/05/07/pdfs/BOE-A-2009-7581.pdf>.

16. <http://www.boe.es/boe/dias/2009/06/27/pdfs/BOE-A-2009-10575.pdf>.

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.

Order EHA/3319/2009, of 10 December, amending Order EHA/3364/2008, of 21 November, in implementation of Section 1 of Royal Decree-Law 7/2008, of 13 October, on Urgent Measures in the Financial-Economic Field in relation to the Concerted Action Plan of Eurozone Countries.¹⁷

Pursuant to Royal Decree-Law 7/2008, of 21 November, and the Concerted Action Plan of Euro Zone Countries, credit institutions have been making issues of promissory notes, bonds and debentures backed by the State. Although this type of issue was provided for solely until 15 December 2009, the European Commission authorised an extension of the system of Spanish guarantees. By means of this Order, the Directorate General for Treasury and Financial Policy is consequently authorised to extend the period during which credit institutions can issue financial instruments with State guarantees.

Order EHA/3515/2009, of 29 December, establishing contributions to the Savings Bank Deposit Guarantee Fund.¹⁸

Royal Decree 2606/1996, of 20 December, on Credit Institution Deposit Guarantee Funds, provides that credit institutions must each year contribute to guarantee funds of two per thousand of the guaranteed deposits of each institution, although the Ministry of Economy and Finance is authorised to reduce these contributions when the Fund reaches a sufficient level to comply with its purposes. This legislation makes use of this power in relation to the Savings Banks Guarantee Fund and reduces the contributions to one per thousand of guaranteed deposits.

A.8 Other legislation

Act 3/2009, of 3 April, on structural modifications of mercantile companies.¹⁹

This commercial legislation is of a general scope in respect of structural modifications of mercantile companies, and therefore is applicable to public limited companies (*sociedades anónimas*), limited liability companies, ordinary partnerships and partnerships limited by shares and collective partnerships. 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 public limited 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

17. <http://www.boe.es/boe/dias/2009/12/12/pdfs/BOE-A-2009-19950.pdf>.

18. <http://www.boe.es/boe/dias/2009/12/31/pdfs/BOE-A-2009-21166.pdf>.

19. <http://www.boe.es/boe/dias/2009/04/04/pdfs/BOE-A-2009-5614.pdf>.

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 the challenge of merger. The law on structural modifications 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 whereby resulting company 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 demergers in that in a segregation it is the company that is segregated itself and not its members which receive shares, capital 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 (Ley de Sociedades de Responsabilidad Limitada) compared with that of the Public Limited 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 unanimously adopted 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 the international transfer of corporate domicile*, with few substantial modifications. The directors of the company intending to transfer its registered office abroad must draw up and sign a transfer scheme, along with an explanatory report which must be made 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 public limited 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 public limited companies*: the right of preferential subscription ceases to be recognised; the exceptions are extended to the requirement of an 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.

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 shareholdings in investment services firms, credit institutions and insurance companies.²⁰

20. <http://www.boe.es/boe/dias/2009/06/30/pdfs/BOE-A-2009-10751.pdf>.

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

- *Significant shareholdings in financial entities*: The legislation is amended on significant shareholdings in investment services firms, collective investment undertakings, credit institutions and insurance companies, as a result of the transposition of Directive 2007/44/EC of the European Parliament and Council, of 5 September 2007.
- The new legislation considers significant shareholdings 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 shareholdings 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 shareholdings, 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.
- *UCITS*: Act 35/2003, of 4 November, on collective investment undertakings is amended, not only in the field of significant shareholdings 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 UCITS management companies to transfer them from one UCITS to another UCITS 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 the directors.
- *Securitisation Funds*: Act 19/1992, of 7 July, on the regime of real estate investment funds and companies and mortgage securitisation funds is amended. In particular, the possibility is regulated of altering the deed of incorporation of the securitisation fund; modifications of deeds of incorporation may not alter the nature of the assets assigned to the fund nor transform a mortgage securitisation fund into one of asset securitisation or *vice versa*, nor mean *de facto* the 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 CNMV, of minor importance, 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.

Act 11/2009, of 26 October, regulating Listed Real Estate Market Investment Companies.²¹

This Act introduces into our legal system the concept of Listed Real Estate Market Investment Companies (*sociedades anónimas cotizadas de inversión en el mercado inmobiliario* – SOCIMIs), inspired by the foreign regime of REITS (Real Estate Investment Trusts). Its aim is to promote the real estate rental market and the real estate market as a whole.

SOCIMIs are companies whose principal activity is direct or indirect investment in real estate assets of an urban nature for rental, including both dwellings and commercial premises, care homes, hotels, garages and offices, amongst others. In order to allow indirect investment, SOCIMIs are allowed to participate in other SOCIMIs or in undertakings which fulfil the minimum requirements for investment and distribution of profits laid down for them, whether or not resident in Spanish territory or listed or otherwise on regulated markets. The obligation is laid down that these undertakings must systematically distribute a very high percentage of the profits which they obtain.

A special tax regime is established for them, pursuant to which they will be taxed at a rate of 18% on distributed profits, provided that at least 80% of their assets are invested in urban real estate devoted to leasing and acquired in full ownership or through holdings in companies which fulfil the same investment and profit distribution requirements. If the member is an individual, he or she will have a tax exemption on the income from dividends received from the SOCIMIs. Nevertheless, by way of exception to the general tax regime for transactions in securities, the transfer of shares in SOCIMIs is not exempt from the asset transfer mode of the Tax on Asset Transfers and Stamp Duty (*Impuesto sobre transmisiones patrimoniales y actos jurídicos documentados*).

Act 16/2009, of 13 November, on payment services.²²

This legislation guarantees that payments made in the ambit of the European Union, specifically transfers, direct debits and payment transactions made by card, can be carried out with the same ease, efficiency and security as the internal national payments of Member States, and that it is also possible to operate with a single current account throughout the territory of the European Union. It also requires greater speed in payment transactions within the European Union such that in general they must be completed within a period of one business day.

In addition, it also regulates the information requirements and rules for protection of payment service users, and in particular the person ordering a payment transac-

21. <http://www.boe.es/boe/dias/2009/10/27/pdfs/BOE-A-2009-17000.pdf>.

22. <http://www.boe.es/boe/dias/2009/11/14/pdfs/BOE-A-2009-18118.pdf>.

tion will only partially bear losses deriving from unauthorised payment transactions resulting from the use of a stolen or removed payment instrument, meeting losses solely in a maximum amount of 150 euros. A rule is introduced as a new feature that in every provision of payment services which does not include conversion into foreign currencies, the expenses will be shared between the payor and the beneficiary.

The legislation also establishes a new type of authorised entity for the provision and execution of payment services: payment entities, for which capital requirements are established and their supervision by the Bank of Spain and a list of permitted activities, which exclude capturing repayable funds from the public.

In other respects, this Act also introduces other legislative amendments. In particular, amendments to Act 211/1964, of 24 December, on regulation of the issue of debentures by companies which have not adopted the form of a joint stock company, association or other legal entity and creation of the Bondholders' Syndicate can be highlighted, in order that this legislation is not applicable to the issuers of securities of public undertakings to which the regime of State Debt extends. Various insolvency aspects are also regulated, regarding maintenance of contractual set-off agreements.

Royal Decree 1817/2009, of 27 November, amending Royal Decree 1245/1995, of 14 July, on the creation of banks, cross-border activity and other matters relating to the legal regime of credit institutions, and Royal Decree 692/1996, of 26 April, on the legal regime of financial credit establishments.²³

This Royal Decree implements Act 5/2009, of 29 June, relating to the regime of significant shareholdings in financial institutions, with respect to credit institutions. The regime of significant shareholdings in financial institutions, as is well known, constitutes a prior administrative control in the case of credit institutions for which the Bank of Spain is responsible, which has the objective of evaluating for prudential purposes the identity, integrity and solvency of the most significant shareholders of institutions. In this respect, this rule, in parallel with other similar decrees promulgated for other types of financial entity, regulates how holdings must be computed in credit institutions in order to determine what is considered a significant shareholding. The criteria are also listed in accordance with which the Bank of Spain will prepare and publish a list determining the content of the information which may be required in order to evaluate the acquisition of a significant shareholding. This information will relate to the potential acquirer, the proposed acquisition and financing of the acquisition, as well as aspects relating to the commercial and professional integrity of directors and executives who will direct the activities of the credit institution as a result of the proposed acquisition. In those cases in which a change of control occurs, a business plan must be prepared detailing the impact of the acquisition on corporate governance, structure and available funds, internal control bodies and on procedures for the prevention of money laundering and the financing of terrorism.

Furthermore, this legislation contains various specific additional provisions for credit institutions. Together with the powers and functions of the Bank of Spain referred to, the Royal Decree also provides that the Ministry of Economy and Finance may refuse creation of a bank or financial credit establishment when the shareholders who will have a significant shareholding in it are not considered suitable. Finally, it should be emphasised that, in accordance with European Union

regulation, various powers of the Ministry of Economy and Finance have also been modified, which permitted refusal of authorisation to create a bank in the absence of reciprocity with third party countries, and the Ministry must in the future inform the European Commission and other supervisory authorities of the structure of the group in the case of control by shareholders from third countries.

Royal Decree 1821/2009, of 27 November, amending the Regulations on regulation and supervision of private insurance promulgated by Royal Decree 2486/1998, of 20 November, in the field of significant shareholdings.²⁴

This Royal Decree implements, in relation to investment services firms, Act 5/2009 of 29 June relating to the regime of significant shareholdings in financial institutions. It is a regulation in parallel with that established for credit institutions in Royal Decree 1817/2009, of 27 November, the summary of which is outlined herein above.

Act 29/2009, of 30 December, modifying the legal regime of unfair competition and advertising in order to improve the protection of consumers and users.²⁵

This legislation transposes Directive 2005/29/EC of the European Parliament and of the Council, of 11 May 2005, concerning unfair business-to-consumer commercial practices in the internal market, and Directive 2006/114/EC of the European Parliament and of the Council, of 12 December 2006, concerning misleading and comparative advertising. Consequently, it also means the amendment of Act 3/1991, of 10 January, on unfair competition, the revised text of the General Act on the Protection of Consumers and Users, Act 7/1996, of 15 January, on Regulation of Retail Commerce, and the General Advertising Act, 34/1988 of 11 November.

With respect to the securities market, this Act expressly lays down the criterion whereby that rules which regulate commercial practices in the field of distance marketing of financial services aimed at consumers and users, collective investment in transferable securities, rules of conduct in the field of investment services and public offering or admission to listing of securities shall prevail in the event of a conflict with legislation of a general nature applicable to unfair commercial practices.

B. European legislation

B.1 European supervision committees

Commission Decisions 2009/77, 2009/78 and 2009/79, of 23 January, creating the Committee of European Securities Regulators, the Committee of European Banking Supervisors and the Committee of European Insurance and Occupational Pensions Supervisors.²⁶

These European Commission decisions redefine the functions of the Committee of European Securities Regulators (CESR), the Committee of European Banking Super-

24. <http://www.boe.es/boe/dias/2009/12/07/pdfs/BOE-A-2009-19673.pdf>.

25. <http://www.boe.es/boe/dias/2009/12/31/pdfs/BOE-A-2009-21162.pdf>.

26. <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:025:0018:0022:EN:PDF>, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:025:0023:0027:EN:PDF> y <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:025:0028:0032:EN:PDF>.

visors (CEBS), and the Committee of European Insurance and Occupational Pensions Supervisors (CEIOPS), which were respectively created by three decisions of the European Commission that were repealed by the new provisions. The Commission decisions were taken on proposal by the European Council, which had invited the Commission to clarify the function of the European supervisor committees referred to and to study options for reinforcing their scope of action.

Although these provisions for the most part set out powers and functions which the European supervisor committees have already been carrying out, various novel aspects can also be highlighted.

- The possibility is provided for national supervisors to submit specific questions to the European supervisor committees with a view to obtaining non-binding reports from them.
- Likewise, the European supervisor committees must facilitate and coordinate the delegation of tasks of one national supervisor to another, and the day-to-day practical work of information exchange.
- In addition, the existence is provided of a mixed committee on financial conglomerates in which the three committees will participate and mutual collaboration enhanced between them in order that they can determine, at an early stage, possible micro-prudential trends and risks at cross-border and inter-sector level.
- There is also provision for the committees to report, when necessary, to the Commission, to the Council, to the European Parliament and to national authorities. In particular, it is provided that the committees will report to the European Commission twice a year on vulnerable sector points and risks. It is nevertheless clarified that the committees must not disclose information on specific entities supervised.

B.2 UCITS

Directive 2009/65/EC, of 13 July 2009, of the Parliament and of the Council, on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS).²⁷

This legislation replaces Directive 85/611/EEC of the Council, of 20 December 1985, on UCITS after a long review process which has taken as background the publication of the European Commission Green Paper on investment funds (2005) and White Paper on investment funds and impact assessments (2006).

One of the main objectives of the Directive is to eliminate obstacles to the commercialisation of UCITS in other Member States, since the 1985 notification procedure often turned out to be long and inflexible, with frequent imposition by the authority of the host State of stricter requirements than those established in the Directive. The approach adopted in this Directive consists of implementing the necessary and sufficient basic harmonisation to ensure mutual recognition of authorisation and prudential supervision systems, making the grant possible of a single authorisation valid throughout the European Union, with supervisory powers given to the State of origin. In order to avoid regulatory and supervisory arbitrage, however, the pre-

caution is adopted that the host State can refuse authorisation of a UCITS when it is not authorised to commercialise holdings in it in its State of origin. The possibility remains for the Member State of origin to establish stricter rules than those contained in the Directive for undertakings supervised by it.

Another major objective of the Directive consists of promoting an increase in the size of UCITS in order to take advantage of the economies of scale and cost reductions which this brings about for investors. The regulation of cross-border mergers of UCITS or the possibility of a UCITS investing its assets in another UCITS known as principal UCITS (entity pooling or principal-subordinate structures) must be interpreted in this respect, being exempt from the general prohibition on investing more than 10%, or 20% as the case may be, of their assets in a single UCITS .

Thirdly, the Directive also pursues the objective of management companies being able to manage UCITS in another Member State without the need to create management companies in each Member State. Finally, it must also be emphasised that the aim of the Directive is that the simplified prospectus of UCITS be shorter and less complex and that its preparation by entities is also quicker and less onerous.

B.3 Investment services firms

Directive 2009/83/CE of the Commission, of 27 July 2009, modifying certain annexes of Directive 2006/48 of the European Parliament and Council with respect to technical provisions relating to risk management.²⁸

This Directive was promulgated in the context of a broad reform in the field of capital requirements of financial institutions (credit institutions and investment undertakings), the processing of which has not yet been completed and which, in the framework of the current financial crisis, seeks improvement in management of the so-called major risks of financial institutions; an improvement in the supervision of cross-border financial groups; an improvement in the quality of their own funds, particularly in relation to hybrid instruments; an improvement in management of their liquidity risk and better management of risk relating to financial instruments deriving from securitisation.

This Directive deals with various specific aspects which can be directly regulated by European Commission Directive, in implementation of Directive 2006/48/EC of the European Parliament and Council, of 14 June 2006, relating to the taking up and pursuit of the business of credit institutions. In particular, certain clarifications and adaptations are made in relation to various matters: criteria for organisation and treatment of risk; standard methods; methods based on internal evaluation; reduction in credit risk; own fund requirements for investment in securitisation bonds; operating risk and publication of information on own funds. It also clarifies the forms in which credit institutions can demonstrate transfer of a significant part of the risk off their balance sheet.

Directive 2009/111/EC, of 16 September 2009, of the European Parliament and of the Council amending Directives 2006/48/EC, 2006/49/EC and 2007/64/EC as regards banks affiliated to central institutions, certain own fund items, large exposures, supervisory arrangements, and crisis management.²⁹

28. <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:196:0014:0021:EN:PDF>.

29. <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:302:0097:0119:EN:PDF>.

The own funds requirements of credit institutions and investment services firms are regulated. The principal modifications proposed are as follows:

- Regulation of risk concentration limits is harmonised.
- The supervision of cross-border banking groups is improved. Colleges of supervisors are created for banking groups which operate in various EU countries. The powers and responsibilities of national supervisory authorities are clarified and their cooperation made more effective.
- The regulation is improved of the quality of own funds of banks, particularly in relation to “hybrid” instruments. For the purpose of solvency regulation, a distinction is made between instruments which do not have the same ranking as ordinary shares during liquidation or which do not absorb losses in normal situations with the same ranking as ordinary shares.
- Various adaptations are made relating to liquidity risk management.
- The risk management of securitised instruments is improved. Companies which assign their assets in the securitisation process will have to retain part of the risk associated with these securities, whilst companies which invest in them will have to show due diligence and sufficiently inform themselves, or otherwise will be subjected to heavy capital penalties.
- The obligation is introduced in the Community sphere, in force in our internal legal system, for financial institutions to create anti-cyclical “cushions” in boom times which can be used during recession phases.
- In order to guarantee financial stability, the European Commission is commissioned, in relation to Credit Default Swaps, with strengthening the transparency of extra-stock exchange markets and attenuate counterparty risks through the creation of central counterparties subject to prudential rules and effective supervision.

B.4 Credit rating agencies

Regulation (EC) 1060/2009, of 16 September 2009, of the European Parliament and of the Council on credit rating agencies.³⁰

In line with the G-20 recommendations, under this regulation the European Union establishes a registration and supervision system for credit rating agencies. The content of this regulation is discussed in the detail in section 3.3 of Chapter 2.

B.5 International financial reporting standards (IFRS)

Regulation (EC) 69/2009, of 23 January 2009, of the Commission, amending Regulation (EC) no. 1126/2008, adopting certain international accounting standards in relation to International Financial Reporting Standard (IFRS) 1 and International Accounting Standards (IAS) 27.³¹

30. <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:302:0001:0031:EN:PDF>.

31. <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:021:0010:0015:EN:PDF>.

This legislation incorporates certain modifications into European Union Law adopted by the International Accounting Standards Board (IASB). In particular, IFRS 1 is modified in relation to adoption for the first time of international financial reporting standards, and IAS 27, in relation to separate and consolidated financial statements.

The modifications of IFRS 1 enable an entity adopting the IFRS for the first time to use, as deemed cost of an investment in a subsidiary, jointly controlled entity or associate, either the fair value at the date of transition by the entity to IFRS or the previous GAAP carrying amount of the investment at that date. In line with this above, the modification of IAS 27 clarifies how to determine the cost of an investment in those cases in which the company acquires from another company in the same group a holding in a subsidiary, allowing the measurement used by the original parent company to be maintained.

It also establishes the obligation to recognise all dividends received from a subsidiary, jointly-controlled entity associate as revenue in the separate financial statements.

Regulation (EC) 254/2009, of 25 March 2009, of the Commission amending 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.³²

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.

Regulation (EC) 636/2009, of 22 July 2009, of the Commission, amending Regulation (EC) No. 1126/2008, adopting certain international accounting standards in accordance with Regulation (EC) No. 1606/2002 of the European Parliament and of the Council as regards International Financial Reporting Interpretations Committee's (IFRIC) Interpretation 15.³³

This regulation incorporates Interpretation No. 15 into European Union Law. It refers to the accounting treatment of income deriving from the construction of real estate.

Specifically, it establishes that when a construction contract allows the buyer of the property to specify the most important structural elements in the design of the property, the income which the seller receives from these contracts will be recorded in accordance with IAS 11 (Construction contracts) or IAS 18 (Ordinary income).

Regulation (EC) 824/2009, of 9 September 2009, of the Commission, amending Regulation (EC) No. 1126/2008 adopting certain international accounting standards in accordance with Regulation (EC) No. 1606/2002 of the European Parliament and of the Council as regards International Accounting Standard (IAS) 39 and International Financial Reporting Standard (IFRS) 7.³⁴

32. <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:080:0005:0013:EN:PDF>.

33. <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:191:0005:0009:EN:PDF>.

34. <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:239:0048:0050:EN:PDF>.

It regulates the effective date of the reclassification of financial assets arising from modifications in IAS 39 and IFRS7, in 2008. Regulation 1004/2008, of 15 October, had made it possible, due to the financial crisis, to reclassify certain financial instruments as headings valued at cost instead of at their value, understanding that the fair value of the reclassification date would become its cost for accounting purposes. The current Regulation establishes that these accounting reclassifications may not be applied retroactively to dates earlier than 1 July 2008.

Regulation (EC) 839/2009, of 15 September 2009, of the Commission, amending Regulation (EC) 1126/2008 adoption certain international accounting standards in accordance with Regulation (EC) 1606/2002 of the European Parliament and Council, as regards International Accounting Standard (IAS) 39.³⁵

This Regulation incorporates various modifications into European Union Law promulgated by the International Accounting Standards Board (IASB) in relation to IAS 39.

The premium or price of an option can be broken down into two variables: the intrinsic value and the time value. The intrinsic value solely depends on the price of the underlying asset and the price of exercising the option. The time value is the value of the possibility of a favourable price movement before the option's maturity. This regulation establishes that, in inflation hedging, the time value of an option is not taken into account and only the losses from unfavourable price movements of the underlying asset may be recorded. Furthermore, it regulates the accounting treatment of inflation hedging, which is only allowed when the inflation component is separately identified in the hedge contract.

Regulation (EC) 1136/2009, of 25 November 2009, of the Commission, amending Regulation (EC) no. 1126/2008 adopting certain international accounting standards in accordance with Regulation (EC) no. 1606/2002 of the European Parliament and of the Council as regards International Financial Reporting Standard (IFRS) 1.³⁶

This legislation incorporates into European Union Law a modification of International Financial Reporting Standards (IFRS), in particular in relation to the so-called restructured IFRS 1, on adoption for the first time of IFRS. Guidance for transition to IFRS which has become obsolete is eliminated and minor changes made to the wording.

Regulation (EC) 1142/2009, of 26 November 2009, of the Commission, amending Regulation (EC) no. 1126/2008 adopting certain international accounting standards in accordance with Regulation (EC) no. 1606/2002 of the European Parliament and of the Council as regards International Financial Reporting Interpretations Committee's (IFRIC) Interpretation no. 17.³⁷

This legislation incorporates into European Union Law Interpretation no. 17 of the International Financial Reporting Interpretations Committee. This interpretation clarifies and gives guidance on the accounting treatment of distributions of assets other than cash to owners of an entity.

35. <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:244:0006:0009:EN:PDF>.

36. <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:311:0006:0020:EN:PDF>.

37. <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:312:0008:0013:EN:PDF>.

Regulation (EC) 1164/2009, of 27 November 2009, of the Commission, amending Regulation (EC) no. 1126/2008 adopting certain international accounting standards in accordance with Regulation (EC) no. 1606/2002 of the European Parliament and of the Council as regards International Financial Reporting Interpretations Committee's (IFRIC) Interpretation no. 18.³⁸

This legislation incorporates into European Union Law Interpretation no. 18 of the International Financial Reporting Interpretations Committee (IFRIC). This interpretation clarifies and gives guidance on accounting for transfers of elements of tangible fixed assets from customers, or cash to acquire or construct an element of tangible fixed assets.

Regulation (EC) 1165/2009, of 27 November 2009, of the Commission, amending Regulation (EC) no. 1126/2008 adopting certain international accounting standards in accordance with Regulation (EC) no. 1606/2002 of the European Parliament and of the Council as regards International Financial Reporting Standard (IFRS) 4 and IFRS 7.³⁹

This legislation incorporates into European Union Law a modification of the International Financial Reporting Standards (IFRS), in particular of IFRS 4 on insurance contracts, and IFRS 7, on information to be disclosed regarding financial instruments. The purpose of the modifications is to strengthen information obligations in relation to assessments of fair value and the liquidity risk associated with financial instruments.

Regulation (EC) 1171/2009, of 30 November 2009, of the Commission, amending Regulation (EC) no. 1126/2008 adopting certain international accounting standards in accordance with Regulation (EC) no. 1606/2002 of the European Parliament and of the Council as regards International Financial Reporting Interpretations Committee's (IFRIC) Interpretation no. 9 and International Accounting Standard (IAS) 39.⁴⁰

This legislation incorporates into European Union Law the modifications of Interpretation no. 9 of the International Financial Reporting Interpretations Committee and of International Accounting Standard no. 39 (IAS 39). Both modifications relate to implicit financial derivatives and in particular the possibility of accounting for them separately from the principal contract of which they form part, excluding them from the category of assets accounted for at fair value.

Regulation (EU) 1293/2009, of 23 December 2009, amending Regulation (EC) no. 1126/2008 adopting certain international accounting standards in accordance with Regulation (EC) no. 1606/2002 of the European Parliament and of the Council as regards International Accounting Standard (IAS) 32.⁴¹

This legislation incorporates into European Union Law various modifications of International Accounting Standard no. 32 (IAS 32). These modifications relate to the concept of net worth and permit certain financial derivative instruments to be considered in this category even though they are denominated in a currency which is not the functional currency of the issuer.

38. <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:314:0015:0020:EN:PDF>.

39. <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:314:0021:0026:EN:PDF>.

40. <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:314:0043:0046:EN:PDF>.

41. <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:347:0023:0025:EN:PDF>.

B.6 Other regulations

Directive 2009/101/EC, of 16 September 2009, of the European Parliament and of the Council on coordination of safeguards which, for the protection of the interests of members and third parties, are required by Member States of companies within the meaning of the second paragraph of Article 48 of the Treaty, with a view to making such safeguards equivalent.⁴²

This legal text simply consolidates Directive 68/151/EEC of the Council, of 9 March 1968, updating the text with the modifications which have been made to it since its promulgation. It is applicable to civil or mercantile undertakings and also to cooperatives and other legal public or private law entities, except for those which are non-profit making.

Directive 2009/102/EC, of 16 September 2009, of the European Parliament and the Council on company law on single-member limited liability companies.⁴³

This legal text is limited to consolidating Directive 89/667/EEC of the Council, of 21 December 1989, in the field of company law, relative to limited liability companies with a single member, updating the text with the modifications made to it since its promulgation.

Directive 2009/109/EC, of 16 September 2009, of the European Parliament and of the Council, amending Council Directives 77/91/EEC, 78/855/EEC and 82/891/EEC, and Directive 2005/56/EC as regards reporting and documentation requirements in the case of mergers and divisions.⁴⁴

This legislation is set in the context of an initiative by the European Commission to reduce the administrative burdens falling on European Union companies to the minimum necessary. In particular, the Directive relates to mergers and demergers of companies, both cross-border mergers and demergers of Directive 2005/56/EC of the European Parliament and Council, and to domestic mergers and demergers.

Together with other aspects already provided for in our domestic law, it provides that the websites of companies or other websites can be an alternative to the public registries of companies for the purpose of complying with information obligations which are required of these structural modifications. The Directive must be transposed into domestic law before 30 June 2011.

42. <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:258:0011:0019:EN:PDF>.

43. <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:258:0020:0025:EN:PDF>.

44. <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:259:0014:0021:EN:PDF>.

Composition of the CNMV Board as at 30 April 2010

President	Mr Julio Segura Sánchez
Vice-President	Mr Fernando Restoy Lozano
Board Members	Ms Soledad Núñez Ramos
	Mr Francisco Javier Aríztegui Yáñez
	Ms Rosa Rodríguez Moreno
	Mr Luis Pedroche y Rojo ¹
General Secretary	Mr Alfonso Cárcamo Gil ²

Composition of the CNMV Executive Committee as at 30 April 2010³

President	Mr Julio Segura Sánchez
Vice-President	Mr Fernando Restoy Lozano
Members	Ms Rosa Rodríguez Moreno
Secretary	Mr Alfonso Cárcamo Gil

1. Appointed by Ministerial Order of the Ministry of Finance and Economy EHA/1072/2010, of 30 April.
2. Replaces Mr Javier Rodríguez Pellitero in the post. Resolution of the Executive Committee of the CNMV dated 25 February 2010 (OSG 27/02/2010).
3. The creation, constitution and functions of the Executive Committee are regulated by article 18 of Securities Market Act 24/1988, of 28 July, as amended by Act 44/2002, of 22 November, on Measures to Reform the Financial System. The creation, constitution and functions of the Executive Committee are regulated by article 18 of Securities Market Act 24/1988, of 28 July, as amended by Act 44/2002, of 22 November, on Measures to Reform the Financial System.

Composition of the CNMV Advisory Committee as at 30 April 2010⁴

President	Mr Fernando Restoy Lozano
Secretary	Mr Alfonso Cárcamo Gil
Technical Secretary	Mr Víctor Rodríguez Quejido
Members	
Representatives of the members of the official secondary markets	
Member	Mr Ignacio Santillán Fraile
Alternate	Mr José Ignacio García-Junceda Fernández
Member	Mr Jaime Aguilar Fernández-Hontoria
Alternate	Mr José María Antúnez Xaus
Member	Mr Manuel Ardanza Fresno
Alternate	_____
Member	Mr Francisco Oña Navarro
Alternate	Mr Ignacio Solloa Mendoza
Member	Mr José María Méndez Álvarez-Cedrón
Alternate	Mr Julio Alcántara Lera
Member	Ms Ana Ibáñez Díaz-Bustamante
Alternate	Ms Aránzazu Ullibarri Royuela
Representatives of the issuers	
Member	Mr Francisco Uría Fernández
Alternate	Mr Ángel Antonio del Valle Suárez
Member	Mr Juan A. Margenat Padrós
Alternate	Ms Ana Delgado Alcaide
Member	Mr Luis Miralles García
Alternate	Mr Manuel González Escudero
Member	Mr José Manuel González Porro
Alternate	Mr Manuel Ángel Romero Rey
Representatives of the investors	
Member	Mr Manuel Pardos Vicente
Alternate	Mr Jofre Farres Roselló
Member	Ms Pilar González de Frutos
Alternate	Ms M ^a Aránzazu del Valle Schaan
Member	Mr Antonio M ^a Malpica Muñoz
Alternate	Mr José Manuel Pomarón Bagües
Member	Mr Mariano Rabadán Forniés
Alternate	Mr Ángel Martínez-Aldama Hervás
Representatives of the Autonomous Regions with an official secondary market	
Basque Country	
Member	Mr Fernando de la Hucha Celador
Alternate	Mr Miguel Bengoechea Romero
Catalonia	
Member	Mr Ferrán Sicart i Ortí
Alternate	Mr Josep María Sánchez i Pascual
Region of Valencia	
Member	_____
Alternate	Mr Nicolás Jannone Bellot

CNMV Organisation Chart

