

CNMV

*Comisión Nacional
del Mercado de Valores*



Annual Report

on activities

CNMV ANNUAL REPORT
ANNUAL REPORT ON ACTIVITIES

2003

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Letter from the CNMV President



Spanish securities markets ended 2003 on a hopeful note, based on an improved international economic and stock market context and a good Spanish economic situation. After three consecutive years of losses, the Spanish stock markets gained considerably while volatility decreased. Although the stock market contribution to corporate financing through capital increases and public offerings was still low, major IPO's have been announced for 2004, some of which have already been performed.

However, in the fixed-income market, private sector financing gained considerably in volume. Low yields on other alternative assets, an improvement in companies' credit quality and the dynamism of the property market, financed increasingly by the issuance of asset-backed securities, increased the appeal of private fixed-income assets, thus further boosting growth.

Because of the improved situation of the Spanish economy and markets, individual savers increased investments in securities. In particular, small savers returned to mutual funds, even the risk funds that had registered substantial cash outflow in the last few years. The perception was that investors were more willing to accept risk, while being prudent in general, which was clearly positive for security market performance.

Increased activity by small investors suggests that they may be giving a vote of confidence to the Spanish markets, aided, in my opinion, by the regulatory efforts with regard to market transparency and integrity. In 2003, further progress was made with the approval of the Transparency Law, which obliges listed companies to issue an annual corporate governance report. The CNMV has already issued a Circular establishing the specific content of such reports.

The CNMV continued to hire employees in 2003 in order to efficiently comply with its obligations. Human and technical resources were increased as a result of market growth. In compliance with the Law on Measures to Reform the Financial System, the CNMV's Internal Regulation, which regulates its governance, internal organisation and procedures, was approved.

Readers will have noticed that the structure of the 2003 Annual Report differs from that of previous editions. The change is due not only to the desire to improve the report's structure but also to adapt its content to Additional Provision 2.2 of the Law on Measures to Reform the Financial System, which envisages the inclusion of a report from the CNMV's internal control body in the CNMV's annual report. That report is attached as an annex in Part I.

I would like to remind readers that we face major challenges in the coming years, such as the adaptation of listed companies' financial information to international standards, the implementation of a new law on collective investment schemes, and the transposition of the recently-approved Takeover Directive and Directive on Markets in Financial Instruments. I am convinced that those challenges will be faced responsibly and energetically and that the outcome will be positive for Spanish investors, companies and markets.

*Blas Calzada Terrados
Madrid, May 2004*

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Abbreviations

AIAF:	Asociación de Intermediarios de Activos Financieros/Spanish Brokers' Association
ANCV:	Agencia Nacional de Codificación de Valores/Spain's National Securities Numbering Agency
AV:	Agencia de valores/Broker
AVB:	Agencia de valores y bolsa/Broker and stock exchange member
BME:	Bolsas y Mercados Españoles/Spanish Stock Exchanges and Markets
BOE:	Boletín Oficial del Estado/Official State Gazette
CADE:	Central de Anotaciones de Deuda del Estado/Spanish government debt book-entry centre
CESR:	Committee of European Securities Regulators
CIS:	Collective Investment Scheme
CNMV:	Comisión Nacional del Mercado de Valores/Spanish Securities Market Commission
EC:	European Commission
ECR:	Entidad de Capital-Riesgo/Venture capital firm
EEC:	European Economic Community
ESC:	European Securities Committee
ESCB:	European System of Central Banks
EU:	European Union
FC&M:	Mercado de Futuros sobre Cítricos y Mercaderías/Citrus fruit and commodity futures market
FCR:	Fondo de capital-riesgo/Venture capital fund
FIAMM:	Fondo de inversión en activos del mercado monetario/Money market fund
FII:	Fondo de inversión inmobiliaria/Real estate investment fund
FIM:	Fondo de inversión mobiliaria/Securities investment fund
FTH:	Fondo de titulización hipotecaria/Mortgage securitisation fund
IAS:	International Accounting Standards
IASB:	International Accounting Standards Board
IFRS:	International Financial Reporting Standards

IGBM:	Índice General de la Bolsa de Madrid/Madrid Stock Exchange General Index
IIC:	Institución de inversión colectiva/Collective investment scheme
IIMV:	Instituto Iberoamericano del Mercado de Valores
IOSCO:	International Organization of Securities Commissions
ISD:	Investment Services Directive
ISIN:	International Securities Identification Number
LATIBEX:	Madrid-based market in Latin American securities
MEFF RF:	Mercado español de futuros financieros renta fija/Spanish market in fixed-income futures
MEFF RV:	Mercado español de futuros financieros renta variable/Spanish market in equity futures
MFAO:	Mercado de Futuros del Aceite de Oliva/Olive oil futures market
MMU:	Market Monitoring Unit
MOU:	Memorandum of understanding
OTC:	Over the counter
SCLV:	Servicio de Compensación y Liquidación de Valores/Securities Clearing and Settlement Service
SCR:	Sociedad de capital-riesgo/Venture capital company
SENAF:	Sistema Electrónico de Negociación de Activos Financieros (a Spanish multilateral trading facility)
SGC:	Sociedad gestora de carteras/Portfolio management company
SGEGR:	Sociedad gestora de entidades de capital-riesgo/Venture capital management company
SGFT:	Sociedad gestora de fondos de titulización/Securitisations fund management company
SGFTH:	Sociedad gestora de fondos de titulización hipotecaria/Mortgage securitisation fund management company
SGIIC:	Sociedad gestora de instituciones de inversión colectiva/Collective investment scheme management company
SIBE:	Sistema de Interconexión Bursátil Español/Spain's electronic market
SICAV:	Sociedad de inversión de capital variable/Open-end investment company
SII:	Sociedad de inversión inmobiliaria/Real estate investment company

SIM:	Sociedad de inversión mobiliaria/Securities investment company
SIMCAV:	Sociedad de inversión mobiliaria de capital variable/Open-end securities investment company
SON:	Sistema Organizado de Negociación/Multilateral trading facility
SV:	Sociedad de valores/Broker-dealer
SVB:	Sociedad de valores y bolsa/Broker-dealer and stock exchange member
UCITS:	Undertakings for Collective Investment in Transferable Securities

PART I

SUPERVISORY REPORT

1. Governing bodies and structure of the CNMV

The Board of the Comisión Nacional del Mercado de Valores (CNMV) approved the Commission's Internal Regulation on 10 July 2003, thus complying with the provisions of Article 14.10 of the Securities Market Law¹, introduced in 2002 by the Law on Measures to Reform the Financial System². The Internal Regulation plays an essential role in the CNMV insofar as it formally establishes the framework for the Commission's organisation and functioning.

The CNMV Internal Regulation

Article 14.10 of the Securities Market Law indicates that the CNMV Board "shall approve the Internal Regulation, which shall establish the organic structure of the Commission; allocate powers among the various bodies; establish the internal procedures; establish the specific system applicable to personnel when they cease to provide services at the Commission, without prejudice in this case to the provisions of section 7, paragraph 2 of this article and article 21 of this Law, with regard to incompatibility systems; establish personnel hiring procedures, in accordance with the principles referred to in section 7 of this article; and establish any questions relating to the functions and actions of the Comisión Nacional del Mercado de Valores that are required by the provisions of this Law."

In accordance with that mandate, the CNMV Board, via the Resolution dated 10 July 2003, approved the Internal Regulation, which consists of eight chapters containing a total of 59 Articles plus three transitory provisions and two final provisions.

The chapters of the Regulation are as follows:

- Chapter I: General provisions.
- Chapter II: Objective and functions of the CNMV.
- Chapter III: CNMV governing bodies.
- Chapter IV: Functioning of the CNMV Board, Advisory Committee and Executive Committee.
- Chapter V: CNMV management bodies.
- Chapter VI: Procedures for matters that correspond to the Board and internal procedures for the functioning of the CNMV.
- Chapter VII: CNMV personnel.
- Chapter VIII: Assets, budgets and financial control of the CNMV.

The entire text of the Internal Regulation can be consulted in the "Laws, Regulations and Other Rules" section of the CNMV web site (www.cnmv.es).

One of the notable new features of the Internal Regulation is the set of rules governing the CNMV Executive Committee. The Executive Committee was constituted in early

¹ Securities Market Law 24/1988, dated 28 July.

² Article 46 of Law 44/2002, dated 22 November, on Measures to Reform the Financial System.

2003 under the Law on Measures to Reform the Financial System³, which provided for its creation and established its composition and powers⁴. The Regulation envisages the Executive Committee's meeting and decision-making system (notice and frequency of meetings, quorum, agenda, minutes and voting) and the possibility that, depending on the business to be transacted, the Managing Directors, and other CNMV Directors expressly invited by the President, may attend the meetings but may not vote. Following the constitution of the Executive Committee, the CNMV Board delegated a number of duties to it⁵.

The Internal Regulation also establishes a new organisational structure of the CNMV, illustrated in Annex 5 of this chapter. The changes in the organisational structure can be summarised as follows:

- Two new Directorates were created within the Directorate-General of Legal Affairs—the Legal Counsel Directorate and the Directorate of Litigation and Enforcement—with a view to separating structurally the duties of the legal counsel from those related to disciplinary proceedings.
- Within the Directorate-General of Markets and Investors, the Directorate of Financial and Accounting Reports was created and, in accordance with the Third Transitory Provision of the Regulation, will become operational once the relevant powers relating to the accounting and auditing of listed companies have been assumed by the CNMV.
- The internal control body, which reports directly to the Executive Committee, was created as envisaged in point 1 of Additional Provision Two of the Law on Measures to Reform the Financial System⁶. That body must inform the Executive Committee of the compliance, speed and suitability of the supervision and inspection procedures attributed to the CNMV and the general application of the internal procedures. The internal control body is also responsible for issuing an annual report on the degree to which the resolutions adopted by the CNMV governing bodies conform to the applicable procedural legislation, and that report must be included in the annual report on the supervisory function envisaged in point 2 of Additional Provision Two of the Law on Measures to Reform the Financial System. That report is annexed to the first part of this Annual Report.

Internal procedures of the CNMV

The Internal Regulation establishes the framework for the CNMV's internal procedures. The Regulation establishes that the investigations and processes implemented by the CNMV in the exercise of its public functions must conform to the legislation that applies, in general, to the Public Administration⁷. More specifically, the Regulation details the procedures that must be governed by the different areas of

³ See Article 46 of that Law, which amended Article 18 of the Securities Market Law.

⁴ See Chapter 1 of the 2002 CNMV Annual Report.

⁵ CNMV Board resolution dated 13 October 2003 regarding the delegation of powers to the President, Vice-President and Executive Committee of the Comisión Nacional del Mercado de Valores. This resolution can be consulted in the "Laws, Regulations and Other Rules" section of the CNMV web site (www.cnmv.es).

⁶ The internal control body was constituted as the Directorate of Internal Control. The CNMV Board, at the suggestion of the President, appointed its Director on 4 December 2003 (see Annex 4 of this chapter).

⁷ Law 30/1992, dated 26 November, on the Legal Regime of the Public Administration and Common Administrative Procedure, and supplementary provisions.

supervision and internal administration or services, the formalities that must be adopted in drafting and approving them, and the means by which their application must be supervised⁸, in accordance with the provisions of Article 46 of the Law on Measures to Reform the Financial System.

The internal procedures fall into three major categories in terms of the scope of their application: entities and persons operating in the securities markets (five procedures); securities issuance (eight procedures); and administration and services (six procedures). The drafting of the internal procedures is the responsibility of the Directorate in charge of the area in question, and of the General Secretariat, in accordance with any guidelines and forms approved by the President⁹. The internal procedures must be approved by the Executive Committee, at the suggestion of the President and on the basis of a report by the Directorate-General of Legal Affairs. The President must sign the procedures, which take the form of service notes, and he may order their publication in the Official State Gazette on the grounds of general interest.

The general structure of the procedures is as follows:

- Scope and applicable legislation
- Forms, channels and deadlines for the reception of information or requests
- Verification, control, demands and authorisation to be performed by the CNMV
- Publication and dissemination of information
- Envisaged exceptions
- Manuals must be drafted by the Managing Directors and the Directors attached to the Presidency or Vice-Presidency for the compliance with, and practical application of, the provisions contained in the procedures (however, these manuals are not public and are not legally binding)
- Date on which procedures comes into effect

At the end of 2003, the following six internal procedures had been drafted and were pending approval¹⁰:

- a) Procedure to authorise investment services firms and collective investment schemes (PAE).
- b) Procedure on amendments to bylaws, regulations and services provided by the companies, institutions and entities operating in secondary securities markets (PME).
- c) Procedure to make demands and requests for data and reports from the companies, institutions and entities operating in securities markets (PFR).
- d) Procedure for periodical reporting by issuers (PIP).
- e) Procedure for the disclosure of significant events (PHR).
- f) Procedure for the disclosure of significant holdings in listed companies and on the acquisition of own shares (PPS).

The procedures listed above are largely based on the criteria already being applied by the CNMV to the formalities and actions contemplated therein. The compilation and updating of these criteria using the formal mechanisms provided for in the Internal Regulation will enable more transparent and effective application and adequate monitoring by the internal control body.

⁸ Chapter VI, Section 2, Articles 38 to 41.

⁹ The contents of the procedures regarding formalities, deadlines, notifications, standardised forms and other requirements must conform to the legislation that is specifically applicable to the securities markets and, as indicated, to the Legal Regime of the Public Administration and Common Administrative Procedure and its implementing regulations.

¹⁰ They were approved in early February 2004.

Code of Conduct for CNMV staff and executives

The Securities Market Law contains a number of precepts which regulate the rights, duties and responsibilities of the personnel working at the CNMV and establish the rules of conduct and ethical values that must guide their actions. Article 14.7 establishes that CNMV staff are employed under labour law and are subject to the Law on the Incompatibilities of Personnel Serving the Public Administrations; it also establishes the obligations and limits to which CNMV personnel are subject in relation to trading in the securities markets; Article 90.3 regulates the duty of secrecy and confidentiality; and several precepts in Title VII establish the obligation to safeguard restricted information and the rules of conduct that apply in relation to the securities markets.

The CNMV Internal Regulation, by virtue of the authorisation and the mandate contained in Article 14.10 of the Securities Market Law, has expanded on some of these matters, such as the regime concerning incompatibilities of personnel (Articles 53 and 54 of the Internal Regulation), the duty of secrecy (Article 53), the limitations inherent in performing operations in the securities markets (Articles 56 and 57), and the responsibility and legal/institutional support granted by the CNMV to its personnel (Article 58).

On 4 November 2003, the CNMV Board approved the new General Code of Conduct for CNMV Personnel, which complies with the provisions contained in Article 53 of the Internal Regulation and compiles a wide range of legal and regulatory rules and precepts in a single text. The Code covers:

- The regime of incompatibilities and liabilities derived from the exercise of the functions attributed to CNMV personnel.
- The ethical standards of action, which include, inter alia, respect for the law and impartiality, integrity and objectivity in CNMV employees' actions.
- The rules detailing restrictions on the use of available information and governing professional secrecy and the prohibition of the use of restricted information.
- The rules imposing restrictions on trading in securities, particularly the requirement to notify the CNMV of all such operations and the prohibition to sell within less than eleven months.

The Code can be consulted in the "About the CNMV?" section of the Commission's web site (www.cnmv.es).

New Regulation of the CNMV Advisory Committee

The CNMV Advisory Committee¹ is the CNMV Board's consultative body. A report by the Advisory Committee must obligatorily be obtained before: (i) approval of CNMV Circulars; (ii) imposition of penalties due to very serious infringements; (iii) authorisation, revocation and corporate transactions of the investment services firms and other persons or entities acting under the scope of Article 65.2 of the Securities Market Law, when so required by regulation, based on their economic and legal importance; and (iv) the authorisation and revocation of the branches of investment services firms from countries that are not members of the European Union, when so required by regulation. In addition to its advisory function with regard to the CNMV Board, the Advisory Committee advises on draft regulations

of a general nature on those matters relating directly to securities markets that are referred to it by the Government or the Ministry of Economy.

The 1998 Law Reforming the Securities Market Law² changed the previous composition of the Advisory Committee, which included only representatives of the members of the stock markets, with a maximum limit of ten persons³, plus a representative of each of the autonomous regions that have devolved powers over securities markets and in whose territory there is a stock exchange. In accordance with the aforementioned Law, the Advisory Committee is now composed of representatives of the issuers, investors and members of all the official secondary markets, whose number must be established by regulation (it was finally set at fourteen). In addition, there is one representative of each of the autonomous regions with jurisdiction over securities markets and in whose territory there is an official secondary market. The Advisory Committee is chaired by the Vice-President of the CNMV, who does not have a vote.

The regulatory implementation of the Advisory Committee regulation was enacted by Royal Decree 504/2003, dated 2 May 2003. Accordingly, the market members have six representatives, the issuers have four and the investors have four. These representatives must fulfil the requirements of fitness and properness and have proven knowledge and experience in matters relating to the securities markets. Their term is four years, but they may be removed for failure to perform their duties or comply with the requirements that led to their appointment.

The representatives of the market members, issuers and investors may be designated directly, by a vote of the members of each group, or indirectly, through designation by the representative associations of these groups. In the case of representatives of certain investors (insurance companies, pension funds and collective investment schemes), the indirect method has preference.

¹ This body was created by Securities Market Law 24/1988, dated 28 July.

² Law 37/1998, dated 16 November, reforming Securities Market Law 24/1988, dated 28 July.

³ This figure does not include representatives of the autonomous regions.

Annex 1

Composition of the CNMV Board

President:	Blas Calzada Terrados
Vice-President:	Juan Jesús Roldan Fernández
Commissioners:	Belén Romana García ¹¹ Gonzalo Gil García Soledad Plaza y Jabat Juan Junquera González Luis Perezagua Clamagirand
Secretary:	José María Garrido García

Annex 2

Composition of the CNMV Executive Committee¹²

President:	Blas Calzada Terrados
Vice-President:	Juan Jesús Roldan Fernández
Commissioners:	Soledad Plaza y Jabat Juan Junquera González Luis Perezagua Clamagirand
Secretary:	José María Garrido García

¹¹ Replaced Gloria Hernández García as Director-General of Treasury and Finance, appointed by Royal Decree 910/2003, dated 11 July.

¹² The creation, constitution and functions of the Executive Committee are regulated by Article 18 of Securities Market Law 24/1988, dated 28 July, as amended by Law 44/2002, dated 22 November, on Measures to Reform the Financial System.

Annex 3

Composition of the CNMV Advisory Committee¹³

President: Juan Jesús Roldán Fernández.
Secretary: José María Garrido García.

Representatives

Issuers: Jesús López-Brea y López de Rodas.
Javier López Madrid.
Carlos Cerón Bombín.

Investors: Enrique Goñi Beltrán de Garizurieta.
Javier Tribó Boixareu.

Market members:
Sebastián Albella Amigo
Gregorio Arranz Pumar.
Jorge Bergareche Busquet.
Ignacio Gómez Sancha.

Consumers and Users Council:
Jorge Caminero Rodríguez.

Autonomous regions:

Valencian Government
José Manuel Uncio Lacasa.

Catalan Government
Sadurní Anfosso i Borrell

Basque Government
Juan Miguel Bilbao Garai.

Alternative Representatives

Issuers: David Herrero García.
Luis Felipe Marcos García.

Investors: Luis Munárriz Moreno.
José Palomeras Pagés.

Market members:
Juan Luis Muñoz Pardo.
José María Ramírez Núñez de Prado.
Jaime Aguilar Fernández-Hontoria.
José Antonio de Bonilla y Moreno.

¹³ CNMV Board resolution on 25 March 2002.

Consumers and Users Council:

Manuel Pardos Vicente.

Autonomous regions:

Valencian Government:

Javier Gomar Parra.

Catalan Government:

Josep María Sánchez i Pascual¹⁴.

Basque Government:

Miguel Bengoechea Romero.

¹⁴ Replaces Jaume Piera i Llovera. Notification to the General-Directorate of Finance by the Department of Economy and Finance of the Catalan Government on 18 December 2002.

Annex 4

CNMV Directors

<i>Directorate-General of Markets and Investors:</i>	Angel Benito Benito
Primary Markets:	Carlos Lázaro Recacha
Secondary Markets:	Antonio Mas Sirvent
Investor Affairs:	Elena Brito Alonso
<i>Directorate-General of Securities Market Participants:</i>	Sol Hernández Olmo
Authorisation and Registration:	Antonio Moreno Espejo
Supervision:	M ^a José Gómez Yubero
<i>Directorate-General of Legal Affairs and Secretary to the Board:</i>	José María Garrido García
Legal Counsel and Deputy Secretary to the Board:	Javier Rodríguez Pellitero
Litigation and Enforcement:	Silvia García Malsipica ¹⁵
<i>Directorates:</i>	
Director attached to the President:	Rafael Sánchez de la Peña
Research and Statistics:	M ^a Nieves García Santos
International Relations:	Juan Carlos Recoder Casso
Information Systems:	Javier Nozal Millán
General Secretariat:	Salvador Meca Gómez
Internal Control:	Margarita García Muñoz

¹⁵ Appointed, at the suggestion of the CNMV President, by Board resolution on 31 March 2004.

Annex 5

Structure of the Comisión Nacional del Mercado de Valores

	DIRECTORATES GENERAL	DIRECTORATES	FUNCTIONS
BOARD	Directorate-General of Securities Market Participants	Directorate of Authorisation and Registration	Authorisation of investment services firms, collective investment schemes and venture capital firms. Registration.
		Directorate of Supervision	Supervision, inspection and intervention in registered entities (investment services firms, collective investment schemes and venture capital firms).
	Directorate-General of Markets and Investors	Directorate of Primary Markets	Security issues, public offerings and listings. Significant holdings and own shares at listed companies. Takeovers. Supervision of financial reporting and auditing of listed companies ¹ .
		Directorate of Secondary Markets	Supervision of secondary markets. Reporting of significant events to the market. Exclusion from, and suspension of, trading.
		Directorate of Investors	Provision of information to investors. Investor education.
		Directorate of Financial and Accounting Reports¹	Development of matters attributed to the CNMV in relation to the auditing and accounting of listed companies. Supervision of financial reporting and auditing of listed companies.
	Directorate-General of Legal Affairs	Legal Counsel Directorate	Legal advice to CNMV governing and management bodies. Legal reports on draft regulations and on matters submitted to the CNMV Board or Executive Committee.
		Directorate of Litigation and Enforcement	Litigation. Implementation of disciplinary proceedings and formulation of draft resolutions.
		Directorate attached to the President	Market budgets, members and administrators. Advice on accounting regulations. Analysis of EU and international policy on securities markets.
		Directorate of Research and Statistics	Annual Reports on the activities of the CNMV and the situation of the securities markets. Studies and Reports on the securities markets. Preparation and updating of CNMV statistics. Promotion and distribution of CNMV publications.

BOARD		Directorate of International Relations	Coordination of the CNMV's participation in international bodies and programmes. Advice on matters regarding international relations. Monitoring EU directives and regulations.
		Directorate of Information Systems	Planning and management of the CNMV information services. Design, programming, implementation and maintenance of the Commission' IT applications. Technical assistance to CNMV units. Management of NSNA.
		General Secretariat	Administration. Economic and human resources management. Official registries. Internal procedures. Claims service ² .
EXECUTIVE COMMITTEE		Directorate of Internal Control	Provision of information to the Executive Committee regarding the compliance, speed and suitability of the internal procedures. Drafting the report on control for inclusion in the annual report on supervision. Control and verification of the correct application of internal procedures.

¹ In accordance with Transitory Provision Three of the Internal Regulation, the Directorate of Financial and Accounting Reports will become operational once the CNMV assumes full powers over auditing and accounting of listed companies. In the meantime, the supervision of these companies' financial reporting and audits is the responsibility of the Directorate of Primary Markets.

² Transitory Disposition One of the Internal Regulation attributes this Service to the General Secretariat, until the Commissioner for Investor Protection commences to operate. The Spanish Cabinet has already implemented the regulation for this body through Royal Decree 303/2004, dated 20 February, approving the Regulation for the Commissioner for the Protection of Financial Services Customers. That regulation will come into force four months after its publication in the Official State Gazette.

2. Secondary markets

The CNMV's actions respond to the three basic principles governing its supervisory function: transparency, correct security price formation, and investor protection. In compliance with article 13 of the Securities Market Law, the CNMV monitors the secondary markets and the individuals and legal entities that participate in them, and disseminates all the information about securities issuers that is necessary so that investment decisions are well-founded and are made in equitable conditions with respect to other investors.

Secondary market regulations are currently undergoing a major review in the European Union, creating a new supervisory challenge. In 2003, the Market Abuse Directive and three level 2 implementing measures were approved, while progress continued in other major projects including the Financial Instruments Markets Directive and Transparency Directive (see chapter 9¹).

The supervisory function must also adapt to the new financial market conditions, characterised by increased competition in trading and in clearing and settlement systems. The main actions in the Spanish and international markets in 2003 are described in the section on temporary suspensions and delistings and in the annex relating to this chapter.

Securities market activity

The Spanish stock market followed the bullish trend set by the principal international markets after three consecutive years of losses. The Ibex-35 index gained 28.2% in 2003, more than most European stock markets. The equity index rally was practically continuous between April and 2003 year-end (see next box). That performance was reflected in the significant decline in stock market volatility with respect to 2002.

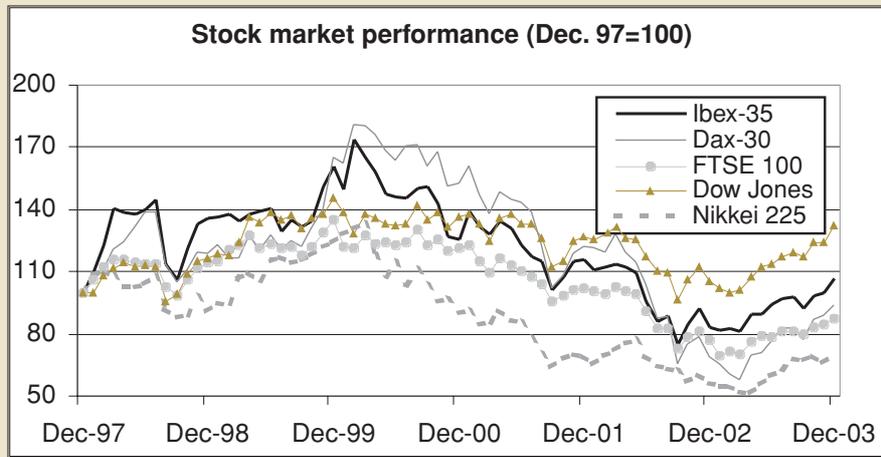
Stock market performance in 2003

The main international stock markets recovered in 2003 due to the signs of economic recovery, especially in the US and Japan, improved corporate earnings, and because the war in Iraq ended ahead of schedule. There were significant gains in both the US (the Dow Jones index rose by 25.3% and Nasdaq by 50%) and Japan (the Nikkei index gained 24.5%).

In Europe, the gains were slightly more modest due to the uncertainty about economic recovery and the euro's strength, which was more pronounced in the latter part of the year. The EuroStoxx-50 index gained 15.7% and the main European equity indexes increased by 10%-16%, except for Germany's Dax-30, which gained 37.1% as a result of the correction of higher relative losses in 2002 (-43.9%).

¹ See, also, the box about the Transparency Directive in chapter 3.

The Spanish stock market again outperformed its European counterparts due to faster economic growth in Spain. The IGBM (Madrid Stock Exchange General Index) gained 27.4% in 2003. All the sectors gained except for Consumer Goods, which was influenced by one textile company's performance. The largest gainers were Communications & Information Services (44.5%), Capital & Intermediate Goods (29.6%), Construction (25.4%) and Energy (25.0%).



Trading in the secondary markets supervised by the CNMV increased considerably in 2003 (see table 2.1). Equity trading in SIBE (Spain's electronic market), which concentrates 86% of stock market trading, increased by 11.3% to 489.3 billion euros. Trading in fixed-income securities, especially those listed on AIAF, also rose; 35% of that increase was linked to new AIAF listings. Commercial paper continued to be the most traded instrument, especially in repos, although trading in asset-backed bonds, non-convertible bonds and mortgage bonds grew fastest in 2003. Conversely, trading in matador bonds and asset-backed commercial paper was lower than in 2002. The increase in trading in fixed-income securities on the stock exchange was more moderate. Catalunya regional government bond issues continued to represent the bulk of this segment (nearly 90%).

Warrant trading on the platform opened in November 2002 increased by 27.8% although the amount continued to be small compared to the total stock market. That platform has provided flexibility and quality in warrant trading, boosting investor participation. The largest trading volumes were concentrated in warrants issued by a single institution², although other issuers gained some market share during the year. The most traded underlying security of those contracts were the Ibex-35 (26%) and individual stocks (68% combined).

Trading in derivatives on MEFF declined 22.5% in terms of MEFF contracts. Trading in derivatives on individual shares decreased by nearly 24% due to lower volatility in the spot market, although those contracts continued to concentrate the bulk of MEFF trading (86%). Trading in products pegged to the Ibex-35 fell (-12.3%) as a result of lower option activity. In addition to lower volatility in the stock market, that performance was also due to increased competition from products on pan-European equity indexes traded in other markets.

Trading in contracts on fixed-income continued falling, to practically marginal volumes (under 1,400 contracts). Since the euro's introduction in 1999, European interest rate contracts have been concentrated in the German Eurex market.

² Société Générale.

Trading via MEFF in products listed in other markets increased by 24.6% in 2003, reflecting the shift in derivatives trading towards other markets. The number of contracts traded via EuroMEFF far exceeded 5 million and trading was concentrated mainly in interest rate derivatives traded on Eurex (nearly 2.9 million contracts) and DJ EuroStoxx-50 futures traded on Monep and Eurex (1.9 million contracts).

Table 2.1

Trading in the secondary and derivatives markets supervised by the CNMV

	Trading ⁽¹⁾		
	2002	2003	Change (%)
Markets	516,075.8	570,552.3	10.6
Equities	444,935.5	495,493.9	11.4
SIBE	439,715.3	489,307.3	11.3
Open outcry	4,972.9	4,444.7	-10.6
<i>of which SIM/SIMCAV</i>	4,418.9	3,932.1	-11.0
Second market	17.9	13.3	-25.5
Latibex	229.5	1,728.6	653.1
Fixed-income	69,813.6	73,362.7	5.1
Electronic market	719.7	658.7	-8.5
Open outcry	69,093.9	72,704.0	5.2
<i>of which regional government debt</i>	68,785.9	71,948.3	4.6
Warrants⁽²⁾	1,326.6	1,695.7	27.8
AIAF- Fixed-income	239,625.2	330,900.9	38.1
Commercial paper	204,877.3	261,525.8	27.6
Asset-backed bonds	34,747.9	69,375.1	99.7
Debentures, bonds and mortgage bonds	21,540.2	45,894.4	113.1
Matador bonds	3,802.0	3,402.6	-10.5
MEFF- Derivatives	35,907.7	27,824.1	-22.5
Interest rate contracts	54.4	1.4	-97.5
Ibex-35 and S&P index contracts	4,506.8	3,951.2	-12.3
Share contracts	31,346.4	23,871.6	-23.8
<i>Intermediation activity (EuroMEFF)⁽³⁾</i>	<i>4,198.9</i>	<i>5,233.6</i>	<i>24.6</i>

⁽¹⁾ Bourses and AIAF: Million euros. MEFF: Thousands of contracts.

⁽²⁾ Since 11/11/02, warrants and certificates are traded in a specific new segment of the electronic market.

⁽³⁾ Trading of products listed on other European markets, which MEFF members and customers can access via the securities company, MEFF Euroservices, S.V. (EuroMEFF).

Table 2.2

Issuers in the secondary and derivatives markets supervised by the CNMV

	No. of issuers*		
	2002	2003	Change (%)
Markets			
Equities			
SIBE	141	132	-6.4
Open outcry	2,860	3,053	6.7
<i>of which SIM/SIMCAV</i>	2,749	2,988	8.7
Second market	24	22	-8.3
Latibex	23	27	17.4
Equities excluding SIM/SIMCAV	299	243	-18.7
Fixed-income			
Electronic market	56	52	-7.1
Open outcry	19	19	0.0
<i>of which regional government debt</i>	3	3	0.0
Warrants	13	13	0.0
AIAF			
Commercial paper	50	58	16.0
Debentures and bonds	172	224	30.2
Mortgage bonds	8	10	25.0
Matador bonds	25	22	-12.0

* At 31 December.

Supervision of secondary markets

In 2003, the members of the markets supervised by the CNMV performed over 18 million transactions; the bulk (14 million) corresponded to equity transactions (see table 2.3 and 2.4). The transactions executed in the markets led to 38,000 supervisory signals³, which were analysed by the Directorate of Secondary Markets; a total of 482 subpoenas were sent to intermediaries and securities issuers. The subpoenas sent to the issuers were mainly to request disclosure of significant events.

Table 2.3
Summary of supervisory activity. 2003

	Equities	Fixed-income	Derivatives	Total
Supervisory signals ⁽¹⁾	30,379	3,906	3,703	37,988
Subpoenas	428	40	14	482
Supervision reports	163	38	46	247
Reports sent to other Directorates and bodies	50	1	20	71

⁽¹⁾ Signals that identify transactions or groups of transactions in which there have been unusual movements in certain parameters in order to analyse them for supervisory purposes.

The supervisory function was also manifested in the drafting of nearly 250 supervision reports, some of which were sent to other CNMV Directorates, mainly the Market Monitoring Unit and the Directorate of Supervision, and to other bodies for investigation and, where appropriate, penalties, adoption of pertinent corrective measures and drafting of appropriate recommendations.

Table 2.4
Members of the clearing and settlement markets and systems

Market	Number
Stock exchanges	64
Madrid stock market	53
Barcelona stock market	35
Valencia stock market	18
Bilbao stock market	7
Latibex ⁽¹⁾	1
AIAF	92
Specialists ⁽²⁾	17
MEFF Renta Variable	121
Custodians	53
Clearing members	46
Traders	22
MEFF Renta Fija	137
Custodians	58
Clearing members	27
Custodian clearing members	16
Non-trader custodian clearing members	1
Traders	35
Iberclear⁽³⁾	261
Stock exchanges	106
Latibex	91
AIAF	92
Book-entry public debt market	217

Source: CNMV and Iberclear.

⁽¹⁾ Remote member.

⁽²⁾ Members specialising in trading with specialist intermediary-broker systems.

⁽³⁾ Members of Sociedad de Gestión de los Sistemas de Registro, Compensación y Liquidación de Valores (Iberclear). The total is lower than the sum of the number of clearing members in the various markets since many entities provide service in more than one market.

³ Supervisory signals identify individual transactions or groups of transactions in which there have been unusual movements in certain parameters, such as prices and volumes. The Directorate of Secondary Markets analyses the transactions that have been signalled to check whether or not they conform to accepted practices.

Disclosure of significant events

The CNMV received a total of 6,425 disclosures of significant events in 2003, 46% higher than in 2002. Although the number of disclosures increased in all categories (see table 2.5), the main increases were in disclosures of issuers' advance results, presentations on companies and periodical reporting by asset-backed funds. There were also new disclosures about the Audit Committees that listed companies are obliged to file by the Finance Law⁴.

The larger number of disclosures was due to notices of shareholders' meetings and resolutions adopted by them, periodical disclosures by asset-backed funds, and issuers' results. All the disclosures were published and are available on the CNMV's web site⁵.

Table 2.5
Significant events and other disclosures received at the CNMV

Type	2002	2003
Significant events	3,041	4,887
Acquisitions or transfer of holdings	255	279
Notices and resolutions of shareholders' meetings	511	602
Issuers' advance results	92	225
Changes in the Board or other governing bodies	269	264
Audit Committee (Law 44/2002)	0	431
Periodical disclosure by asset-backed funds	184	405
Periodical disclosure by mortgage-backed funds	560	678
Suspensions and resumption of trading	163	154
Delistings (including prior agreements)	73	113
Other	934	1,736
Other disclosures	1,367	1,538
Announcement of coupon and dividend payments	292	277
Information about issuers' results	507	557
Presentations about companies	75	132
Other	493	572
Total	4,408	6,425

General features of secondary market supervision

Measures to improve the preference share segment

Activity in the preference share segment on the AIAF market increased considerably in 2003 mainly because it has established itself as a target of retail investment. The CNMV believed it was important to improve the price formation and disclosure mechanisms in view of the differences in prices offered to customers by the various entities. For that purpose, the CNMV created a work group with AIAF which, *inter alia*, is considering publishing prices on its web site.

⁴ See chapter 3 ("Periodic disclosure by listed companies").

⁵ The most recent disclosures of significant information, of the same day and since the close of the previous market session are published on www.cnmv.es, section "CNMV al día - Hechos relevantes del día" ("Latest developments- Significant events today"). Previous disclosures can be viewed in section "Consultas a los registros oficiales - hechos relevantes" ("Official Registers - Significant events").

New trading segment for warrants, certificates and other products

The CNMV closely monitored the specific trading platform for warrants, certificates and other products in its first year, especially the factors affecting retail investors (price formation and disclosure, liquidity, and product suitability). Some problems were detected regarding price formation, including a lack of convergence among warrants with similar characteristics, which led the CNMV to work with Sociedad de Bolsas and issuers so as to give them an appropriate solution and improve the information offered to investors.

Level 2 implementing measures for the Market Abuse Directive¹

With the advice of the Committee of European Securities Regulators (CESR), the European Commission is working on level 2 measures to implement and specify some of the items covered by the Market Abuse Directive. Some level 2 measures were already approved in 2003 (see next box and chapter 9 on Regulation). Other measures are being studied, including those implementing "accepted market practices" and the restriction of own share transactions by executives and directors.

The Market Abuse Directive refers to "accepted market practices" when it envisages the possibility of not penalising a person whose behaviour may constitute market manipulation if he/she proves that his/her action responded to legitimate interests and conformed to "accepted market practices". The Directive defines those practices as those "that are reasonably expected in one or more financial markets and are accepted by the competent authority..." The level 2 regulations will establish the factors and basic principles for determining what can be considered as market practices and the procedures that the supervisory bodies must follow in order to determine their acceptability.

The current draft emphasises that market practices should not have a negative effect on the free interplay of supply and demand and that they should be transparent and favour security liquidity and market efficiency. Regarding the procedures for the supervisory body to determine whether or not the practices are acceptable, the draft states that it is necessary to provide the market with appropriate information about the decision adopted and the grounds for that decision. Nevertheless, a thorough list of accepted practices will not be established, so each country may set more specific factors and criteria for the regulator.

Another obligation envisaged in the Market Abuse Directive is that issuers must draw up a list of persons who work for them, whether on a regular or occasional basis, with access to inside information. The level 2 regulations are developing this area. One of the items in the latest working document² is that permanently limiting the transactions that can be performed by the persons stated in the insider list (including members of the administrative, management or supervisory bodies of the issuer) could make it difficult to transact with shares of the company in which they carry out their professional activity. Therefore, the possibility of a transparency mechanism is being studied that would enable those persons to transact with shares of the company without contravening the insider dealing rules.

¹ Directive 2003/6 of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation (market abuse).

² Directorate-General Internal Market, Working Document 38/2003 on the implementation of article 1, paragraphs 1 and 2, and article 6, paragraphs 3, 4 and 9 of the European Parliament and Council Directive, 10 November 2003.

Financial analysts' conflicts of interest: European Commission initiative

Analysts' activity has soared in the last few years but there has been very little specific regulation to date. The Market Abuse Directive, published in January 2003, expresses the need to guarantee the diligence of the people who conduct or disclose research about financial instruments so that the information is presented appropriately to investors and that those people disclose their interest or conflicts of interest regarding the information they provide.

To facilitate implementation of the provisions of the Market Abuse Directive, a new Commission Directive¹ was published in December 2003 as regards the fair presentation of investment recommendations and the disclosure of conflicts of interest. That regulation establishes very harsh measures to guarantee the fairness, probity and integrity of the persons who produce recommendations about securities and disclose them to the market.

That level 2 Directive establishes that investment recommendations must be explicit (buy, sell, hold, etc.), their presentation and disclosure must be clear and accurate, and the identity of the producer of the recommendations, his/her conduct of business rules and the identity of his/her competent supervisory authority must be disclosed. The obligation to disclose potential conflicts is highlighted especially in the cases where the person has a financial interest in the instruments to which the recommendation refers or any other type of conflict with respect to an issuer to which the recommendation relates.

¹ Commission Directive 2003/125 of 22 December 2003 implementing Directive 2003/6 of the European Parliament and of the Council as regards the fair presentation of investment recommendations and the disclosure of conflicts of interest.

Code of conduct for non-profit organisations regarding temporary investments

Non-profit organisations have increased their investments in financial markets in recent years to optimise the returns on the cash that they manage. To ensure that their participation in financial markets conforms to their purposes, the Finance Law¹ entrusted the CNMV with regulating this matter in its supervisory scope. In compliance with that mandate, in November the CNMV² approved a Code of Conduct containing specific rules for non-profit organisations regarding temporary financial investments³.

The Code establishes a set of principles and recommendations regarding temporary financial investments:

- establish investment selection and management systems in proportion to the volume and nature of the temporary financial investments;
- select investments based on security, liquidity and profitability;
- diversify risks and invest in securities or financial instruments traded on official secondary markets to preserve liquidity;
- avoid transactions that are merely speculative.

The principle of transparency was also established in the Code. Specifically, the governing, administration and management bodies of non-profit organisations must specify any transactions in which they have departed from the recommendations, explaining the reasons, and present an annual report on the degree of compliance with the Code.

¹ Additional Provision Three of Law 44/2002, dated 22 December, on Measures to Reform the Financial System.

² CNMV Board resolution dated 20 November 2003, which approved the Code of Conduct for non-profit organisations regarding temporary investments.

³ The scope of application of this Code of Conduct includes the following: foundations, associations, professional associations, job creation funds, mutual insurance companies and welfare mutual funds.

Temporary suspensions and delistings

In 2003, there were 80 cases of temporary suspension of trading, affecting 50 issuers. The most frequent cause of suspension continued to be the disclosure of significant information. The number of suspensions for that reason increased by 42% with respect to 2002 but there was a clear downward trend in the suspension period, so that there are now more suspensions of less than one day.

Table 2.6
Temporary suspensions of trading

	2002	2003
Number of issuers suspended	49	50
Number of suspensions	69	80
Presentation of tender offer	14	9
Disclosure of significant events	43	61
Expiry of period for acceptance of delisting offers	5	3
Other	7	7

In 2003, delistings increased significantly, rising 91% to a total of 67 companies, mainly traded in the outcry system. There were several reasons for the delistings: mergers, delisting offers, withdrawal from the Mercantile Register and the Official SIM/SIMCAV Registers in the CNMV and by decision of the regional governments (see table 2.7). The number of delistings at the companies' own initiative increased considerably⁶. Most of the delistings were processed by the CNMV through the intermediate procedure⁷ in order to expedite the delistings of companies with very concentrated capital and low liquidity while guaranteeing an appropriate exit strategy for minority shareholders in all cases.

⁶ In 2003, 14 companies applied to the CNMV to delist; in 2003, 4 companies were delisted for that reason. Some of the delistings by decision of the regional governments were also for that reason.

⁷ The intermediate procedure eliminates the obligation to make a delisting tender offer. The company requests delisting from the CNMV after approval by the Shareholders' Meeting. That decision is made public through a significant event disclosure and publication in the Official State Gazette (BOE). The CNMV decides whether to approve the delisting after reviewing shareholders' pleadings. In order to provide minority shareholders with an exit, the CNMV requires issuers to maintain a buy order until the delisting materialises. The CNMV analyses the purchase price in line with the criteria for approving delisting tender offers. The agreed price is disclosed to the market as a significant event.

Table 2.7
Delistings in 2003

Company	Market	Reason	Date
Ibérica de Autopistas	EM	Delisting	30-01-03
Mapfre Vida de Seguros y Reaseguros	EM	Delisting	03-02-03
Koipe	EM	Technical: merger	24-02-03
Enaco	EM	Intermediate procedure	18-03-03
Banco Finantia Sofinloc	EM	Intermediate procedure	18-03-03
Uniland Cementera	EM	Delisting	08-05-03
Aurea, Concesiones de Infraestructuras	EM	Technical: merger	02-06-03
Banco Zaragozano	EM	Intermediate procedure	20-11-03
Bami	EM	Technical: merger	24-11-03
Grupo Dragados	EM	Technical: merger	15-12-03
Energía e Industrias Aragonesas	EM	Technical: merger	22-12-03
Inversiones Ibersuizas	OOM	Intermediate procedure	09-01-03
La Unión Resinera Española	OOM	Intermediate procedure	09-01-03
Finanzas y Patrimonios, Simcav	OOM	Continues to be listed on other markets ⁽¹⁾	15-01-03
Hawass Investment	OOM	Technical: withdrawal from the Mercantile Register	29-01-03
Zeleta de Inversiones	OOM	Technical: withdrawal from the SIM/SIMCAV Register	11-02-03
Renfila	OOM	Intermediate procedure	12-02-03
Novamer, Sim (in liquidation)	OOM	Technical: withdrawal from the Mercantile Register	18-02-03
Carteras Reunidas	OOM	Intermediate procedure	11-03-03
Manufacturas de Estambre	OOM	Delisted by the Valencia regional government	12-03-03
Hie de Inversiones, Simcav	OOM	Continues to be listed on other markets ⁽¹⁾	18-03-03
Casgo	OOM	Delisted by the Basque regional government	04-04-03
Sociedad de Admón. de Valores Mobiliarios	OOM	Delisted by the Basque regional government	04-04-03
Secure Inversiones, Simcav	OOM	Technical: withdrawal from the SIM/SIMCAV Register	24-04-03
Silla Inversiones Simcav	OOM	Continues to be listed on other markets ⁽²⁾	25-04-03
Sirval	OOM	Technical: withdrawal from the SIM/SIMCAV Register	02-05-03
Inversiones Verma 21	OOM	Technical: withdrawal from the SIM/SIMCAV Register	14-05-03
Pascual Hermanos	OOM	Intermediate procedure	15-05-03
Inversiones Villa De Paris I	OOM	Technical: merger.	29-05-03
Blue Chip Inversiones	OOM	Technical: withdrawal from the SIM/SIMCAV Register	04-06-03
Compañía Trasmediterránea Frigoríficos de Vigo	OOM	Intermediate procedure	23-06-03
	OOM	Delisted by the Basque regional government	24-06-03
Eurostar Activos	OOM	Technical: withdrawal from the Mercantile Register	08-07-03
Inmobiliaria Barrio de Bilbao	OOM	Delisted by the Catalunya regional government	22-07-03
Eguaras	OOM	Delisted by the Catalunya regional government	22-07-03
Almacenes Generales Internacionales	OOM	Intermediate procedure	01-08-03
Increcisa	OOM	Intermediate procedure	01-08-03

Company	Market	Reason	Date
Armando Álvarez	OOM	Intermediate procedure	01-08-03
Finex	OOM	Delisted by the Valencia regional government	01-08-03
Daltar	OOM	Intermediate procedure	05-08-03
Inversions Puigcerda 2000	OOM	Technical: withdrawal from the SIM/SIMCAV Register	09-09-03
Inversora Condal	OOM	Delisted by the Catalunya regional government	15-09-03
Gorbea	OOM	Delisted by the Basque regional government	15-09-03
Viuda de Gastelurrutia-Forjas de Bérriz	OOM	Delisted by the Basque regional government	17-09-03
Retsa Inversiones	OOM	Technical: withdrawal from the SIM/SIMCAV Register	17-09-03
Arinver 2000	OOM	Technical: withdrawal from the SIM/SIMCAV Register	01-10-03
Inversiones Filvos	OOM	Technical: withdrawal from the SIM/SIMCAV Register	06-10-03
Parque Independencia	OOM	Technical: withdrawal from the SIM/SIMCAV Register	24-10-03
Cartera Extramun, Simcav	OOM	Continues to be listed on other markets ⁽³⁾	06-11-03
Carhebape 1	OOM	Technical: withdrawal from the SIM/SIMCAV Register	11-11-03
Financiera Bansander	OOM	Technical: merger	17-11-03
Central de Inversiones en Valores	OOM	Technical: merger	17-11-03
Norteña de Valores	OOM	Technical: merger	17-11-03
Bansaliber	OOM	Technical: merger	17-11-03
Xaroa	OOM	Delisted by the Valencia regional government	20-11-03
Ubs Selección Crecimiento	OOM	Technical: withdrawal from the Mercantile Register	24-11-03
M.S.P. Eurogestión Bolsa	OOM	Technical: merger	04-12-03
Invercella Actius Mobiliaris	OOM	Technical: merger	04-12-03
Zona Euro 3d	OOM	Technical: merger	04-12-03
Boracmo	OOM	Technical: merger	04-12-03
Brokreus	OOM	Technical: merger	04-12-03
Ibertubo	OOM	Delisted by the Basque regional government	30-12-03
Davmes, Simcav	OOM	Technical: withdrawal from the SIM/SIMCAV Register	30-12-03
Mejana, Simcav	OOM	Technical: withdrawal from the SIM/SIMCAV Register	30-12-03
Grucycsa	OOM	Intermediate procedure	30-12-03
Sansemisa, Simcav	OOM	Technical: withdrawal from the SIM/SIMCAV Register	30-12-03
Hilaturas Vera	Second Market	Delisted by the Catalunya regional government	24-11-03

EM: Electronic Market.

OOM: Open Outcry Market.

⁽¹⁾ Delisted from the Bilbao Stock Exchange, continues to be listed on the Madrid Stock Exchange.

⁽²⁾ Delisted from the Bilbao Stock Exchange, continues to be listed on the Valencia Stock Exchange.

⁽³⁾ Delisted from the Valencia Stock Exchange, continues to be listed on the Barcelona Stock Exchange.

Initiatives of the Spanish markets⁸

In 2003, significant strides were made in the process to integrate markets and clearing and settlement systems. The process to restructure the ownership of the market holding company (Bolsas y Mercados Españoles, S.A.) was completed; also, Sociedad de Gestión de los Sistemas de Registro, Compensación y Liquidación de Valores (Iberclear) was formally incorporated and assumed the functions of Sistema de Compensación y Liquidación de Valores (SCLV) and Central de Anotaciones de Deuda del Estado (CADE). Another new feature in 2003 was the authorisation of an olive oil futures market.

Bolsas y Mercados Españoles, Sociedad Holding de Mercados y Sistemas Financieros, S.A.

In 2003, Bolsas y Mercados Españoles (BME), which comprises the Spanish stock exchange management companies and the registration, clearing and settlement systems⁹, completed the consolidation of its ownership structure. In January, the holding company acquired the shares of the then Servicio de Compensación y Liquidación de Valores (SCLV)¹⁰ owned by the four Spanish stock exchange management companies. In September, the acquisition of all the shares of the companies comprising the group was completed through the transfer of the Bank of Spain's remaining minority stake in Sociedad de Gestión de los Sistemas de Registro, Compensación y Liquidación de Valores, S.A. (Iberclear). As a result, the Bank of Spain became a shareholder of the holding company (BME).

The completion of the ownership restructuring of the Spanish markets and clearing and settlement systems will enable BME to meet the objectives for which it was created in 2002, namely to enhance overall efficiency and to strengthen its competitive position in the European Union.

Sociedad de Gestión de los Sistemas de Registro, Compensación y Liquidación de Valores, S.A. (Iberclear)

On 1 April 2003, Iberclear assumed the securities registration, clearing and settlement functions of the SCLV and Central de Anotaciones de Deuda del Estado (CADE), the latter managed until then by the Bank of Spain.

Iberclear's new functions required the Economy Ministry's approval of a Regulation containing the rules on factors such as the company's operating regime, the services it provides, its economic regime, pricing procedures and disclosures, conditions and principles for the provision of services, and the legal regime of its members. The main features are described in the next box, although it should be noted that the approved Regulation is provisional.

⁸ The initiatives of international markets are described in this chapter's annex.

⁹ Bolsas y Mercados Españoles comprises the management companies of the Madrid, Barcelona, Bilbao and Valencia Stock Exchanges, MEFF-AIAF-SENAF Holding de Mercados Financieros, S.A., FC&M Sociedad Rectora del Mercado de Futuros y Opciones sobre Cítricos and Iberclear.

¹⁰ Since 1 April 2003, the functions of SCLV have been assumed by Sociedad de Gestión de los Sistemas de Registro, Compensación y Liquidación de Valores, S.A. (Iberclear).

Regulation of Sociedad de Sistemas de Registro, Compensación y Liquidación de Valores, S.A. (Iberclear)*

The Iberclear Regulation includes the following provisions:

- The company's annual budget must observe the principles of financial balance, coverage of costs of services to users and returns on equity.
- The CNMV may impose changes in prices or commissions when they are contrary to the principle of financial balance, when their application alters clearing and settlement, or when they discriminate unjustifiably between users.
- An audit report must be sent to the CNMV for review and to make any recommendations it deems necessary, without prejudice to its other powers in accordance with current legislation.
- Equity must be sufficient to finance the permanent assets and investments that are necessary for the corporate purpose. The book value of equity must be higher than debt.
- A CNMV authorisation is required in order to reduce capital through capital refunds.

* ECO/689/2003 Order, dated 27 March, which approves the Regulation of Sociedad de Gestión de los Sistemas de Registro, Compensación y Liquidación de Valores.

MEFF

One of the principal new operating features was the inclusion of a new category of member in the equities segment: proprietary trading members. They have two basic features: they can operate only for their own account and they generally have less equity. Moreover, they do not have to be incorporated as investment service firms or as credit institutions although they must adopt a legal form under mercantile law that provides them with their own legal personality and capacity to trade for their own account. By introducing proprietary trading members, MEFF's objective is to provide greater depth and liquidity in all contracts as in other markets where this type of member is already operating.

Another new feature at MEFF was the introduction of the central counterparty for fixed-income instruments. On 1 July 2003, after a favourable report by the CNMV, the Economy Ministry authorised MEFF Sociedad Rectora de Productos Financieros Derivados de Renta Fija, S.A. to become a central counterparty for the public debt repo and spot market (MEFFClear). The request by MEFF Renta Fija was presented under the amendments introduced by Law 44/2002 on Measures to Reform the Financial System.

The central counterparty basically acts as an intermediate party between a securities buyer and seller, i.e. it acts as a buyer with respect to the seller and vice versa. The counterparty takes on the obligations arising from members' participation in the securities clearing and settlement systems, thus eliminating counterparty risk in the transactions.

MEFFClear commenced activity in September 2003 with public debt repos traded in Sistema Electrónico de Negociación de Activos Financieros (SENAF), although the counterparty service is also planned to cover public debt spot trades in both the OTC market and other trading platforms.

There were also two other additional measures with respect to MEFV Renta Variable: its Regulation was adapted to enable non-resident entities to become clearing members, and the general conditions of its contracts were amended in terms of the methods of adjustment for capital transactions.

Authorisation of the olive oil futures market (MFAO)

In November 2003, at the suggestion of the CNMV, the Spanish Cabinet authorised the creation of an olive oil futures market, approved its Regulation, and acknowledged the clearing and settlement house. That market will be governed by MFAO, Sociedad Rectora del Mercado de Futuros del Aceite de Oliva, S.A., which was incorporated in December. It is the first market in the world to trade in olive oil derivatives.

MFAO commenced operations on 6 February 2004. Trading began in futures contracts for one tonne of minimum quality lampante virgin olive oil. The contracts mature six times a year, in odd months. Settlement at maturity is by physical delivery of the product and there are also daily profit and loss settlements by differences with respect to the previous settlement price. A distinguishing feature of this market is that it admits industrial members; non-financial firms related to this sector can trade for their own account provided that they meet the solvency, specialisation and professionalism requirements established by the CNMV¹¹.

Securities clearing and settlement

In 2003, the percentage of sales settled after their theoretical date¹² declined considerably due partly to the introduction of the second daily settlement cycle on 24 March 2003, which increased the period available to support trades. That term was extended as from 1 March 2004¹³. As a result, penalties against members declined and the amount of the centralised securities loan required for past-due sales also decreased.

Two features of the settlement system were amended. In October, a new bilateral settlement cycle was introduced solely for settling the economic and financial transactions accrued by securities in the stock market, simplifying the operating procedures. In November, in order to further improve the system, the reduction of the repurchase term from D+5 to D+4 was approved; it came into force on 1 March 2004.

The formal incorporation of Sociedad de Gestión de los Sistemas de Registro, Compensación y Liquidación de Valores (Iberclear) in April 2003 extended the CNMV's supervisory powers to include securities transactions in the public debt market, a task previously performed by the Bank of Spain. In 2003, the CNMV closely monitored the entities that had the highest levels of delayed settlement sales and extended its supervisory powers to include other transactions such as change of ownership and assignments.

¹¹ CNMV Circular 1/2003, dated 22 January, set out the special requirements for industrial members and regulated the accounting and statistical information required from the governing companies of these markets.

¹² Buy and sell transactions are settled three business days after the transaction date (T+3).

¹³ Before 24 March 2003, there was a single daily settlement cycle at 10:00 hours. The second cycle is settled at 13:30 hours and was extended to 15:00 hours on 1 March 2004.

Joint work between the CESR and the ESCB on standards for securities clearing and settlement systems in the European Union

In October 2001, the Committee of European Securities Regulators (CESR) and the Governing Council of the European Central Bank (ESCB) agreed to conduct joint work on securities clearing and settlement systems in order to reinforce the security and efficiency of clearing and settlement systems in Europe, avoid systemic risk and boost investor asset protection, and to improve the harmonisation of the procedures and practices that facilitate the integration of those activities at European level.

To meet those objectives, obligatory standards were proposed, based on the recommendations of the CPSS-IOSCO¹ joint task force. The private sector provided technical advice in that work.

In August 2003, two documents were released for public consultation². The first set out the proposed standards and the second proposed to extend the standards to institutions other than central securities depositories and central counterparties. For that purpose, the document suggested a list of criteria to determine which institutions would be subject to those standards due to having significant systemic risk in their clearing and settlement activities. The most controversial proposal was the possibility of including custodian banks.

¹ The Committee on Payment and Settlement Systems (CPSS) of the G10 central banks of Basel's Bank for International Settlements and the International Organization of Securities Commissions (IOSCO).

² "ESBC-CESR Standards for Securities Clearing and Settlement in the European Union" and "The Scope of Application of the ESBC-CESR Standards". Both documents are available at www.europefes-co.org, in the section on "Consultative Papers".

Annex 1

Initiatives in international markets

Users have long called for improved efficiency in the clearing and settlement systems, which is necessary for a full Europe-wide securities market integration. In 2003, European institutions continued to work on that issue¹⁴.

One of the most notable features in post-trading systems was the agreement in June to merge the London Clearing House (LCH) and Clearnet (majority-owned by Euronext) to create LCH.Clearnet, raising concern at the London Stock Exchange (LSE) about the possibility that Euronext's control of the new institution would lead to preferential commissions for in the markets operated by Euronext¹⁵. The LSE considered the possibility of transferring its clearing operations to Eurex Clearing, a subsidiary of German group Deutsche Börse, although it finally decided to continue using LCH's services¹⁶.

In Italy, two clearing and settlement initiatives were implemented to extend and improve services. In May 2003, Cassa di Compensazione e Garanzia started acting as central counterparty in equity spot trades and derivatives traded in Borsa Italiana S.p.A. In November 2003, the central settlement and depository system, Monte Titoli¹⁷, announced a new service organisation in order to expedite settlement mechanisms and reduce the associated risks¹⁸.

Competition was especially intense in the principal European and US derivatives markets. Interest focused on access to the US market. Early in 2003, the German-Swiss Eurex market announced plans to create its own derivatives market in the US to compete directly with the main US derivatives markets. That decision was made after the Chicago Board of Trade (CBOT) decided to use the trading platform of Liffe.Connect (a Euronext subsidiary), ending the technological alliance with Eurex that had commenced in July 2002.

Early in 2003, the London Stock Exchange fostered the creation of a new equities derivatives market called EDX London as a joint venture with OM London¹⁹. After the Financial Services Authority (FSA) recognised OM London as an investment exchange²⁰, the latter commenced operations in July by trading in Scandinavian equities contracts—an underlying asset traded in OM London.

Some actions were also performed in the stock markets. After the failed attempts to create a single European stock market, the European scenario has consolidated

¹⁴ This includes the second Giovannini Report on EU cross-border clearing and settlement arrangements, the Group of 30 report and the joint work between the Committee of European Securities Regulators (CESR) and the European Central Bank (ECB) on standards for securities clearing and settlement systems in the European Union (see box in this chapter).

¹⁵ In equities, Euronext comprises the Paris, Amsterdam, Brussels and Lisbon Stock Exchanges.

¹⁶ Euronext is the largest individual shareholder of LCH.Clearnet (41.5%). Nevertheless, as a result of objections by the LSE (i) Euronext's vote was limited to 24.9% and the LSE obtained a permanent seat on the Board of LCH.Clearnet; and (ii) the fees applied by LCH to the LSE's transactions were reduced by 25%.

¹⁷ Monte Titoli was integrated into the Borsa Italiana group in December 2002.

¹⁸ The new settlement service has two cycles: overnight and daylight. The overnight cycle runs during the night before the settlement day. The daylight cycle is settled through the current RTGS (Real-Time Gross Settlement) system, which includes the overnight cycle's cash balances.

¹⁹ OM London is a subsidiary of the OM Group, which manages the Stockholm Stock Exchange.

²⁰ Recognised Investment Exchanges (RIE) are authorised to operate in the UK by the Financial Services Authority (FSA).

around 2-3 large markets (Euronext, Deutsche Börse and LSE), a structure that is compatible with markets that operate in a more local, regional sphere. The Nordic and Baltic regions made significant strides in integrating their markets. In June 2003, the stock markets of Stockholm (Stockholmbörsen, managed by the OM Group) and Helsinki, which belong to the HEX Group²¹, merged to form the OMHEX market. In December 2003, OMHEX announced plans to integrate into NOREX, the alliance between the Nordic stock exchanges²².

Investors' interest in Dutch securities listed in Euronext led the LSE and Deutsche Börse to present two different trading platform projects that would give access to trading in those securities from their respective markets²³.

Table 2.8 summarizes the current structure of the securities markets and the clearing and settlement systems in the European Union at the end of 2003.

²¹ Helsinki Integrated Markets (HEX) manages the securities markets and central depositories of Finland, Estonia and Latvia and provides its members with access to Euronext.

²² The NOREX alliance comprises Copenhagen Stock Exchange, Iceland Stock Exchange, Stockholmbörsen and Oslo Börs.

²³ In March, the LSE presented the SETS platform, which is intended to be operational within a year, announcing a 40% reduction in trading fees with respect to those charged by Euronext. In September, Deutsche Börse announced that it planned to give continuous access to trading in all the Dutch AEX-25 index securities through its own Xetra trading system.

Table 2.8
Current situation of the securities markets and clearing and settlement systems in the European Union

	Spot	Derivatives	Clearing	Settlement	Other features
Euronext	<ul style="list-style-type: none"> - ParisBourseSBFSA - Amsterdam Exchanges - Brussels Exchanges - Bolsa de Valores de Lisboa e Porto 	Euronext. Liffe	LCH. Clearnet	Euroclear (including CrestCo)	<ul style="list-style-type: none"> - Demutualised - Listed - Horizontally integrated with stakes in clearing and settlement systems
Deutsche Börse Group	<ul style="list-style-type: none"> - Frankfurt Stock Exchange - Regional markets: Berlin, Düsseldorf, Hamburg, Hannover and Munich 	Eurex (50% Swiss Exchange, including Eurex USA)	Eurex Clearing	Clearstream	<ul style="list-style-type: none"> - Demutualised - Listed - Vertically integrated
London Stock Exchange Group	London Stock Exchange (LSE)	EDX London (including OM London)	London Clearing House (LCH. Clearnet)	CrestCo (Euroclear)	<ul style="list-style-type: none"> - Demutualised - Listed
Gruppo Borsa Italiana	Milan Stock Exchange	- IDEM ⁽¹⁾	CC&G ⁽²⁾	Monte Titoli	<ul style="list-style-type: none"> - Demutualised - Vertically integrated
Bolsas y Mercados Españoles (BME)	<ul style="list-style-type: none"> - Bolsa de Madrid - Bolsa de Barcelona - Bolsa de Bilbao - Bolsa de Valencia - AJAF - SENAF 	<ul style="list-style-type: none"> - MEFF - FC&M 	<ul style="list-style-type: none"> - Iberclear (including CADE) - MEFFclear - (CCP⁽³⁾ fixed-income) 	Iberclear (including CADE)	<ul style="list-style-type: none"> - Vertically integrated - Demutualised
NOREX - OMHEX	<ul style="list-style-type: none"> NOREX: - Copenhagen Stock Exchange (CSEX) - Oslo Börs (OS) - Iceland Stock Exchange (ICEX) - Stockholmbörsen (OM) HEX : - Helsinki Stock Exchange - Tallinn Stock Exchange - Riga Stock Exchange 	<ul style="list-style-type: none"> NOREX: - Copenhagen Stock Exchange - Oslo Börs - Stockholmbörsen (OM) HEX : - Helsinki Stock Exchange - Tallinn Stock Exchange - Riga Stock Exchange 	<ul style="list-style-type: none"> NOREX: - VP A/S⁽⁴⁾ - VPS ASA⁽⁵⁾ - ISD⁽⁶⁾ - VPC⁽⁷⁾ HEX: - APK⁽⁸⁾ - Estonian CSD - Latvian Central Depository 	<ul style="list-style-type: none"> NOREX: - VP A/S⁽⁴⁾ - VPS ASA⁽⁵⁾ - ISD⁽⁶⁾ - VPC⁽⁷⁾ HEX: - APK⁽⁸⁾ - Estonian CSD - Latvian Central Depository 	<ul style="list-style-type: none"> NOREX: Demutualised ICEX: Vertically integrated HEX: Vertically integrated OMHEX: Demutualised and listed

⁽¹⁾ IDEM: Italian Derivatives Market. ⁽²⁾ CC&G: Cassa de Compensazione e Garanzia. ⁽³⁾ CCP: Central Counterparty. ⁽⁴⁾ VP A/S: Danish Securities Centre (Vaerdipapircentralen). ⁽⁵⁾ VPS ASA: Norwegian Central Securities Depository. ⁽⁶⁾ ISD: Icelandic Securities Depository. ⁽⁷⁾ VPC: The Swedish Central Securities Depository and Clearing Organisation. ⁽⁸⁾ APK: The Finnish Central Securities Depository (Arvopaperikeskus).

3. Issuers' Disclosure

The CNMV's actions in relation to the primary markets focus on improving the quality of information provided to investors as a key element of investor protection. This information must meet several criteria: it must be complete and truthful and must be made available to the public promptly and completely.

Current legislation establishes several standards regarding form, content and deadlines which are mandatory in relation to certain disclosures. The CNMV is responsible, *inter alia*, for controlling, verifying and analysing the period information that listed companies must disclose periodically to the CNMV and their auditors' reports; controlling and analysing notifications of significant holdings in those companies and treasury stock; and directing, advising on and executing proceedings related to the issuance and listing of securities and to takeovers and public offerings. It also disseminates public information regarding these activities¹.

Improving the quality of this information requires constant efforts to update the regulations. In this context, the Transparency Law approved last year substantially increases reporting on listed companies' governance.

Securities issues

Securities issues and public offerings

The amount of securities issues (fixed-income and equities) and public offerings registered at the CNMV rose by 75% in 2003 to €144 billion due to the increase in fixed-income, which exceeded €140 billion (see table 3.1). The number of fixed income issues filed rose significantly, from 149 to 207.

In contrast to the fixed-income segment, the amount of equity issues and public offerings fell by more than 50% to €3.8 billion. The number of issues fell slightly, from 46 in 2002 to 43. The number of capital increases without waiver of the pre-emptive subscription rights fell by 30% and there were no capital increases via primary offerings (there were none in 2002, either). However, four secondary offerings were registered (the same number as in 2002), although the amount was far lower since there was only large secondary offering—that of Red Eléctrica de España, S.A. (REE) as a result of the disinvestment by its utility shareholders, whose total of €416.6 million was allocated to Spanish institutional investors².

¹ Articles 25 to 30 of the Securities Market Law.

² Of the three other secondary offerings, one was by Corporación Financiera Alba, totalling €51.1 million, and the other two were by Zeltia, each of which amounted to €0.9 million and were intended for employees. The three secondary offerings were offered entirely to Spanish investors.

Table 3.1
Issues and public offerings registered

Amounts in million euros

	No. of files		Amount ⁽¹⁾	
	2002	2003	2002	2003
Total fixed income and equities	195	250	82,763	144,239
Fixed income	149	207	75,148	140,480
Commercial paper (2)	56	71	44,271	74,901
Other	93	136	30,877	65,579
Equities	46	43	7,615	3,759
Capital increases	42	39	4,713	3,289
Secondary offerings	4	4	2,901	470
Primary offerings	0	0	0	0
Other issues	1,179	1,104	6,954	5,188
Warrants	1,132	1,051	2,339	1,327
Other financial contracts(3)	47	53	4,615	3,861
Total	1,374	1,354	89,717	149,427

⁽¹⁾ Effective amount offered in the domestic market only.

⁽²⁾ The effective amount coincides with the nominal amount. Does not include asset-backed commercial paper.

⁽³⁾ Includes certificates and preference shares.

Other issues registered with the CNMV

Owing to the decline in volatility in the spot markets, warrant issuing slowed significantly in terms of amount (down 43.3%) to €1.3 billion. The number of issues fell less sharply (by 7%), while the number of issuers remained flat at 13.

The amount of other financial contracts (mainly atypical financial contracts) also fell in 2003, albeit to a lesser extent (down 16.3%), totalling €3.9 million, whereas the number of issues rose slightly.

The most notable operations in 2003 were:

- The first issues of preference shares were registered under the scope of Law 19/2003, dated 4 July³, which made it possible to issue these securities from Spain (see box).
- The first partial bonus issue (La Seda de Barcelona, S.A.)⁴.
- The launch by Jazztel of the first drawdown under the Equity Line agreement. The Equity Line agreement is a programme of flexible financing through equity, which could prove to be an efficient system for medium-sized entities which require capital sporadically. With this system, the financial institution with which the company enters into the Equity Line agreement sells the securities on loan from the company to the market and, subsequently, returns them by subscribing newly-issued shares of the company.

³ The issuers were: Santander Central Hispano Finance, S.A., Unipersonal (September 2003), Caixa Galicia Preferentes, S.A., Sociedad Unipersonal (October 2003), Banesto Preferentes, S.A. (November 2003), Cantabria Preferentes, S.A. Unipersonal (November 2003) and BBVA Capital Finance, S.A. Unipersonal (December 2003).

⁴ Previously, issues were either entirely free of charge or for a cost; partial bonus issues were not admissible.

Regulation of preference shares under Law 19/2003

Law 19/2003, dated 4 July¹, introduced a new Additional Provision Two in Law 13/1985, dated 25 May², which regulates in greater detail the requirements for preference shares of credit institutions to be calculated as equity, and their tax system. These securities were not previously regulated by Spanish legislation and they were issued in other jurisdictions (e.g. the Cayman Islands). In accordance with the aforementioned Law, preference shares must fulfil, inter alia:

- a) Be issued by a credit institution or by an institution resident in Spain or in a territory of the European Union which is not a tax haven, whose voting rights are owned by a credit institution that controls a consolidable group or sub-group of credit institutions, and whose exclusive activity or purpose is the issuance of preference shares;
- b) Be entitled to receive a predetermined, non-accumulative remuneration;
- c) Not grant their owners voting rights, barring exceptional circumstances established in their respective conditions of issuance;
- d) Be perpetual;
- e) Be listed on organised secondary markets.

¹ Law 19/2003, on the legal regime of the movement of capital, international economic transactions and certain money laundering prevention measures.

² Law 13/1985, dated 25 May, on investment coefficients, equity and disclosure requirements of financial intermediaries.

Prospectuses

In 2003, the first international-format issue prospectus was filed in Spain, prepared by the issuer and translated into Spanish. The prospectus in question refers to an issue of medium-term fixed-income securities (European Medium Term Notes; EMTN).

The possibility of filing with the CNMV a prospectus which has already been prepared in the international format, accepted by the financial markets, greatly facilitates the issuer's work. Many Spanish companies currently raise finance via such issues in the international market since they offer flexibility and are accepted among investors, so this possibility of filing prospectuses may encourage the presence of these securities in the Spanish market in the future. The international prospectus is accompanied by a Spanish translation and some items required by Spanish legislation, plus a clarification of certain terms for the purposes of translation or because of different practices in other financial communities.

In 2003, no prospectuses were filed via mutual recognition, as provided for in Article 26 of Royal Decree 291/1992 for simultaneous transactions inside and outside Spain. This procedure has been used on a few occasions in the past.

⁵ Only five companies have used this method of flotation since 1997: Jazztel (14/10/2000), Banco de Sabadell (06/02/2001), Puleva Biotech (13/12/2001), Natraceutical (22/11/2002) and Antena3 (17/10/2003). The date in brackets relates to the vetting of the issuers' listing prospectuses.

In October, the prospectus was filed relating to the flotation of Antena3, S.A., which was performed via the direct listing system⁵ as opposed to a public offering.

In the regulatory arena, the new Prospectus Directive came into force on 31 December 2003, although it is pending transposition into Spanish legislation. The new directive envisages a single European passport for issuers (see chapter 9). This implies that companies registered in the European Union and in third countries may sell any type of securities, or list them on any regulated European market, with the authorisation of just one competent authority in the European Union. Prospectuses need not be translated into every official EU language: it will be sufficient to produce them in a language that is commonly accepted in the financial markets and, if the host country so requests, a summary will be translated into the local language (see box).

Secondary legislation under the Prospectus Directive

The CESR¹, under the European Commission's mandate, offered advice on the technical measures required for the implementation of the Prospectus Directive (Level 2 measures), which must be approved by the European Commission. In accordance with the deadline established in the Directive, the European Commission is expected to prepare a regulation with the standard prospectus forms and other implementation measures before July 2004. This significant change in the European Union's primary securities market will require amendments to the regulation and supervision of the Spanish primary market. The Prospectus Directive and its regulation impose legislative amendments, not only in Spain's Securities Market Law and its implementing regulations, but also in the related corporate, registration and tax laws. Amendments to Spanish legislation and supervision must ensure the competitiveness of Spain's securities markets and, therefore, guarantee investor protection. The Directive demands the following principles in the regulation of prospectuses:

- Ensure that small investors and small and medium enterprises (SMEs) have confidence in the financial markets, by promoting rigorous transparency rules in the financial markets.
- Provide investors with a wide range of competitive investment opportunities and an adequate level of information and protection.
- Foster innovation in the financial markets to increase their dynamism and efficiency.
- Reduce the cost of capital and foster access to it.
- Balance the long-term costs and benefits that the regulation implies for market participants (including SMEs and small investors).
- Stimulate international competitiveness in the financial markets of the European Union, without prejudice to the necessary increase in international cooperation.
- Strive towards the equal treatment of all market participants.

¹ Committee of European Securities Regulators.

CNMV Board position on non-application of Article 6 B) of Royal Decree 291/1992 in atypical financial contracts

In view of the proliferation of atypical financial contracts among investors and their peculiar nature as financial instruments rather than simple marketable securities, the CNMV resolved on 22 September 2003 not to apply to those contracts the general exemption from prior compliance with the CNMV¹ that is applicable to issues of securities which mature within a period of twelve months or less and, instead, to subject issues of atypical financial contracts to the following requirements:

- Filing of documentation prior to issuance
- Delivery and registration of documents accrediting the issue
- Vetting and registration of the issuers' auditors' reports and financial statements
- Vetting and registration of the prospectus².

The Board understands that the general exception is applicable only to the marketable securities envisaged in Article 2 of the Securities Market Law and not to the financial instruments referred to in that Article, which must comply with the foregoing general requirements, regardless of the term of those instruments.

¹ The exception is established by Article 6 B) of Royal Decree 291/1992.

² These general requirements for securities issues are expressed in Article 26 of the Securities Market Law.

Periodic disclosure by listed companies

CNMV Circular 2/2002, dated 27 November, which came into force on 1 July 2003, changed the format of the periodic disclosures that must be filed by issuers of listed securities. The CIFRADO/CNMV encryption and electronic signature system was established as the only system for disclosing that information. The first year of obligatory use of this system must be viewed positively since the benefits of the systems, such as the authenticity, integrity and non-repudiation⁶ of the information and the speed at which it is placed at the public's disposal, far outweigh the disadvantages resulting from some technical issues in sending the information.

A noteworthy feature of the legislative reforms brought about by the Finance Law⁷ and the Transparency Law⁸ in relation to the information disclosed by listed companies, is the forthcoming publication of a Ministerial Order on the disclosure of related-party transactions by issuers of securities listed in official secondary markets. This regulation will establish the manner in which entities must communicate these transactions in their half-yearly disclosures as from the first half of 2004. This infor-

⁶ The entity issuing the information is assured that the information will not be rejected by the CNMV if it meets the established technical specifications.

⁷ Law 44/2002, dated 22 November.

⁸ Law 26/2003, dated 17 July.

mation does not eliminate the obligation to disclose such transactions in the annual corporate governance report⁹.

Financial statements and auditors' reports¹⁰

The CNMV believes it is vital for issuers to present clean auditors' reports about their financial statements, so that investors and other users of such information can base their decisions on financial statements that, in all respects, present a true and fair view of the company's net worth, financial situation and earnings. It is to be expected that the measures established in relation to corporate governance regulations and, especially, the obligation for entities with listed securities to create an audit committee, should reinforce the rigorous application of generally accepted accounting standards and principles. Table 3.2 shows that 84% of the audits filed last year carried a favourable opinion.

The CNMV focused on ensuring that auditors' reports, together with their corresponding financial statements and management reports, were made available to the public promptly and in full. Subsequently, where necessary, it requested issuers to provide information about the reasons for the auditors' opinion and the plans to resolve the issue, and to elaborate on the information contained in the notes to the financial statements. In particular, the main measures adopted in 2003 in relation to the audited financial statements corresponding to 2002 were as follows:

- A total of 130 demands were issued for failure to file auditors' reports and special auditors' reports¹¹. Another 45 demands were to request issuers to provide additional information on qualified auditors' reports, and 67 demands were to request additional information not contained in the notes to financial statements and/or explanations of discrepancies between the information regarding the financial statements and that contained in periodic disclosures.
- Trading in the securities of European Paper and Packaging Investment Corporation, S.A. (in liquidation) continued to be suspended following the auditor's denial of opinion regarding its financial statements¹².
- The projections in the management reports contained in the financial statements were included in the analysis of the degree of compliance with expectations and/or of projections of issuers registered with any of the CNMV's registers (as periodic public information, issue prospectuses, etc.).
- The following information was made available to the public on the CNMV's web site: (i) the full text of the auditors' reports of issuers, (ii) the response to demands and requests for amplification of the information in the annual report (see table 3.3), (iii) special auditors' report, and (iv) the CNMV's 2002 annual report on auditors' reports of issuers.

⁹ Order ECO/3722/2003, dated 26 December, on the annual corporate governance report and other instruments of disclosure by listed corporations and other entities.

¹⁰ This information can be found in the CNMV web site (www.cnmv.es), in the "Registration Files" section, under the headings "Issuers Filings" and "Annual Accounts".

¹¹ Special auditors' report are aimed at updating qualified audit information. The update is done as of the end of the first half of the year after the qualified auditors' report is filed.

¹² Trading in the securities of that company was suspended on 6 August 2001. The auditor was unable to express any opinion on the financial statements corresponding to 2000, 2001 and 2002.

Table 3.2
Audits of issuers filed with the CNMV (1)

	2000		2001		2002	
	No.	%	No.	%	No.	%
1 Auditors' reports filed with the CNMV						
Total auditors' reports filed	651	100.0	657	100.0	679	100.0
- Individual financial statements	423	65.0	429	65.3	452	66.6
- Consolidated financial statements	228	35.0	228	34.7	227	33.4
- <i>Special reports under M.O. 30/9/92</i>	91		70		65	
2 Auditors' opinion						
- Clean opinion	556	85.4	563	85.7	570	83.9
- Qualified opinion	95	14.6	94	14.3	109	16.1
3 Types of qualification						
- No. of auditors' reports with exceptions	64	9.8	45	6.8	71	10.5
- No. of auditors' reports with uncertainties, etc	36	5.5	49	7.5	49	7.2
- No. of auditors' reports with limitations	7	1.1	15	2.3	12	1.8
4 Effects of exceptions						
4.1 on earnings						
- No. of auditors' reports with positive effect	25	3.8	18	2.7	18	2.7
- No. of auditors' reports with negative effect	31	4.8	19	2.9	44	6.5
4.2 on net worth						
- No. of auditors' reports with positive effect	28	4.3	16	2.4	15	2.2
- No. of auditors' reports with negative effect	3	0.5	1	0.2	9	1.3
5. Nature of uncertainties, etc.						
- Going concern	9	1.4	8	1.2	10	1.5
- Tax contingencies	11	1.7	8	1.2	17	2.5
- Recovery of assets	15	2.3	12	1.8	12	1.8
- Effect of devaluation of Argentinean peso	0	0.0	11	1.7	2	0.3
- Litigation	9	1.4	7	1.1	15	2.2
- Denial of opinion or adverse opinion	2	0.3	1	0.2	1	0.1
- Other uncertainties	15	2.3	15	2.3	14	2.1

(1) Data from the CNMV's Public Audit Register. They relate to auditors' reports on financial statements and special reports filed with the CNMV through 31 December each year. Percentages calculated with respect to the total number of auditors' reports.

Table 3.3
Demands issued to listed companies in 2003 in connection
with the audit of the 2002 financial statements

Companies with qualified auditors' report which remedied the situation or have established a plan for doing so

Issuers	Market/Segment⁽¹⁾
Áurea (merged with Abertis)	Electronic Market
Dogi International Fabrics	Electronic Market
Fastibex	Electronic Market
Federico Paternina	Electronic Market
Natra	Electronic Market
Sogecable	Electronic Market
Tableros de Fibras	Electronic Market
Service Point Solutions	Nuevo Mercado
Tecnocom, Telecomunicaciones y Energía	Nuevo Mercado
Bodegas Bilbaínas	Open outcry market
Ibérica de Mantenimiento Industrial	Open outcry market
Inversora Condal	Open outcry market
Cartera Hotelera (previously Mercapital)	Open outcry market

(Continues over)

(Continued)

Gesticit	Second market
Intereconomía Corporación	Second market
Unicaja	Fixed-income
Caja Rural de Zamora, Cooperativa de Crédito	Not listed

Companies with qualified auditors' report whose resolution depends on future events or which will not be resolved in the short term

Issuer	Market/Segment
Avanzit	Electronic Market
CIE Automotive	Electronic Market
Española del Zinc	Electronic Market
Eppic (en liquidación)	Electronic Market
Funespaña	Electronic Market
Koipe (merged with SOS Cuétara)	Electronic Market
Mecalux	Electronic Market
Nueva Montaña Quijano	Electronic Market
Sniace	Electronic Market
Sociedad Española del Acumulador Tudor	Electronic Market
SOS Cuétara	Electronic Market
Telefónica	Electronic Market
Urbanizaciones y Transportes	Electronic Market
Vidrala	Electronic Market
Natraceutical	Nuevo Mercado
Aguas de Valencia	Open outcry market
AYCO Grupo Inmobiliario	Open outcry market
Compañía de Inversiones Cinsa	Open outcry market
Finex	Open outcry market
Hullas del Coto Cortés	Open outcry market
Industrias del Curtido	Open outcry market
Minero Siderúrgica de Ponferrada	Open outcry market
Promociones y Conciertos Inmobiliarios	Open outcry market
Saarema Inversiones	Second market
Recol Networks	Not listed

⁽¹⁾ The selected market/segment is that in which the issuers' securities were listed at the date on which the financial statements were prepared.

Transparency Directive

Following the presentation of the European Commission's draft Transparency Directive at the end of 2002, the Council of the European Union prepared a document on 25 November 2003 in which it expressed its general position vis-à-vis that Directive and in which the Presidency of the Council demonstrated its intention to reach an agreement with the European Parliament before the end of the current legislation¹. This document could be subject to amendments by the European Parliament, although the general principles will certainly be maintained.

The most innovative aspects of the Directive with respect to the current system governing disclosure by entities with securities listed in regulated markets are as follows:

- The issuer must publish the auditors' report, together with the financial statements and management report, within four months from year-end.
- Financial information corresponding to the first half of the year of those issuers

which must present consolidated financial information must be prepared in accordance with the international accounting standards that apply to interim financial information.

- Notification of the acquisition or transfer of significant holdings will be based on the proportion of voting rights held by the party obliged to disclose this fact rather than its proportion of capital. It also establishes the obligation to disclose when a shareholder reaches, exceeds or falls below the disclosure threshold through no action of its own.
- It establishes that the holders of financial instruments which grant the right to acquire, on the holder's initiative, shares with voting rights which have already been issued are subject to the requirements to disclose significant holdings.
- Issuers of shares listed in a regulated market which acquire their own shares directly or indirectly must disclose the proportion of own shares when the percentage reaches, exceeds or falls below 5% or 10%.
- The authority empowered to perform the functions contemplated in this Directive (the CNMV in the case of Spain) must have the powers required to request auditors to provide the relevant information and documentation, perform on-site inspections and confirm that the information contemplated in the Directive is filed in accordance with current legislation, and adopt the appropriate measures in the event of infraction.

¹ The elections will take place in June 2004.

Audit committees

In 2003, issuers of securities listed in official secondary markets communicated the amendments to the bylaws to establish the number of members, competencies and rules governing the functioning of the audit committee provided for by the Finance Law¹³. Article 47 of that law establishes that audit committees must comply with the following requirements:

- The majority of the members must be non-executive directors, appointed by the Board of Directors.
- The Chairperson must be appointed from among those non-executive directors, with a non-renewable mandate of four years, although he/she may be reappointed one year after termination of his/her period of office.
- The number of members, the powers and the working rules of the committee must be laid down by the company's bylaws and must foster its independence.

As illustrated by table 3.4, 192 issuers already have an audit committee which meets these requirements, i.e. 60% of the total. This percentage is higher in the electronic market, where it reaches 75% of listed companies (101 companies out of a total of 134). On average, the audit committees have three members. In the vast majority

¹³ Article 47 of Law 44/2002, dated 22 November, on Measures to Reform the Financial System adds an Additional Provision Eighteen to Securities Market Law 24/1988, which contemplates the obligation to create an audit committee.

of companies, the audit committee consists of non-executive directors, with a minimal presence of executive directors.

This obligation is new among Spanish companies, so compliance is not yet complete and some issuers comply only partially with the requirements. In Spain's electronic market (SIBE), a minority of issuers have not disclosed information regarding the audit committee, whereas in many cases incomplete communications have been issued to the CNMV. The clearly transitory nature of the current situation explains why, in some cases, the audit committee has not yet been formed or the bylaw amendments required by legislation to govern the composition and functioning of the audit committee have been performed only in part. The CNMV has issued the appropriate demands for amendment where there is a lack of information or where compliance is incomplete.

Table 3.4
Implementation of audit committees⁽¹⁾

<i>Number of companies</i>	SIBE	All markets
Compliance with legislation⁽²⁾		
Companies obliged to comply with legislation	134	323
<i>which have sent information to the CNMV</i>	128	281
<i>which have complied with the legislation</i>	101	192
Breakdown of motives for failure to comply⁽³⁾		
No information has been sent to the CNMV	6	42
Incomplete disclosure to the CNMV	20	52
No bylaw amendments	2	13
Incomplete bylaw amendments	4	8
The majority of directors are not non-executive	1	2
The committee's chairperson is an executive director	1	5
The committee has not been created	2	20
Total	36	142

⁽¹⁾ Information up to 1 March 2004.

⁽²⁾ Additional Provision Eighteen of the Securities Market Law.

⁽³⁾ A single company may be in breach for more than one reason.

At the end of 2003, Law 62/2003, dated 30 December, on Legal, Administrative and Labour Measures extended the obligation to create audit committees to those companies which do not have a Board of Directors but do have an equivalent body and, in the case of saving banks, enabled the functions of the audit committee to be performed by control committees¹⁴. That law also increased the operating capacity of audit committee in discharging their duties by granting them the opportunity to inform the Shareholders' Meetings on any matter that falls under their scope of competence, on their own initiative and not just in response to questions raised by shareholders.

Information to be disclosed to the market in mergers

In 2003, there were 15 mergers in which at least one of the companies involved was listed¹. The CNMV requested the companies involved to place the necessary information at the public's disposal. Company mergers are subject to approval by Shareholders' Meetings and are governed by the Spanish

¹⁴ Of the 192 entities which comply with the regulation on audit committees, 23 are savings banks.

Corporations Law. The Law identifies the documents (merger proposals, identification of directors, directors' reports, independent experts' reports, merger balance sheets and bylaws) which must be placed at the disposal of shareholders, bondholders and the holders of special rights other than shares, when the notice of meeting is published.

If the merger involves a listed company, the market must be supplied with the documentation through the registration of significant disclosures with the CNMV and via the web sites of the companies involved, all before their respective Shareholders' Meetings are held.

The merger proposal must contain, inter alia, the share exchange ratio, which must be determined on the basis of the real enterprise value. The valuation of the companies and its adaptation to the share exchange ratio proposed by the companies' directors are generally produced on the advice of financial experts. The reports on the merger proposal which must be issued by independent experts designated by the Mercantile Registrar, and the reports by the companies' directors, must obligatorily refer to the following²:

Directors' report	Independent experts' report
<ul style="list-style-type: none"> • Detailed explanation and justification of the merger proposal (legal and economic aspects) • Share exchange ratio • Special valuation difficulties, if any 	<ul style="list-style-type: none"> • Value contributed by absorbed companies • Methods used to establish share exchange ratio • Suitability of those methods • Values obtained by those methods • Special valuation difficulties, if any • Comments on whether the value contributed by the absorbed companies is equal, at least, to the post-merger company's capital, or if it corresponds to the capital increase of the absorbing company, as the case may be

The shareholders of listed companies may, until the seventh day prior to the date on which the Shareholders' Meeting is scheduled to be held, request directors to provide the information or clarifications that they deem necessary or raise questions in writing about matters included in the agenda of the Shareholders' Meeting and about the information available to the public which the company had supplied to the CNMV since the last Shareholders' Meeting was held. Directors are obliged to provide the information required in writing until the date scheduled for the Shareholders' Meeting, provided that the request is supported by shareholders representing 25% of capital. In the other cases, the information may only be denied when, according to the chairperson, the publication of the requested information jeopardises the corporate interests.

Once the merger has been approved by the Shareholders' Meetings, and in the

event that the transaction requires an issue to be vetted, the corresponding prospectus must be placed at the public's disposal. Otherwise, the market must be supplied with the necessary information regarding the share exchange ratio and other significant aspects of the merger.

¹ Some mergers received considerable publicity in 2003 (ACS and Dragados, Bami and Metrovacesa, Acesa and Áurea).

² Articles 236 and 237 of the Spanish Corporations Law.

Disclosure of stock options held by directors of listed companies

Current legislation obliges all directors to disclose the acquisition or transmission of options on their companies' shares¹⁵. For these purposes, options on shares, warrants, convertible or exchangeable bonds and other securities which grant their owners the right to subscribe to or acquire shares are considered to be equivalent. In 2003, the CNMV received notification from 51 directors relating to 14 companies. Table 3.5 lists the companies whose directors had disclosed stock options or other equivalent assets at 2003 year-end. The bulk of these related to remuneration systems established by the companies themselves. Detailed information can be accessed through the CNMV's web site (www.cnmv.es) in the "Registration Files" section, under the headings "Issuers Filings" and "Shareholders disclosure and own shares".

Disclosure of significant holdings

Spanish legislation establishes the obligation to disclose acquisitions or transfers of listed securities whereby the percentage of capital owned by the acquirer changes by 5% or more¹⁶. If the acquirer is resident in a tax haven, changes of 1% must be disclosed.

The disclosure requirements for members of the board of directors are greater, since they must communicate all acquisitions and transfers of listed securities of the companies in which they are directors. These communications are made in the form approved by Circular 2/1991, dated 24 April, and are registered in the Register of Disclosures of Significant Holdings.

In 2003, a total of 2,572 disclosures of significant holdings were filed in that public register, 20% more than in 2002. Table 3.6 shows the number of significant shareholders (excluding members of the board of directors) of companies in the Ibex-35 as at 31 December 2003, by percentage group.

¹⁵ Royal Decree 1370/2000, dated 19 July, amending Royal Decree 377/1991, dated 15 March, on the disclosure of significant holdings in listed companies and of the acquisition by these companies of own shares, and CNMV Circular 4/2000, dated 2 August, which established the method of disclosing the stock options and remunerative systems for directors of listed companies.

¹⁶ Royal Decree 377/1991, dated 15 March, on the disclosure of significant holdings.

Legislation also establishes the obligation to communicate to the CNMV any acquisition by a company of its own shares on those of its controlling company that exceeds 1% of the capital of the company whose shares are acquired¹⁷, regardless of whether they are acquired in a single transaction or in successive transactions. In 2003, 207 disclosures of acquisitions of own shares were received, 22% less than in 2002.

Table 3.5
Disclosure of stock options

Company	Index/Market	Directors
ACS	Ibex-35	3
Altadis	Ibex-35	3
Bankinter	Ibex-35	2
BBVA	Ibex-35	1
SCH	Ibex-35	5
CAF	Electronic Market	4
Campofrío	Electronic Market	8
Corporación Alba	Electronic Market	3
Grupo Prisa	Electronic Market	7
Iberia	Ibex-35	1
Inditex	Ibex-35	9
Indra	Ibex-35	13
Informes y Proyectos	Electronic Market	1
Jazztel	Electronic Market	9
Logista	Electronic Market	1
Prosegur	Electronic Market	1
Recoletos	Electronic Market	3
Sogecable	Ibex-35	1
Telepizza	Electronic Market	9
Telefónica Móviles	Ibex-35	1
Terra	Ibex-35	3
TPI	Ibex-35	1
Transportes Azkar	Electronic Market	2
Unión Fenosa	Ibex-35	4
Total	24	97

Table 3.6
**Number of shareholders of Ibex-35 companies⁽¹⁾
with a significant holding⁽²⁾**

Company	Holding 5% - 10%	Holding 10% - 25%	Holding 25% - 50%	Holding over 50%
Abertis	1	2	-	-
Acciona	-	-	-	1
Acerinox	3	1	-	-
ACS(3)	2	2	-	-
Altadis	2	1	-	-
Amadeus	-	-	3	-
B. Popular	2	1	-	-

(Continues over)

¹⁷ Additional Provision One of the Spanish Corporations Law and Royal Decree 377/1991, dated 15 March, on the disclosure of significant holdings. In accordance with the CNMV Board resolution dated 2 February 2004, the content of the register of own shares has been publicly available since 1 March 2004. That information can be found in the CNMV web site (www.cnmv.es), in the "Registration Files" section, under the headings "Issuers Filings" and "Shareholders disclosure and own shares".

(Continued)

Company	Holding 5% - 10%	Holding 10% - 25%	Holding 25% - 50%	Holding over 50%
Bankinter	3	-	-	-
BBVA	1	-	-	-
Mapfre	1	-	-	1
Enagás	4	-	1	-
Endesa	3	-	-	-
FCC	1	-	-	1
Ferrovial	-	-	-	1
Gamesa	-	1	1	-
Gas Natural	2	-	2	-
Iberdrola	3	-	-	-
Iberia	4	1	-	-
Inditex	2	-	-	1
Indra	1	1	-	-
Metrovacesa	2	1	-	-
NH Hoteles	4	1	-	-
REE	-	-	1	-
Repsol YPF	5	1	-	-
Sacyr Vallehermoso	3	3	-	-
SCH	1	-	-	-
Sogecable	1	3	-	-
Telefónica	2	-	-	-
Telefónica Móviles	-	-	-	1
Terra	-	-	-	1
TPI	-	-	-	1
Unión Fenosa	1	1	-	-
Zeltia	1	1	-	-
Total	55	21	8	8

⁽¹⁾ For reasons of uniformity, Arcelor is not included because it is governed by different legislation since its registered offices are in Luxembourg.

⁽²⁾ Holdings below 5% of the company's capital may be viewed in the CNMV's web site (www.cnmv.es) in the "Registration Files" section, under the headings "Issuers Filings" and "Shareholders disclosure and own shares".

⁽³⁾ ACS absorbed Grupo Dragados on 12 December, so its shares ceased to be listed.

New developments in corporate governance: the Transparency Law

On 19 July 2002, with the aim of increasing transparency and security in the financial markets, the Spanish Cabinet resolved to create a Special Commission to study the criteria and guidelines which must be followed by companies that issue securities listed on the organised markets in their relations with advisers, financial analysts and other companies, persons or entities which assist them or provide professional services, and those which should apply in relations among those service providers.

The conclusions of the Special Commission, which was chaired by Enrique Aldama, were contained in the report published on 8 January 2003, and they introduce the "comply or explain" principle. This principle implies that when a company's governance practices depart from the generally recommended corporate governance standards, a detailed explanation must be given regarding the motives for the departure so that the market may assess it appropriately. Although a wide

scope of self-regulation is recommended for companies to structure their corporate governance, it is understood that binding regulations are required to guarantee transparency in the securities markets.

Accordingly, the Transparency Law¹ established several corporate governance measures, including the following (see chapter 9):

- The obligation to disclose the arrangement, extension or modification of shareholders' agreements which include the regulation of voting rights in Shareholders' Meetings or which restrict the free transfer of shares.
- In the area of internal organisation, it established the obligation for listed companies to equip themselves with a number of corporate governance tools, such as a Board of Directors Regulation and a Shareholders' Meeting Regulation, which must be communicated to the CNMV and registered in the Mercantile Registry.
- With the aim of achieving maximum transparency in the corporate information which listed companies provide to the market, it established the obligation to prepare an annual corporate governance report detailing, *inter alia*, the company's ownership and administrative structure, related-party transactions, risk control systems, the functioning of the Shareholders' Meeting and the degree of compliance with the corporate governance recommendations. The annual corporate governance report² replaces the voluntary questionnaire which the CNMV drafted in 2000 in order to monitor the adoption of the Code of Good Governance by listed companies.

¹ Law 26/2003, dated 17 July, which amended Securities Market Law 24/1988, dated 28 July and the Consolidated Spanish Corporations Law with the aim of reinforcing transparency of listed corporations.

² The structure and content of the report are detailed in CNMV Circular 1/2004, dated 17 March, on the annual corporate governance report of listed corporations and other companies that issue securities listed in the official secondary securities markets, and other means of disclosure for listed corporations. Prior to its approval, the CNMV released the draft circular for public consultation via the CNMV web site.

Regulation governing synthetic securitisation

Article 97 of Law 62/2003, dated 30 December, on Legal, Administrative and Labour Measures regulates the synthetic securitisation of loans and other receivables, opening up a new path of growth in this rapidly expanding securitisation market.

Securitisation consists of transforming receivables and other collection rights into securities normally traded in the markets (AIAF in the case of Spain), by constituting a fund which acquires the rights and finances them by issuing securities. Unlike traditional securitisation, synthetic securitisation enables the credit risk of a portfolio of assets to be passed on to the capital market via a securitisation fund without actually selling the assets to the fund. For these purposes, credit derivatives are used, which are financial instruments designed to transfer all or part of a financial instrument's credit risk. The regulation of these transactions enables credit institutions to employ them as a means of managing risk and equity, which presents certain advantages (for example, less red tape).

The new regulation adds that the assets of asset securitisation funds that take part in synthetic securitisation may be composed of deposits in credit entities and fixed-income securities traded in official secondary markets, including those acquired via repos, and it indicates that the counterparty of the credit derivative contract must be a credit institution, an investment services firm or a non-resident entity authorised to perform these activities.

4. Takeover bids

A total of 13 takeover bids were authorised in 2003 for a potential amount of 7,535 million euros; ultimately 12 bids took place, for a total value of 4,335 million euros. This significant difference between potential and actual volume was due mainly to the negative outcome of one takeover bid¹. Excluding this transaction, although the number of bids fell, both the potential and actual amounts were similar to 2002. Over 70% was concentrated in three takeover bids: Barclays Bank for Banco Zaragozano, Telefónica for Terra Networks, and SCH for Cepsa.

The takeover bids made after 1 April were supervised under a new regulatory system² whose main objective is to improve protection for minority shareholders when there are changes in control of listed companies.

Table 4.1
Takeover bids

Millions of euros

	1999	2000	2001	2002	2003
Filed in the year ⁽¹⁾					
Number	13	16	19	17	13
Potential amount ⁽²⁾	711	3,059	7,865	5,589	7,535
Performed ⁽³⁾					
Number	13	14	18	17	12
Actual amount	601	2,606	4,648	4,318	4,335

⁽¹⁾ Authorised in the year.

⁽²⁾ Does not include the potential amount of bids which were withdrawn.

⁽³⁾ All those filed in the year, even if concluded in the following year, not including those which failed or were withdrawn.

Objectives

The goals pursued in the takeover bids performed in 2003 were as follows (see table 4.2):

- Eight takeover bids were made for 100% of the shares, four of them with the purpose of gaining control of the offeree company, two with the purpose of increasing the stake of the controlling shareholder or group, and two with the purpose of acquiring own shares (one to reduce capital and the other to delist the company).
- Of the five bids made for a maximum number of shares below 100% (partial

¹ The Caltagirone and Marchini groups' bid for Metrovacesa.

² Royal Decree 432/2003, dated 11 April, partially amending Royal Decree 1197/1991, dated 26 July, on takeover bids for securities.

bids), acceptance exceeded the maximum limit in three cases, triggering proration, while the other two bids did not reach the maximum. In every case, the acquisition was limited to a maximum number of shares so that the resulting stake remained below 50%, either in order to attain a sizeable stake without exceeding 50% (one bid), restore the voting rights irregularly acquired (one bid), increase the stake in the offeree company (two bids), or acquire own shares to reduce capital.

Table 4.2
Takeover bids authorised in 2003

Offeree company	Offeror	Purpose	% of capital covered by the bid	Actual cash amount (million euros)	Outcome as % of securities initially targeted
Grupo Dragados	ACS	Increase stake	Maximum 10.00	382.664	99.92 (prorated)
Compañía Trasmediterránea	Acciona Logística and five other offerors ⁽¹⁾	Takeover	100.00 (min. = 80.00%)	269.388	99.06
Metrovacesa	Quarta and Astrim (Caltagirone and Marchini groups)	Takeover	100.00 (min. = 50% + 1 share)	---	Failed
Uniland Cementera	Uniland Cementera	Delisting	7.09	28.198	93.79
Banco Zaragozano	Barclays Bank	Takeover	100.00 (min. = 75.01%)	1,123.721	98.31
Terra Networks	Telefónica	Increase stake	61.63 (min. = 36.63%) ⁽²⁾	1,060.983	54.52
Corporación Financiera Alba	Corporación Financiera Alba	Reduce capital	Maximum 7.00	124.313	99.96 (prorated)
Metrovacesa	Bami	Recover suspended voting rights	Maximum 10.00	209.451	99.85 (prorated)
NH Hoteles	Grupo Inversor Hesperia	Acquire a stake	Maximum 26.10 (min. = 15.06%) ⁽²⁾	49.325	17.57
Papelera Navarra	Smurfit España (Madison group)	Increase stake	54.20 (min. = 4.20%)	26.285	89.21
Cepsa	SCH	Increase stake	Maximum 16.00	908.935	75.82
Parques Reunidos	Gestión de Parques de Ocio (Advent group)	Takeover	100.00 (min. = 75.00%)	150.113	90.55
Minero Siderúrgica de Ponferrada	Minero Siderúrgica de Ponferrada	Reduce capital	30.00	2.098	52.27
Total				4,335.474	

⁽¹⁾ The other offerors were: Caja de Ahorros del Mediterráneo, Agrupación Hotelera Dóliga, Suministros Ibiza, Naviera Armas and Compañía de Remolcadores Ibaizábal.

⁽²⁾ In this transaction, the offeror waived the minimum limit that had applied to the bid and acquired all the shares offered to it.

Main features of the takeover bids processed in 2003

- *Conditional offers.* Seven takeover bids were conditional upon obtaining a minimum number of shares. That minimum was exceeded in four cases. In the other three cases, two did not reach the minimum, and the other failed.
- *Modification of initial conditions.* The initial conditions were modified in four of the takeover bids authorised in 2003; one had already announced a price review depending on the share price³. In one delisting offer⁴, the price was revised in view of the company's valuation and, in two other transactions⁵, the conditions were improved under the terms proposed by the offerors during the respective acceptance periods.
- *Size in monetary terms.* The largest transactions were Barclays Bank's takeover bid for Banco Zaragozano (over 1 billion euros), Telefónica's bid for Terra Networks (over 1 billion euros) and SCH's bid for Cepsa (over 900 million euros).
- *Takeover bids by foreign groups.* The three bids made by European groups (Barclays, Madison and Advent) totalled 1.3 billion euros.

Some takeover bids were especially significant in terms of their characteristics:

- *Bids which were rejected by the offeree company and failed.* Just a few months after real estate company Bami acquired a stake in Metrovacesa, two Italian groups, Caltagirone and Marchini, made a bid for 75% of Metrovacesa. The offeree company rejected both the initial bid and subsequent changes (an increase to 100% and an improvement on the price); the takeover bid ultimately failed since the minimum conditions (see table 4.2) were not met or waived.
- *Takeover withdrawn due to lack of administrative authorisation.* Gas Natural, against the objections of one of its core shareholders, bid for control of electricity company Iberdrola. This complex transaction, which potentially amounted to over 15,000 million euros (the largest-ever takeover in Spain), was withdrawn because it was not approved by the electricity regulator⁶.
- *Waiver of minimum condition of acceptance.* Telefónica launched a bid for 100% of Terra Networks, conditional upon acquiring a minimum number of shares (36.63%) that would enable it to obtain 75% of capital. Because of the significant difference between the offer price and the IPO price (November 1999), a large number of shareholders rejected the offer. The level of acceptance was close to the minimum established, and Telefónica's waiver of that condition enabled the bid to proceed.
- *Rejection by offeree and waiver of minimum acceptance.* Another takeover bid, launched by Hesperia for NH Hoteles, was rejected by the offeree company. Despite an increase in the offer price during the acceptance period, the Board of NH Hoteles maintained its adverse opinion and, although acceptance did not enable the offeror to reach the minimum number, its waiver of the minimum enabled it to acquire all the shares which had accepted.
- *Shareholder agreements.* An especially controversial transaction was SCH's bid for

³ Corporación Financiera Alba for its own shares in order to reduce capital.

⁴ Uniland Cementera.

⁵ The bids by the Caltagirone and Marchini groups for Metrovacesa and by Grupo Inversor Hesperia for NH Hoteles.

⁶ The energy regulator is the Comisión Nacional de Energía (National Energy Commission), created by Hydrocarbons Law 34/1998, dated 7 October.

Cepsa due to a conflict between its two core shareholders (SCH and Total), which is still in the courts and was reflected in the report on the bid made by Cepsa's Board. The regulation of shareholder agreements, introduced by the Transparency Law for listed companies⁷, led to a major dispute between Cepsa's two core shareholders. SCH considered that the agreements⁸ with French company Total had been automatically dissolved by that law and launched a takeover bid for Cepsa to increase its stake, whereas Total considered that the agreements were still in force and filed for arbitration under which, as a provisional measure and until the dispute is resolved, both companies were ordered to act in accordance with existing agreements, the voting rights on the shares acquired by SCH in the takeover bid were suspended, and SCH was barred from transferring its stake in Cepsa.

Aspects of particular relevance for supervision

In addition to monitoring the offerors' compliance with the principles of transparency and equal treatment of all shareholders of the offeree company, the CNMV also paid special attention to the following aspects:

- *Monitoring equal treatment of all the shareholders in the four takeover bids⁹* when there were agreements between the respective offerors and some shareholders of the offeree company. In all cases, the agreements were drawn up in a contract in which the subscribing shareholders undertook irrevocably to sell their shares while the offerors undertook to acquire them under the agreed conditions through a takeover bid for all the shares of the offeree companies—the only way to assure the sale of all the shares—and in equal conditions for all the shareholders. In this way, all the shareholders of the offeree company had the opportunity to sell all their shares to the offeror at the same price and within the same deadline.
- *Analysing the valuation reports and other circumstances regarding prices.* In accordance with the applicable legislation, two of the takeover bids authorised in 2003 required express authorisation of the price. One was a delisting offer¹⁰ and the other was an offer to recover the voting rights suspended after an irregular acquisition of a significant stake¹¹. In both cases, the CNMV examined at length the valuation reports drafted by independent experts and checked their compliance with regulatory valuation rules. Two other bids¹², which included the possibility of delisting the target shares on completion of the bids, were accompanied by valuation reports which were also examined by the CNMV.

Two of the authorised bids established significantly lower prices than the IPO price. Authorisation of those bids was based on compliance with the applicable rules and the fact that there was sufficient information in the respective prospectuses without having to assess the respective prices. However, one of those offers¹³ was partly aimed at delisting the target shares and included a valuation report that enabled shareholders to cross-check the price; the other bid¹⁴ was not for the purpose of delisting and it did not include a valuation report.

⁷ Law 26/2003, dated 17 July, which amended Securities Market Law 24/1988 and the consolidated text of the Spanish Corporations Law, to reinforce transparency in listed companies.

⁸ The shareholder agreements contain, among other items, rules for a special majority and the distribution of seats in the Board of Directors and Executive Committees of Cepsa and include reciprocal pre-emptive rights on their respective shares in Cepsa.

⁹ Acciona and five other offerors for Trasmediterránea; Barclays Bank for Banco Zaragozano; Madison for Papelera Navarra; and Advent for Parques Reunidos.

¹⁰ Uniland Cementera delisted its own shares.

¹¹ Bami for Metrovacesa.

¹² Acciona and five other offerors for Trasmediterránea, and Advent for Parques Reunidos.

¹³ Advent for Parques Reunidos.

¹⁴ Telefónica for Terra Networks.

- *Monitoring acquisitions of stakes of close to 25% of capital.* In 2002, Bami acquired a stake in Metrovacesa amounting to less than 25%. The outcome of transactions with own shares performed by Metrovacesa resulted in Bami owning over 25% of Metrovacesa's voting rights. This led to the suspension of the voting rights acquired irregularly (see next box) and of three directorships at Metrovacesa; their restoration required an obligatory takeover bid.

Calculation of a significant stake for the purposes of launching an obligatory takeover bid

To determine whether a stake in a listed company is considered to be significant and, therefore, requires an obligatory takeover bid, the following calculations apply. The shares and other instruments that give the right to subscribe or acquire shares of the offeree company that belong to, or are planned to be acquired by, any person will be added to those corresponding to its group, those of all the members of the governing bodies of the companies comprising that group, and those of the other persons acting on their own behalf but on account of, or in concert with, that person.

A takeover bid is obligatory if the sum of the aforementioned positions is 25% or more of the voting rights of the offeree company or, where that percentage is under 25%, if the person is or may be in a position to appoint over one-third of the governing body's members.

Non-voting shares must be included in the calculation to determine the total position in the offeree company. The stake (in percentage terms) of that position is calculated only with respect to voting shares. For example, acquiring 12.5% of a company that has issued non-voting shares for 50% of its capital represents a 25% stake of the voting rights and, therefore, triggers the obligation to launch a takeover bid.

Because of the variety of cases in which voting rights may be suspended or attributed to persons other than the shares' owners, the applicable rule does not include all of them but, as a general rule⁽¹⁾, it states that the significant stakes for the purposes of launching a takeover bid are calculated using the voting stock.

One such case involves treasury stock. This circumstance cannot be ignored when setting a significant stake threshold above which a company is obliged to launch a takeover bid. It is necessary to distinguish between supervening significant stakes arising from external transactions with own shares (outside the control of the party in question) and situations in which transactions with own shares and the stake in question are performed intentionally, enabling the party to acquire or increase the percentage of voting rights in an offeree company.

(1) Article 1.1 of Royal Decree 1197/1991, dated 26 July, on takeover bids for securities.

- *New features in the supervision of bids as a result of amendments to the regulation.* Amendments to the takeover regulation (see chapter 9) included the elimination of the obligation to launch bids for 75% of capital. The last bid of this type was made before the entry into force of the amendment in April 2003¹⁵. Since then, to acquire 50% or more of a company and appoint over half of its

¹⁵ The Caltagirone and Marchini groups' bid for Metrovacesa was subsequently changed to 100%.

Board members, it is necessary to launch a bid for 100% of capital, even if the offeror does not own 50% of the offeree company.

The other new features in the amendment were not applied in 2003 since no such cases arose and no competing bids were made.

- *Inclusion of a warning by the CNMV.* The CNMV included a warning in Minero Siderúrgica de Ponferrada's bid for own shares to reduce capital so as to assist the shareholders in understanding and analysing the transaction.
- *Cross-border bids.* In the bid for hotel group NH, a company listed in Spain and The Netherlands, both supervisors coordinated to adapt the prospectus content and the procedures to the requirements of the respective regulations. The Dutch regulator exempted the offeror from some rules that were different to Spanish ones.
- *Application of prorating rules.* Corporación Financiera Alba launched a bid for a maximum number of own shares (7% of capital) at a premium and subsequently redeemed them and reduced capital. Since this was a capital reduction, the proportional prorating system envisaged in the Spanish Corporations Law was applied, which differs from that contemplated in the Royal Decree on takeover bids.

Stock-only takeover bids and mixed cash-and-stock takeover bids

Unlike previous years, in 2003 there were no stock-only or mixed cash-and-stock takeover bids. Gas Natural launched a mixed cash-and-stock takeover bid for 100% of Iberdrola consisting of 29 new shares of Gas Natural plus 340 euros for every 50 shares of Iberdrola, subject to 75% acceptance; as stated earlier, that bid had to be withdrawn.

Delistings

Uniland Cementera was delisted through a takeover. After the bids for Tramediterránea and Banco Zaragozano were completed, these companies were delisted.

Following ACS's takeover bid for Dragados, the former absorbed the latter. After Bami's takeover bid for Metrovacesa, the latter absorbed the former. These mergers resulted in the delisting of Dragados and Bami.

Parques Reunidos is in the process of delisting after Advent's takeover bid. After the controlling shareholder completed its takeover bid for Papelera Navarra, it announced delisting¹⁶.

¹⁶ Parques Reunidos was delisted on 29 March 2004. Papelera Española adopted the name Smurfit Navarra, S.A. on 5 February 2004 and was delisted on 7 April.

The new Takeovers Directive

The European Commission presented a new draft Takeovers Directive. Negotiations over the wording of this Directive were especially problematic due to the differences in national legislation of EU Member States. The initial proposals date from 1989 and 1999. However, the proposal was not approved by the European Council and Parliament until 2003. In November 2003, the European Council, with the abstention of Spain, adopted general guidelines for adopting a common position on the draft Takeovers Directive. The European Parliament approved this draft on the first reading in December¹.

The new draft sets out fundamental principles to govern takeover bids and gives Member States the responsibility to determine the details of application. The objectives of the Directive are as follows:

- (i) harmonise national systems, especially as regards transparency in procedures;
- (ii)panies periodically inform shareholders of defence mechanisms. In the case of hostile takeover bids, the new text establishes that defence measures must be approved by the Shareholders' Meeting.

The main new features of the draft are the recognition of sell-out rights (enabling minority shareholders to force the majority shareholder that made the bid and acquired 90%-95% of the offeree company to buy their shares) and squeeze-out rights (enabling majority shareholders to force minority shareholders to sell their shares).

¹ The Directive was finally approved in April 2004 (Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids).

5. Entities

The CNMV supervises investment services firms (ESI)¹, collective investment schemes (IIC) and their management companies (SGIIC) and depositories², venture capital firms (ECR)³ and securitisation fund management companies (SGFT)⁴. The CNMV also authorises collective investment schemes⁵ and their depositories⁶, whereas the other institutions are authorised by the Economy Ministry at the proposal of the CNMV⁷.

Broadly speaking, the CNMV's supervisory function involves checking that the requirements for authorisation are met and subsequently monitoring the institutions that are authorised in order to check their compliance with the regulations.

Authorisation and registration

In line with previous years, the CNMV continued to authorise and register a sizeable number of entities. Nearly 2,000 entities were registered and over 2,000 were removed from the register in 2003.

At 2003 year-end, there were 13,520 entities registered with the CNMV (table 5.1), slightly less than in 2002. Basically, there was a reduction in the number of investment services firms and their representatives and an increase in the number of collective investment schemes, especially SIMCAV, and of venture capital firms.

Six entities belonging to five financial groups were affected by changes in control; they were mainly collective investment scheme management companies (table 5.3). The Spanish buyers were savings banks. The foreign buyers were three groups established in Spain that have entities registered with the CNMV.

¹ Article 84 of Securities Market Law 24/1988, dated 28 July.

² Article 31 of Law 46/1984, dated 26 December, which regulates collective investment schemes. This supervisory function is also envisaged in article 69 of the new Collective Investment Scheme Law (Law 35/2003, dated 4 November).

³ Article 34 of Law 1/1999, dated 5 January, which regulates venture capital firms and their management companies.

⁴ Article 6.3 of Law 19/1992, dated 7 July, which regulates real estate investment funds and companies as well as mortgage securitisation funds, and article 20 of Royal Decree 926/1998, which regulates asset securitisation funds and securitisation fund management companies.

⁵ Article 8 of Law 46/1984, amended by article 41 of Law 44/2002, dated 22 November, on Measures to Reform the Financial System. This function is also envisaged in article 10 of Law 35/2003.

⁶ Article 9 of the Collective Investment Scheme Regulation (Royal Decree 1393/1990, dated 2 November). Article 59 of the new Collective Investment Scheme Law (Law 35/2003) ratifies this authorisation regime.

⁷ Articles 66 of Law 24/1988 (ESI), 7 of Law 1/1999 (ECR), 6 of Law 19/1992 (mortgage securitisation fund management companies) and 13 of Royal Decree 926/1998 (securitisation fund management companies). SGIIC authorisation is envisaged in article 8 of Law 46/1984, as amended by article 41 of Law 44/2002; article 41 of Law 35/2003 ratifies the CNMV's powers in this area.

Table 5.1
Entities registered and removed in 2003

Entity type	Entities registered at 31/12/02	Registrations	Removals	Entities registered at 31/12/03
Investment services firms:	7,655	1,374	1,706	7,323
<i>Spanish</i>	141	10	22	129
Broker-dealers	45	4	3	46
Brokers	65	5	11	59
Portfolio management companies	31	1	8	24
<i>Foreign</i>	782	64	84	762
Branch	19	2	2	19
Free provision of services	763	62	82	743
<i>Representatives</i>	6,732	1,300	1,600	6,432
Collective investment:	5,812	552	308	6,056
<i>Mutual funds</i>	2,543	243	227	2,559
FIM	2,373	230	217	2,386
FIAMM	165	11	8	168
FII	5	2	2	5
<i>Investment companies</i>	2,777	268	42	3,003
SIM	129	0	21	108
SIMCAV	2,646	268	20	2,894
SII	2	0	1	1
<i>SGIIC</i>	124	3	8	119
<i>Depositories</i>	150	0	8	142
<i>Foreign UCITS⁽¹⁾</i>	218	38	23	233
Venture capital:	118	22	8	132
FCR	33	4	2	35
SCR	59	12	5	66
SGECR	26	6	1	31
Securitisation:	8	1	0	9
SGFT	8	1	0	9
Total	13,593	1,949	2,022	13,520

⁽¹⁾ Undertakings for Collective Investment in Transferable Securities.

Applications processed by the Directorate of Authorisation and Registration

The process of registering and removing entities (ESI, SGIIC, SGFT, etc.), their representatives and their products (mutual funds, SIMCAV, etc.) from official registers is a significant part of the Directorate of Authorisation and Registration's functions. Additionally, that Directorate also processes numerous applications of many different types, including amendments to previously registered documents. Overall, in 2003, 14,933 applications were presented (1% more than in 2002) and 15,804 were concluded (approximately 4% more than in 2002).

The number of authorisation and registration applications has increased steadily since the late 1990s (see table), particularly in some periods, due to collective

investment products¹. The CNMV has devoted considerable efforts to dealing with this workload, mainly by increasing human and technical resources as well as expediting processing as much as possible. The CNMV is now reaping the rewards: the number of applications pending registration at 2002 and 2003 year-end has fallen considerably (-15% and -47%, respectively), after increasing for several years, and the processing period of a large number of applications has been reduced².

**Applications processed by the Directorate of
Authorisation and Registration**

Year	Number of applications		
	Presented	Resolved	Pending
1999	9,922	9,220	1,491
2000	13,025	11,960	2,557
2001	13,488	13,254	2,777
2002	14,846	15,259	2,357
2003	14,933	15,804	1,257

The bulk of the registrations processed in 2003 related to Spanish collective investment products (over 70% of the total). In particular, SIMCAV generated 37% of the total and FIM 33%. A large number of applications were also presented by foreign collective investment schemes, which accounted for 18% and were aimed mainly at registering foreign marketers.

**Applications resolved by the Directorate of
Authorisation and Registration**

	2002		2003	
	Number	%	Number	%
Foreign IIC	2,277	14.9	2,911	18.4
FIM	4,627	30.3	5,161	32.7
SIMCAV	6,594	43.2	5,900	37.3
SGC	339	2.2	277	1.8
SAV	501	3.3	570	3.6
Other	921	6.0	985	6.2
Total	15,259	100.0	15,804	100.0

¹ The total number of resolved applications relating to mutual funds, SIMCAV and foreign collective investment schemes increased from 11,476 in 1999 to 14,957 in 2003.

² Among the most numerous applications, there was a decline in the average processing period of applications relating to registrations of the Board of Directors of SIMCAV (from 64.8 days in 2001 to 35.6 in 2003) and to registrations of foreign collective investment schemes (from 49.1 days to 35.6).

Investment services firms (ESI)

In 2003, ten Spanish investment services firms registered with the CNMV: four broker-dealers, five brokers and one portfolio management company. Eight of them were newly-created and the other two came from transformations (one broker became a broker-dealer and another broker became a portfolio management company). Twenty-two entities were removed (three broker-dealers, eleven brokers and eight portfolio management companies), so the number of Spanish investment services firms declined by 12 to 129.

Table 5.2
**Entities registered and removed, and their controlling groups:
 ESI, SGIIC, SGEGR and SGFTH. 2003**

Broker-dealers	Controlling group
<i>Registrations</i>	
Nordkapp Inversiones, Sociedad de Valores, S.A.	Independent
Venture Finanzas, Sociedad de Valores, S.A.	Independent
Fidentiis Equities, S.V., S.A.	Independent
CM Capital Markets Bolsa, S.V., SA	Independent
<i>Removals</i>	
BBVA Bolsa, S.V., S.A.	BBVA
Bankers trust, S.V., S.A.	Deutsche Bank
Molina 6 Inversiones y Valores, S.V., S.A.	La Caixa
Brokers	Controlling group
<i>Registrations</i>	
Nmas 1, Agencia de Valores, S.A.	Independent
Dexia Equities España, S.A., Agencia de Valores	Dexia group
Fonditel Valores, Agencia de Valores, S.A.	Telefónica, S.A.
Atlas Capital Inversiones, Agencia de Valores, S.A.	Independent
Baer, Crosby and Pike, A.V., S.A.	Independent
<i>Removals</i>	
Capital Navarra, Agencia de Valores, S.A.	Independent
Inverbolsa, S.A., Agencia de Valores y Bolsa	Banco Finantia Sofinloc
Swiss Life Asset Management España, Agencia de Valores, S.A.	Swiss Life
B.I. Capital, Agencia de Valores, S.A.	Independent
Zurich Inversiones, Agencia de Valores, S.A.	Zurich
Activos en Renta, Agencia de Valores, S.A.	Independent
Bankers Agencia de Valores, S.A.	Fortis group
Gestidiner, Agencia de Valores, S.A.	Independent
Worldstocks Spain, A.V., S.A.	Independent
Gesconsult Valores, A.V., S.A.	Independent
CM Capital Markets Bolsa, A.V., S.A.	Independent
Portfolio management companies	Controlling group
<i>Registrations</i>	
Gesconsult Carteras S.G.C., S.A.	Independent
<i>Removals</i>	
Gesbanzano, S.A., S.G.C.	Banco Zaragozano
Santander Patrimonios, S.G.C., S.A.	Santander Central Hispano
BCH Gestión de Patrimonios, S.A., S.G.C.	Santander Central Hispano
Fincorp Gestión, S.G.C., S.A.	Independent
Inversores de Capital, S.A., S.G.C.	Independent
Safei Gestión, S.G.C., S.A.	Capitalia group
Profit Carteras, S.A., S.G.C.	Independent
Ladder, S.A., S.G.C.	Independent
Investment services firms from other EU countries	Controlling group
<i>Registrations</i>	
Frank Russell Company Limited, branch in Spain	Frank Russell
Gartmore Investment Limited, branch in Spain	Gartmore

(Continues over)

(Continued)

Broker-dealers	Controlling group
<i>Removals</i>	
KBC Securities, S.A., branch in Spain	Kredietbank group
ING Barings, branch in Spain	Nationale-Nederlanden
IIC management companies	Controlling group
<i>Registrations</i>	
Habitat de Valores, S.G.I.I.C., S.A.	Habitat group
Fonditel Gestión, S.G.I.I.C., S.A.	Telefónica
Star Inmogestion, S.G.I.I.C., S.A.	Bami, S.A.
<i>Removals</i>	
Navarra Bolsa, S.A., S.G.I.I.C.	Independent
Benkers Gestora, S.G.I.I.C., S.A.	Fortis group
G.V.C. Gestión, S.A., S.G.I.I.C.	Credit Suisse
BNP Paribas Ahorro, S.G.I.I.C., S.A.	BNP-Paribas
Citigestión, S.A., S.G.I.I.C.	Citigroup
IM Administración, S.A. S.G.I.I.C.	Independent
Gesconsor, S.A., S.G.I.I.C.	Independent
Activos en Renta Fondos, S.G.I.I.C., S.A.	Independent
ECR management companies	Controlling group
<i>Registrations</i>	
Qualitas Equity Partners, S.A., S.G.E.C.R.	Timón group
Cantabria Capital, S.G.E.C.R., S.A.	Santander Central Hispano
Bullnet Gestion, S.G.E.C.R., S.A.	Independent
Katana Private Equity, S.A., S.G.E.C.R.	Independent
Bankinter Capital Riesgo, S.G.E.C.R.	Bankinter
Mobius Corporate Venture Capital, S.G.E.C.R., S.A.	Independent
<i>Removals</i>	
Alta Venture Sociedad Gestora de FCR, S.A.	BBVA group
Securitisation fund management companies	Controlling group
<i>Registrations</i>	
Intermoney Titulización, S.G.F.T., S.A.	CIMD group

Table 5.3
Changes in control at ESI, SGIIC and SGEER in 2003

<i>Takeovers by foreign financial institutions</i>		
<i>Institution or group</i>		<i>Buyer</i>
<i>Name</i>	<i>Type</i>	
ABF-AT Gestión de fondos	SGIIC	Crédit Agricole
BZ Gestión	SGIIC	Barclays Bank
Bipop on line	Broker	Winterthur
<i>Changes in control and takeovers by residents or Spanish institutions</i>		
<i>Institution or group</i>		<i>Buyer</i>
<i>Name</i>	<i>Type</i>	
Arcalia Inversiones	SGIIC	Bancaja
	Broker	Bancaja
BTM Securities (Spain)	Broker-dealer	La Caixa

Cross-border transactions by Spanish investment services firms

The number of Spanish investment services firms applying for EU passports to operate in other countries in the European Union continued to be small compared with the number of foreign firms although they are now more willing to take advantage of this business possibility. In 2003, two Spanish broker-dealers⁸ applied for EU passports to open branches in other countries in the European Union, whereas ten firms⁹ opted for the free provision of services, mainly to operate in European secondary markets. At 2003 year-end, 22 Spanish investment services firms had received an EU passport to operate under the free provision of services regime (mainly in Germany, the UK, Portugal and France) and four to open branches (see table 5.4).

Table 5.4
Spanish investment services firms with EU passport, by host country⁽¹⁾

Country	No. of investment services firms
Free provision of services	
Germany	16
United Kingdom	12
Portugal	11
France	10
Ireland	9
Belgium	8
The Netherlands	8
Italy	7
Luxembourg	6
Austria	5
Denmark	5
Finland	5
Greece	5
Sweden	5
Iceland	2
Norway	2
Liechtenstein	1
Branches	
Portugal	2
Germany	1
United Kingdom	1
France	1
Total investment services firms with cross-border transactions⁽²⁾	
Free provision of services	22
Branches	4

⁽¹⁾ Countries stated in the disclosures of free provision of services and in the authorisations to open branches.

⁽²⁾ A given firm can provide services in one or more states.

Foreign investment services firms

In 2003, 62 investment services firms based in other EU member states notified the CNMV of their intention to provide investment services in Spain under the free pro-

⁸ Nordkapp Inversiones, S.V., S.A. and Intermoney Valores, S.V., S.A.

⁹ Intermoney Valores, S.V., S.A., Gesmosa-GBI, A.V., S.A., NMas 1, A.V., S.A., UBS Warburg Securities (Spain), S.V., S.A., J.P. Morgan, S.V., S.A., Ahorro Corporación Financiera, S.V., S.A., BBVA & Partners Alternative Investment, S.A., Fidentiis Equities, S.V., S.A., Eurosafei, S.V., S.A., and BBVA Bolsa, S.V., S.A.

vision of services; 82 firms left Spain, reducing to 743 the total number of institutions providing investment services in Spain under the Investment Services Directive¹⁰. In 2003, two firms¹¹ opted to provide services via branches in Spain and two¹² left Spain, maintaining at 19 the number of investment services firms registered with the CNMV under this heading (see tables 5.1 and 5.5).

Table 5.5
Foreign investment services firms, by home country

Country	No. of investment services firms
Free provision of services	743
United Kingdom	534
France	54
The Netherlands	33
Ireland	27
Austria	22
Belgium	12
Germany	12
Sweden	9
Luxembourg	8
Greece	7
Norway	7
Denmark	6
Finland	5
Italy	4
Portugal	3
Branches	19
United Kingdom	14
France	2
Belgium	1
Germany	1
Portugal	1
Total	762

Collective investment schemes (IIC)

Securities investment

The trend of the last few years was reversed in 2003, when the assets managed by securities investment funds increased considerably¹³. This situation was accompanied by a slight decrease in the number of funds registered with the CNMV (see table 5.1). In 2003, 243 funds (230 FIMs, 11 FIAMMs and 2 FIIs) were registered and 227 were removed, mostly because they merged with other funds, so there were 2,559 investment funds on the books at 2003 year-end (16 more than in 2002).

With regard to the investment approach of funds created in 2003 (see table 5.6), there was a sharp increase in the number of guaranteed funds (67), compared with

¹⁰ This information is available on the CNMV's web site (www.cnmv.es).

¹¹ Frank Russell Company Limited, branch in Spain, and Gartmore Investment Limited, branch in Spain.

¹² KBC Securities, S.A., branch in Spain, and ING Barings, branch in Spain.

¹³ The assets managed by securities funds (FIM and FIAMM) amounted to €210 billion in December 2003, i.e. a 20.5% increase on December 2002. The number of investors also rose substantially: from 7.1 million in 2002 to over 7.6 million in 2003. FIMs and FIAMMs performed positively, reversing the trend of the last two years.

other categories such as global funds (46), which are clearly on the up, and short-term fixed-income (36). Only 29 funds invested in the other hybrid categories. The predominance of guaranteed funds reflects investors' risk aversion after several years of losses due to the stock market slump.

The number of FIMs registered as funds of funds increased substantially due to newly-created funds in the year (40 of the 230 registered FIMs) and the conversion of existing funds. At 2003 year-end, 19 master FIM (FIMP) and 24 feeder FIM (FIMS) were registered with the CNMV.

In 2003, the number of registered investment companies increased by 226 (268 registrations and 42 removals) to 3,003¹⁴ (2,894 SIMCAVs, 108 SIMs and one SII). As in previous years, there was considerable growth in the number of SIMCAVs. A total of 268 new SIMCAVs were registered and 20 were removed, mostly because they merged with other institutions. No SIMs were registered and 21 were removed from the books.

Table 5.6
New FIM, by type

Type of FIM	2002		2003	
	Number	% of total	Number	% of total
Short-term fixed-income	16	13.91	36	15.65
Long-term fixed-income	2	1.74	16	6.96
Mixed fixed-income	0	0.00	12	5.22
International fixed-income	5	4.35	8	3.48
International mixed fixed-income	6	5.22	7	3.04
Mixed equities	2	1.74	7	3.04
Spanish equities	8	6.96	8	3.48
International mixed equities	3	2.61	3	1.30
Euro equities	3	2.61	9	3.91
International equities	17	14.78	11	4.78
International equities Europe	0	0.00	3	1.30
International equities Japan	1	0.87	0	0.00
International equities European Union	3	2.61	4	1.74
International equities Emerging countries	1	0.87	1	0.43
International equities Other	12	10.43	3	1.30
Guaranteed fixed-income	11	9.57	16	6.96
Guaranteed equities	25	21.74	51	22.17
Global funds	17	14.78	46	20.00
Total	115	100.00	230	100.00

Mutual fund mergers

In 2003, the number of applications for fund mergers continued to be large due to the need to rationalise the offering. The CNMV registered 119 mergers in 2003, compared with 110 in 2002. Additionally, there were authorised mergers that were pending registration at 31 December 2003 as well as mergers pending authorisation, which will foreseeably cause the removal of 47 and 8 funds, respectively, from the register.

¹⁴ The assets managed by investment companies amounted to €21.5 billion in December 2003, nearly 14% higher than in December 2002. The number of investors rose by 5.3% to 356,000 due solely to growth in the number of shareholders of SIMCAVs.

Real estate investment

In 2003, two new real estate funds (FIIs)¹⁵ were registered and two FIIs¹⁶ were removed, one because it merged with another fund, so the total number of institutions was unchanged at five. At 2003 year-end, two applications for FIIs were presented to the CNMV for registration. One¹⁷ of the two institutions in the real estate investment company register was removed.

IIC management companies (SGIIC)

The number of SGIICs registered decreased by five to 119 since three new SGIICs were registered (groups not related to credit institutions) and eight were removed (four of them owned by banking groups) (see table 5.2).

Foreign IIC

In 2003, a considerable number of new foreign IICs (UCITS¹⁸) were registered to be marketed in Spain (38), compared with 23 removals; as a result, there were 233 UCITS registered with the CNMV at 2003 year-end. The bulk of the new institutions were domiciled in Luxembourg, Ireland and France (see table 5.7).

Regarding cross-border transactions by Spanish collective investment schemes, 22 FIMs obtained an EU passport in 2003 to be marketed in other EU countries; accordingly, the number of Spanish FIMs and FIAMMs with an EU passport was 150 and 14, respectively.

Table 5.7
UCITS by home country

Country	No. of UCITS
Luxembourg	165
Ireland	32
France	21
Germany	10
United Kingdom	4
The Netherlands	1
Total	233

Venture capital firms (ECR)

In line with previous years, the number of registrations of venture capital firms with the CNMV continued to rise, even though registration has been voluntary since 1999, when the CNMV assumed the functions of authorising and supervising them. In 2003, twelve venture capital companies (SCR), four funds (FCR) and six management companies (SGEGR), two of them belonging to credit institutions, were registered (see table 5.1).

¹⁵ Agrupación Fondo Inmobiliario and Madrid Patrimonio Inmobiliario FII.

¹⁶ Segurfondo Inmobiliario FII and SCH Inmobiliario 2 FII.

¹⁷ Vallehermoso Patrimonio.

¹⁸ Undertakings for Collective Investment in Transferable Securities.

Securitisation fund management companies

In 2003, one new securitisation fund management company¹⁹ was registered, increasing the total number to nine.

Supervision of entities

Supervision of investment services firms

Without prejudice to meeting the regulation's other objectives, the CNMV's supervisory actions in 2003 regarding investment services firms focused mainly on the following:

- Solvency of investment services firms and their groups, and their compliance with the legal coefficients. The analysis of compliance by investment services firms and their groups with the coefficients is complemented by monitoring their earnings performance and considering the net worth equilibrium they must have under the framework of the Spanish Corporations Law. A fundamental factor in overseeing the solvency of consolidable groups is monitoring group size and the consolidation methods applied as well as certain intragroup transactions that may lead to a situation of risk for the other group companies.
- Compliance with the codes of conduct.
- Checking the internal control procedures, resources and systems used by those firms.

In the course of the supervisory actions regarding investment services firms, or as a result, the CNMV issued 762 subpoenas, of which 275 were due to on-site actions or visits to firms' headquarters.

In addition to issuing subpoenas for late filings and requesting additional information, the CNMV issued 148 notifications requiring firms to adopt corrective measures or making recommendations as a result of its supervisory actions, 112 from distance supervision²⁰ and the rest from on-site inspections.

Table 5.8
Supervision of investment services firms: subpoenas issued by the CNMV in 2003

Type of subpoena	Actions		
	Distance	On-site	Total
For filing information late	157	-	157
Requesting information	218	239	457
Corrective measures or recommendations	112	36	148
Total	487	1,162	1,649

¹⁹ Intermoney Titulización, S.G.F.T., S.A.

²⁰ Distance supervision comprises mainly the analysis of confidential and public information that the firms must file with the CNMV.

Solvency and other legal coefficients

Because of the sector's unfavourable revenue performance, it became advisable to pay special attention to the net worth of investment services firms and their groups. In particular, the CNMV intensified the monitoring of firms that had posted negative results or persistently incurred higher structural costs than net revenues for services in order to prevent or detect and, where appropriate, resolve situations of non-compliance.

In general, the firms amply complied with the legal requirements regarding the solvency and other coefficients. Nevertheless, some firms failed to comply with requirements but these cases were mainly resolved satisfactorily during the year.

As part of the controls based on the information periodically filed by the firms, the liquidity margins of broker-dealers and brokers were monitored in detailed, checking whether they comply in the form of unrestricted demand deposits at credit institutions. On-site inspections enabled the CNMV to detect situations that affected earnings at some firms, in some cases with a high impact on equity. Another situation that was detected was the deficient application of accounting principles, which affected the firm's results, and the misstatement of equity as a result of transactions with related companies or improper capitalisation of expenses.

Codes of conduct

As part of the supervisory work regarding codes of conduct, the main actions were to check: (i) the bookkeeping of transactions and the archive of order tickets; (ii) the correct application of tariffs; (iii) the establishment of relations with investors and quality of information supplied to clients; and (iv) compliance with the general code of conduct, paying special attention to the suitability of, and compliance with, internal codes of conduct.

The main deficiencies that were detected were in the execution of contractual relations with clients and the mandatory information sent to them. Some deficiencies were also detected in relation to the procedures on allocating transactions to clients, which were prone to generating discriminatory treatment between them.

Internal control procedures, resources and systems

The checks performed in 2003 evidence that compliance in this area was adequate in general. Nevertheless, certain deficiencies were detected in specific cases, including: (i) insufficient resources to perform the authorised activities securely; (ii) the absence of Chinese walls between areas of activity that are susceptible to cause conflicts of interest; (iii) deficiencies in the control procedures relating to securities deposits, in some cases not attributable to the reconciliation and verification procedures of the investment services firms themselves; and (iv) inadequate procedures in establishing limits on financing to clients, which may lead to default and have a negative effect on the firm's results.

To complement on-site inspections, several specific checks were performed regarding compliance with the regulations on internal control procedures, resources and systems, based on the periodical information supplied by the firms. The main checks were as follows:

- Examining the reports on the degree of compliance with internal codes of conduct²¹. A general improvement was observed in the internal control systems of investment services firms and their groups, although the small workforce in many of those firms sometimes makes it difficult to segregate functions adequately.
- Checking, through depositories, of the information filed with the CNMV regarding the positions held by clients of investment services firms and, where appropriate, of the control of the subdeposit entrusted to other financial intermediaries, whether Spanish or foreign.
- Checking that the balances payable were temporary and minimal and that they were materialised in liquid, low-risk assets.

Reports complementing auditors' reports on investment services firms: a new technical audit standard

The CNMV and the bodies representing auditors considered it was advisable for the Accounting and Audit Institute (ICAC) to draft a new technical audit standard regarding the drafting of a report complementing the auditors' report on the financial statements of investment services firms and their financial groups, in place of the technical audit standard in force since 1998¹. On 23 November 2003, the ICAC resolved to publish the new text for consultation.

The 1998 technical audit standard was aimed at standardising the content of the complementary reports, which then referred to broker-dealers and brokers and their financial groups and which were filed with the CNMV by the auditors, in accordance with the spirit of collaboration between supervisory institutions and auditors envisaged by the Spanish Corporations Law.

The new technical audit standard takes account of the extensive amendments introduced in the last few years in the regulations governing investment services firms, including the incorporation of portfolio management companies into that category and the improvement in the information filed with the CNMV. In particular, the new technical audit standard envisages greater emphasis on a detailed review of compliance with the regulations in relation to the solvency and liquidity coefficients, the caps on large risks, as well as the internal control systems and procedures of investment services firms and their consolidable groups.

¹ ICAC Resolution dated 20 July 1998, which publishes the technical audit standard on drafting a special report complementing the auditors' report on the financial statements of broker-dealers and brokers and their groups.

² ICAC Resolution dated 26 November 2003, which publishes the technical audit standard on drafting a report complementing the auditors' report on the financial statements of investment services firms and their groups.

Investor Protection Scheme²²

In 2003, no new claims of breaches were filed regarding insolvent investment services firms, so all the claims analysed by the Investor Protection Scheme's management company referred to cases prior to the Scheme's creation. At 2003 year-end, the management company had analysed all the claims filed (8,871) since the Scheme's creation and had paid over €9 million in indemnities.

²¹ Since 1 January 1999, when the CNMV Circular 1/98, dated 10 June, regarding internal on-going risk control, monitoring and assessment systems, entered into force, the Boards of Directors of investment services firms have been obliged to file with the CNMV a confidential annual report on compliance with their internal control regulations in addition to the audited financial statements.

²² Fondo General de Garantía de Inversiones.

At the end of May 2003, the management company set up a web site²³. It includes the applicable regulations, the standard forms for claiming indemnities and the instructions on how to complete the forms.

The overall contribution to the Investor Protection Scheme budgeted for 2003 amounted to nearly €5 million. The contribution was broken down by member firm for the first time, in accordance with the amendment introduced in Law 53/2002, on Tax, Administrative and Labour Measures. The amendment envisages the calculation of each firm's contribution as the sum of one fixed component and two variable components²⁴. As a result of that amendment, portfolio management companies obligatorily became members of the Scheme, contrasting with the previous system, which envisaged that they arrange civil liability insurance to cover the risks envisaged in the investor compensation regulations.

In November 2003, the Scheme's management company presented its 2004 budget to the CNMV, which approved it. The budget envisages expenses of €969,058 (14% less than in 2003), with personnel expenses amounting to 41% of the total. The only revenues envisaged are those from management fees, so they equal the total amount of budgeted expenses.

Supervision of collective investment schemes

In 2003, within the broad variety of factors to supervise at collective investment schemes and considering their importance for investor protection, the CNMV focused on compliance with the legal coefficients and on the suitability of investments, the sufficiency of resources and the adequacy of the internal control systems, paying particular attention to the prevention of conflicts of interest, the adequacy of information to investors and compliance with the control functions entrusted to the depository.

As a result of its supervisory actions regarding collective investment schemes, the CNMV issued 1,891 subpoenas, of which 1,587 were due to checks based on the information filed by the schemes and the remainder to on-site supervision.

The largest single class of subpoenas (896) related to requests for information from management companies, of which 714 were due to the checks based on the information filed with the CNMV by the schemes. Distance checks generated most of the demands for corrective measures or recommendations. Specifically, of the 437 subpoenas of that type, 315 were due to distance supervision.

Table 5.9
Supervision of collective investment schemes: subpoenas issued by the CNMV in 2003

Type of subpoena	Actions		
	Distance	On-site	Total
For filing information late	558	-	558
Requesting information	714	182	896
Suggesting corrective measures or recommendations	315	122	437
Total	1,587	1,305	2,892

²³ www.fogain.com.

²⁴ The fixed component is selected from three possible amounts, based on the firm's gross fee revenues, thus guaranteeing a minimum contribution from each firm. Regarding the two variable components, one is based on the cash and securities or financial instruments deposited or managed for the clients covered by the guarantee and the other based on the number of clients covered and the maximum indemnity per client envisaged by the regulation.

Legal coefficients and suitability of investments

- *Systematically monitoring the investments by collective investment schemes.* In this basic supervisory task, in addition to checking compliance with the established investment and liquidity coefficients, the CNMV analysed the suitability of the invested assets, compliance with the caps on operating with derivatives and the requirements relating to investment companies' capital and net worth. Some specific breaches were detected which were mostly resolved immediately after issuing the corresponding subpoena for a remedy.
- *Systematically analysing yields.* This supervision approach detected specific valuation errors and some deficiencies in the management companies' internal controls; in each case, the firm in question was ordered to remedy the matter.

The aforementioned systematic checks were complemented with several specific checks; in particular, the following were analysed:

- *The expenses charged to the funds, i.e. management, deposit, audit, intermediation and other fees.* The CNMV checked the compliance of each collective investment scheme with the legal and particular limits of those expenses and their correct accrual and, where applicable, the appropriate allocation to the fund.
- *The suitability of invested assets and instruments.* The CNMV's actions continued to focus on analysing investments in structured products (credit derivatives and mutual funds) and investments by funds of funds in order to detect investments in products that do not provide the liquidity required of an investment institution.
- *Alternative fixed-income valuation systems.* The CNMV analysed compliance with the regulations on alternative valuation procedures for fixed-income assets when their price is not representative of market price performance. The CNMV reviewed the management companies' systems to ensure the correct calculation of their net asset values, paying special attention to the preference share valuation procedures and the systems for reviewing the ratings of issuers of the securities managed by collective investment schemes.
- *SGIICs.* In addition to the prudential controls regarding managed investment funds and companies, the CNMV also checked compliance with the prudential regulations regarding SGIICs (minimum equity, investment regulations, etc.). The CNMV also performed several analyses of the management companies' economic and financial position in order to anticipate possible breaches and, where applicable, demand that they present preventive plans.

Resources, control procedures and conflicts of interest

- *Analysing related-party transactions* to check that: (i) they are made purely in the investors' interests, at market prices; (ii) they conform to the management companies' internal procedures envisaged in their internal codes of conduct; and (iii) adequate information is supplied to investors. In particular, the CNMV analysed the brokerage commissions charged by intermediaries of the same financial group as the management company and it closely monitored securities acquisitions, on behalf of the managed collective investment

schemes, in issues placed or underwritten by other companies in the same group.

- *Reviewing transactions among collective investment schemes managed by the same management company.* The CNMV monitored the contractual conditions of transactions among the schemes managed by the same management company. As a result, the CNMV detected some practices which were clearly discriminatory among collective investment schemes (with a marginal extent and impact on the sector), upon which the CNMV has acted with the utmost rigor envisaged by the regulations. In the same line, for the purpose of prevention, the CNMV checked that management companies had internal procedures that ensured that allocations of positions were not made arbitrarily among the managed collective investment schemes when the transaction orders were global or did not identify the collective investment schemes for which the transaction was ordered.
- *Checking the effective separation of activities within a financial group ("Chinese walls") and decision independence.* As part of the on-site reviews performed at IIC management companies which are part of financial groups, the CNMV analysed whether the investment decisions for the managed portfolios had been made independently and separately from other entities or areas of the financial group (especially, the proprietary portfolio), ensuring that the investment decisions were adopted independently. The CNMV also analysed other possible situations that could generate conflicts of interest when the depository is a member of the same group.
- *Analysing security buying and selling procedures for managed IICs* in order to prevent conflicts of interest between IICs, checking the existence of systems to prove that investment decisions in favour of a certain institution are made prior to execution and knowledge of the results derived from those investment decisions.
- *Detecting other practices that potentially generate conflicts of interest between investors.* In addition to checking the procedures relating to the subscription and reimbursement of mutual fund shares, in 2003 the CNMV performed specific checks to detect discriminatory practices between investors involving the application of different net asset values²⁵.

Information supplied to investors

- *Reviewing the quarterly reports* supplied to investors in order to check whether their content is truthful and sufficient.
- *Analysing auditors' reports, financial statements, auditors' recommendations and the report on the degree of compliance in the internal control report.* The IIC regulation envisages that the CNMV must receive those reports, whose content is fundamental for the CNMV's supervisory functions, so it pays special attention to reviewing their content and the degree of compliance with the disclosure deadlines established in the legislation.

²⁵ Those practices involve mainly the acceptance of subscription and reimbursement of shares at a price that does not correspond to that envisaged in the general regulations and those of the fund itself, in order to favour a certain investor, taking advantage of market movements in which other investors cannot obtain a profit (late or after-hours trading). Those practices may be especially harmful for investors in the most volatile funds, by the guarantee and the other based on the number of clients covered and the maximum indemnity per client envisaged by the regulation.

New Circular on foreign IIC disclosures

In December 2003, the CNMV approved a new Circular on disclosure by foreign IICs marketed in Spain¹ in order to rationalise the information they file with the CNMV, i.e. both the public information filed after the IIC registration and the statistical information.

Because of the substantial increase in the number of foreign IICs marketed in Spain in recent years, their characteristics (marketing of compartments or sub-funds) and the fact that several entities usually market the same product, the CNMV has designed a more rational IIC disclosure system that is more in line with the objectives. As an illustration of the difficulties in managing the system imposed by the previous regulation², each marketer had to file with the CNMV the statistical information of each and every IIC marketed by each compartment or sub-fund, which amounted to around 200,000 combinations of compartment/marketer.

The principal amendments introduced by the new Circular are as follows:

- Public information after registration: (i) designation of a single marketer responsible for filing with the CNMV the changes in the information that is supplied (prospectus, regulation and report for marketing in Spain); and (ii) elimination of the obligation to file periodical economic information (annual and half-yearly reports, in general) with the CNMV, which is replaced by the obligation of the designated marketer to maintain such information at the disposal of the CNMV at its headquarters, and the obligation of the management company or marketer to supply that information to investors.
- Statistical information: simplification of the statements that are filed with the CNMV, replacing the obligation to inform on each compartment or sub-fund with the obligation of the IIC to send an overall confidential statement.

¹ CNMV Circular 3/2003, dated 29 December, on disclosure by foreign IICs registered at the CNMV.

² CNMV Circular 2/1993, dated 3 March, on disclosure by foreign IICs that have filed with the CNMV the offering prospectus for their shares (amended by CNMV Circular 3/1997, dated 29 July).

Actions regarding IIC depositories

Continuing the actions that commenced in 2002, last year the CNMV reviewed specific IIC depositories, mainly through on-site inspections, to check their degree of compliance with the regulations relating to IICs. We reviewed the following:

- *Existence of a body or department at the entity that is dedicated specifically to compliance with the regulations on IIC depositories.* In particular, the CNMV checked whether the hierarchical position of the person or area in charge at the entity was compatible with independence of actions, a reasonable segregation of functions and an appropriate prevention of conflicts of interest with the SGIIC.
- *Safekeeping and settlement of the securities comprising IIC assets,* obtaining, in particular, evidence that the depository is exercising adequate control of the securities whose deposit has been outsourced to other entities.
- *Controls established by the depository to ensure compliance with its task to supervise the activity of management companies with respect to the administered IIC.*
- *Existence of a system to notify the CNMV of anomalies and problems.*

In 2003, there was a substantial increase in the number of notifications filed with the CNMV by the depositories regarding possible breaches of the legal coefficients of the IICs administered by the management companies. That increase evidences the depositories' greater awareness of the need to fully comply with their functions, which can be partly attributed to the written reminder from the CNMV President on the subject and the commencement of on-site inspections at those entities last year.

Actions regarding self-managed IICs

Following the pattern that commenced in 2002, last year the CNMV continued to perform on-site inspections at SIMs and SIMCAVs not managed by SGIICs, in order to cover a sector which, though smaller than the other IICs in terms of managed assets, also requires effective supervision to protect investors' rights.

Actions regarding real estate IICs

In addition to checking real estate IICs' compliance with the mandatory coefficients, the CNMV reviewed some FII appraisal reports, in some cases as a result of especially erratic fluctuations of the appraisals and in others due to discrepancies in appraisals that were not sufficiently justified with respect to the price actually arranged in the transaction in question. In some cases, the CNMV asked appraisers to supply information and clarify their appraisals in technical terms.

European initiatives in the area of collective investment schemes: CESR and the UCITS Contact Committee

To implement the Lamfalussy reforms, harmonised IIC regulation and supervision should conform to the new European regulatory framework. Before the Lamfalussy Report, the UCITS Contact Committee had been created under the aegis of the Undertakings for Collective Investment in Transferable Securities (UCITS) Directive and its functions were to develop regulations through comitology, advise the European Commission and promote a harmonised application of the UCITS Directives. In line with the Lamfalussy procedure, those functions must now be attributed to the European Securities Committee (ESC) and the Committee of European Securities Regulators (CESR), so the UCITS Directive must be amended.

Although there is uncertainty as to the date of such amendment (considering that the European Parliament is to dissolve in May 2004 as a result of the European elections), in 2003 a provisional UCITS group was created in the CESR which will perform such functions, once they are legally attributed. In any case, the CESR intends to start working in matters relating to collective investment schemes even before all the powers have been transferred, in coordination with the UCITS Contact Committee. In fact, as a result of CESR meetings and the public consultation process between the sector's players, the first issues have already been identified in which the CESR could work on in this field: (i) areas in which to foster greater harmonisation (IIC depositories, delegation of functions, SGIIC passports, etc.); (ii) convergence of supervisory practices; (iii) consistence with other Directives (Financial Instruments Markets Directive, Electronic Commerce Directive, etc.); and (iv) areas that are not yet harmonised.

In 2003, the UCITS Contact Committee focused on areas related to the homogeneous transposition of the UCITS Directives, specifically: (i) simplified prospectuses,

defining common content at European level, regardless of the home country of the IIC, ensuring that the supervisory bodies of the host country did not make additional requirements or contents; and (ii) the use of derivatives by IICs, harmonising the interpretation of the maximum leverage permitted as a result of such use, the concept of short selling, and the way to consider derivatives in diversification coefficients.

Supervision of other entities

Venture capital firms

Based on the characteristics of venture capital firms and the profile of their investors, the CNMV's supervision is limited to reviewing their annual audits and analysing their confidential filings in order to check their compliance with certain legal coefficients. The latter supervisory task is hampered by the absence of a regulation on how to calculate the legal limits.

Securitisation fund management companies

The CNMV started to review these companies in 2002, focusing on analysing their resources in order to adequately oversee their activity. In 2003, the scope of the review was expanded to include the examination of the financial statements of the managed securitisation funds and the procedures applied by the management companies to manage and control them.

Supervision of the obligations relating to the prevention of money laundering

In view of the forthcoming implementation of the collaboration agreement signed in June 2003 between the CNMV and the Executive Service of the Commission for the Prevention of Money Laundering and Monetary Offences (SEPBLAC), some checks were included in the supervisory visits on a trial basis in order to ascertain and assess the degree of general compliance by investment services firms and IIC management companies with the obligation to prevent money laundering, as imposed by the regulations (see box).

Collaboration agreement with the Executive Service for the Prevention of Money Laundering

In accordance with the provisions contained in Law 19/1993, dated 28 December, on certain measures to prevent money laundering, and Royal Decree 925/1995, dated 9 June, which approved the Regulation of that Law, on 18 June 2003 a Collaboration Agreement was signed between the CNMV and the Executive Service of the Commission for the Prevention of Money Laundering and Monetary Offences (SEPBLAC).

The fundamental purpose of the Agreement, which entered into force in 2004, is to foster more effective supervision of the compliance by entities that operate in

the securities market with the obligations to prevent money laundering. For that purpose, both supervisory bodies agree to collaborate, within their respective powers, in supervising the prevention procedures by the entities bound by these regulations, envisaging the following: (i) preparation of a census of such entities; (ii) exchange of information about suspicious transactions in the securities market; (iii) training of the human resources of both bodies; and (iv) collaboration in managing the authorisation applications from financial institutions in relation to their having adequate procedures, control bodies and communication systems envisaged in the activity programmes to prevent and stop transactions related to money laundering.

Three years after the signature of the Agreement, its contents will be reviewed in the light of the experience accumulated in its application.

6. Market integrity

The supervisory function needs the support of a fair, effective disciplinary system that ensures the good functioning and integrity of securities markets. The CNMV's penalising powers are acknowledged fundamentally in Title VIII of the Securities Market Law¹ and Title VI of the Collective Investment Scheme Law², which also classify the violations.

In accordance with those regulations, the CNMV has the power to commence and process disciplinary proceedings in the framework of the principles and procedures that generally govern the penalising power of Public Authorities³. In the case of minor or serious violations, the penalties are imposed by the CNMV directly; in the case of very serious violations, the penalties are imposed by the Economy Ministry based on a proposal by the CNMV and after consultations with its Advisory Committee⁴.

Market Monitoring Unit (MMU)

The MMU's actions pursue two purposes: prevent and detect conduct contrary to the securities market regulations, focusing especially on market abuse (insider dealing and market manipulation). In 2003, the MMU investigated a total of 47 events or situations, eight of which had commenced in 2002. The investigations affected 176 individuals and 203 legal entities. Table 6.1 summarises the investigation statistics.

Six of the MMU's investigations led to subsequent actions:

- *Warnings.* Two warnings were sent to investment services firms ordering them to fully comply with certain obligations related to archiving order documentation and putting them at the disposal of the CNMV. Also, a warning was sent to an issuer to abstain from commissioning investment services firms to generate trading in its shares which did not make economic sense even when those transactions did not affect the free formation of prices.
- *Initiation of disciplinary proceedings.* Three investigations of possible market manipulation by the issuer itself or companies in its group commenced in 2003.

¹ Securities Market Law 24/1988, dated 28 July.

² Collective Investments Scheme Law 35/2003, dated 4 November.

³ Law 30/1992, dated 26 November, on the Legal Regime of Public Authorities and Common Administrative Procedure.

⁴ Regarding very serious violations, authorisation may only be revoked by the Spanish Cabinet.

Table 6.1
The Market Monitoring Unit's actions

	Number	
	2002	2003
Investigations	315	379
Individuals	144	176
Legal entities	171	203
Actions during the investigations(*)	905	1,054
Subpoenas	836	993
Requests for assistance from foreign institutions	19	19
Depositions	38	24
Visits	12	18
Subsequent actions	6	6
Prior notification and warnings	2	3
Initiation of proceedings	2	3
Other	2	0

(*) Number of individuals and legal entities affected. This figure is not comparable to that in table 9.1 of the 2002 Report, which referred to the number of notifications corresponding to this type of action, regardless of the number of individuals or legal entities envisaged in each notification.

Proceedings monitoring and institution surveillance unit

Disciplinary proceedings

In 2003, the CNMV Board and, from 13 October, by delegation, its Executive Committee, initiated 35 new disciplinary proceedings, investigating a total of 78 possible violations. In 2003, the CNMV completed ten proceedings, covering a total of 56 violations. Of the proceedings completed, eight were initiated in 2002 and two in 2003.

A total of 113 penalties were imposed: 92 fines (a total of €2.7 million) and 21 public reprimands (see table 6.4).

The main characteristics of the violations investigated in 2003 are as follows:

- Intermediaries (investment services firms, and IIC management companies and depositories): there was a significant increase in actions related to possible violations of codes of conduct, coefficients and accounting rules, factors on which the CNMV focused especially in its supervisory function.
- Issuers: three proceedings were opened for practices contrary to the free formation of prices; and three other proceedings were initiated for failure to comply with the obligation to inform the CNMV and investors, for accounting irregularities and for failure to disclose certain significant events. One of those proceedings was resolved in the year by imposing a penalty on the persons responsible. Another proceeding was suspended because there was already a criminal proceeding under way regarding the same events, which had commenced as a result of the CNMV notifying the Public Prosecutor.

Table 6.2
Number of violations envisaged in the disciplinary proceedings

	2002	2003
1. Violations leading to the initiation of proceedings	54	78
* Very serious	21	34
* Serious	29	44
* Minor	4	-
2. Violations on which proceedings concluded	7	56
Very serious violations	5	23
* proceedings initiated in 2000	2	-
* proceedings initiated in 2001	1	-
* proceedings initiated in 2002	2	19
* proceedings initiated in 2003	-	4
Serious violations	2	29
* proceedings initiated in 2002	2	25
* proceedings initiated in 2003	-	4
Minor violations	-	4
* proceedings initiated in 2002	-	4
<i>Pro memoria:</i>		
<i>Number of proceedings initiated</i>	17	35
<i>Number of proceedings concluded</i>	7	10
<i>Initiated in 2003</i>	-	8
<i>Initiated in 2002</i>	4	2
<i>Initiated in 2001</i>	1	-
<i>Initiated in 2000</i>	2	-

Table 6.3
Types of violations investigated

	Opened		Closed	
	2002	2003	2002	2003
Very serious violations	21	34	5	23
I. Failure to disclose/incorrect disclosure of significant holdings	1	1	-	2
II. Forbidden activities	5	6	3	5
III. Market manipulation	1	2	-	1
IV. Breach of coefficients	2	9	-	1
V. Failure to disclose significant events/provision of misleading, incorrect information or with significant omissions	1	3	1	2
VI. Violation of general securities market regulations	4	5	-	4
VII. Violation of general IIC regulations	3	6	-	6
VIII. Accounting irregularities	2	-	-	1
IX. Unregistered issues	2	2	1	1
Serious violations	29	44	2	29
I. Accounting irregularities	2	4	-	2
II. Forbidden activities	1	9	-	1
III. Breach of coefficients	4	9	1	3
IV. Violation of general securities market regulations	2	-	-	2
V. Violation of general IIC regulations	7	13	1	8
VI. Breach of codes of conduct	13	8	-	13
VII. Market manipulation	-	1	-	-
Minor violations	4	-	-	4
I. Violation of general securities market regulations	4	-	-	4

Table 6.4
Penalties imposed

	2002		2003	
	Number	Amount*	Number	Amount*
I. Fines	13	8,555	92	2,702
II. Public reprimands	3	-	21	-

* Thousand euros

Unregistered intermediaries

The CNMV always focuses on detecting unauthorised intermediation. In addition to pursuing the intermediaries themselves, the CNMV fosters investor self-protection by drafting and disseminating information since experience suggests that they are the most efficient way to reduce the impact of unauthorised activities. The CNMV publishes warnings about those types of institutions on its web site⁵ and provides information to individual investors through its Investor Assistance Office⁶.

As in 2002, the bulk of unauthorized activities detected in 2003 were by non-Spanish institutions and persons aimed mainly at attracting foreign investors, resident or non-resident in Spain, and selling them investments in financial products issued by institutions domiciled in tax havens. The CNMV continued to cooperate with foreign supervisors in order to adopt coordinated measures to prevent such activities. One of the first measures adopted in all cases is to disseminate public warnings issued by foreign supervisors through the CNMV web site. A total of 24 warnings of this type were issued, the same number as in 2002.

In contrast to the illegal activities to attract foreign investors, the number of activities targeted specifically at Spanish investors continued to fall significantly, as evidenced by the substantial decline in the number of claims filed with the CNMV against that type of intermediary and by the outcome of the regulator's investigations and disciplinary proceedings⁷. This evidences the effectiveness of the actions performed by the CNMV in investigating and penalising that type of conduct and in informing investors⁸. In particular, there was a considerable increase in the number of investor queries to check that the institutions offering them financial products and services were duly registered and to consult the public warnings about unregistered intermediaries.

A new feature in 2003 regarding prevention was the Executive Committee's decision to publish warnings about companies and persons believed to be performing activities reserved for investment services firms without having the corresponding administrative authorisation⁹. Between October and year-end, the CNMV publicly warned about the existence of 67 institutions of that type¹⁰.

⁵ See section on "Warnings" in "Investor's corner" in www.cnmv.es.

⁶ See chapter 7.

⁷ A total of 104 claims were filed in 2001, 40 in 2002 and 14 in 2003. Only one disciplinary proceeding was opened in 2003 against a company and its collaborators, which was resolved in the same year by imposing a fine totalling €81,216.

⁸ See box on the CNMV's powers regarding unregistered intermediaries.

⁹ The CNMV Board adopted that decision under the aegis of article 13 of the Securities Market Law, which entrusts the CNMV with fostering the dissemination of as much information as necessary for it to pursue its purposes, including investor protection.

¹⁰ See section on "Warnings" in "Investor's corner" in www.cnmv.es.

International support unit

In 2003, under the aegis of international cooperation agreements, the CNMV issued 30 requests for information from foreign regulators relating to investigations under way. The bulk of requests were as a result of investigating unauthorised institutions and market manipulation. The CNMV also processed 26 requests of the same type from foreign regulators. Table 6.5 shows the number of requests received and issued, and the countries involved.

Table 6.5
International requests for assistance in inspection

Requests to foreign regulators			Requests from foreign regulators		
Sent to	Year		Received from	Year	
	2002	2003		2002	2003
Bahamas	2	0	Australia	0	2
Belgium	0	2	Belgium	5	1
France	1	2	Denmark	1	0
Hong Kong	0	1	Finland	1	0
Ireland	1	1	France	2	2
Luxembourg	1	2	Germany	1	1
Portugal	3	0	Hong Kong	1	0
Sweden	0	1	Ireland	8	6
Switzerland	4	4	Jersey	1	3
United Kingdom	3	12	Luxembourg	2	0
United States	1	5	New Zealand	0	1
			The Netherlands	1	1
			United Kingdom	4	9
Total	16	30	Total	27	26
Status			Status		
Closed	10	24	Closed	25	21
Pending	6	6	Pending	2	5
Total	16	30	Total	27	26

The CNMV's powers regarding unregistered intermediaries

Without prejudice to the application of the disciplinary regime that may correspond in each case, the Securities Market Law empowers the CNMV to perform specific actions to prevent the activity by unregistered intermediaries. The CNMV may order the offending persons or institutions to immediately cease using the names reserved for registered intermediaries or providing the products or services reserved for them, and may impose fines if they disobey.

Those specific powers are justified by the need to immediately deter such institutions from providing unauthorised services, once the CNMV has detected them and to warn investors about their existence. Occasionally, the perpetrators are legally-incorporated mercantile companies and this, in addition to the skills of the promoters and salespeople, may mislead investors into thinking that their activities are legal, even when the institutions are not authorised to provide investment services.

The penalising power and the aforementioned specific powers are more effective

if complemented by measures to inform investors and raise awareness of the problem. The CNMV often detects cases where previously-penalised institutions and persons reinitiate irregular activities using other names or identities and in other locations. Sometimes, the real nature of the illegal activities is concealed behind firms purporting to act merely as financial advisers or operating in several countries. On other occasions, the use of new information technologies by offenders makes it quite difficult to locate them. Therefore, it is necessary that investors be informed and act prudently before embarking upon relations with new intermediaries, by checking that they are duly registered with the CNMV to provide the investment services they are offering.

With that purpose in mind, the CNMV's web site provides information about the characteristics and modus operandi of the unregistered intermediaries⁽¹⁾ so that investors can make their own judgements about those institutions before entering into contractual relations with them. The CNMV also handles individual queries from investors through its Investor Assistance Office⁽²⁾.

The "Investor's Corner" also discloses public warnings about specific unregistered institutions. The warnings are of three types: (i) issued by the CNMV regarding institutions subject to a disciplinary proceeding; (ii) issued by the CNMV regarding unregistered institutions not subject to a disciplinary proceeding; and (iii) issued by foreign supervisors and sent to the CNMV within the framework of international cooperation agreements. The warnings of type (ii) started to be disseminated in October 2003 by decision of the CNMV Board, which considered it necessary to publish public warnings about institutions that are suspected of providing investment services without authorisation. The decision was based on article 13 of the Securities Market Law, which entrusts the CNMV with fostering the dissemination of as much information as necessary to protect investors.

⁽¹⁾ See the Investor Guide on "Fly-by-night operations" in the section on "Guidance" of the "Investor's Corner" in www.cnmv.es.

⁽²⁾ Telephone: 902149200. e-mail: inversores@cnmv.es.

Criteria of interest applied in resolving disciplinary proceedings

Trading in own shares and market manipulation

Article 83 ter of the Securities Market Law prohibits preparing or engaging in practices that distort the free formation of prices. Such practices include transactions or orders which give, or are likely to give, false or misleading signals as to the supply of, demand for, or price of, marketable securities or financial instruments. The Law classifies them to be very serious or serious depending on whether or not the price has been altered significantly.

As stated in the decision by the Contentious-Administrative Section of the National Court dated 7 March 1994, because of the real nature and exact content of that violation, it must consist not of isolated events or actions but, generally, of a succession of events that, viewed jointly and harmoniously, constitute the conduct envisaged by the disciplinary Law, i.e. the practices that seek to distort the free formation of prices.

Therefore, when analysing an alleged violation of that type, events and conducts must be viewed as a whole. The trades in the institution's securities which were

ordered in a specific period must be investigated, as a whole, not individually, as well as the form of order transmission, their type and any statements made in the tapes that contain the orders.

The decisions by the Contentious-Administrative Section of the National Court dated 16 December 1996 and 16 April 1997, which revised disciplinary resolutions by the CNMV regarding that type of violation, establish the defining factors and legally-protected good in the following terms:

"Accordingly, the precept in question does not require that the purpose be illegal but, rather, the performance of practices designed to distort the free formation of prices, so the fact that the free formation of prices is distorted for a subsequent purpose that is not penalised is not an exonerating circumstance. Consequently, the violation arises when the practices in question lead to the formation of a price other than by the free interplay of supply and demand.

..., the precept in question legally protects the free price formation mechanism in order to ensure transparency and equal opportunities among investors. The prices formed in those circumstances ensure an efficient allocation of funds, so the CNMV's mission to monitor transparency and equal opportunities among investors, as conferred by the Law, is important not only for investors in particular but also for the financial system in general."

The second decision states the following:

"The violation referred to in article 99.i) consists of practices aimed at distorting the free formation of prices, regardless of whether or not that is achieved, although the instrument used for that purpose must be suitable attaining that end...

... it is appropriate to classify under article 99.i) of the Law the conduct which, through the massive acquisition of securities, in an operation aimed at, and designed for, a sole purpose, is aimed at maintaining securities prices, using for that purpose an effective means, regardless of the result, that is observed given the proportion in the number of transactions with the securities."

The fact that trading in own shares is a suitable tool or an effective means for listed companies to distort their share prices, as has already been accepted and ratified by the administrative courts, is unquestionable since a priori it involves replacing third parties' supply and demand positions in the market, potentially leading them to create an artificial market in terms of volume and price.

Listed companies can legally trade in their own shares within the limits established by the Spanish Corporations Law. That trading may be due to the issuer's lawful interest in providing investors with adequate liquidity and market depth, and in minimising temporary mismatches between supply and demand or in acquiring a block of shares to subsequently redeem, exchange or sell it to a specific investor or in the market.

However, active trading by an issuer in its own shares may cause a conflict of interest with other market players, leading to the risk of insider dealing (asymmetrical information about the company) or market manipulation (transactions that directly affect the prices formed by third parties or massive trading in own shares that may induce third parties to invest or divest).

Consequently, secondary market prices should be based on the buy and sell positions of independent investors without any significant influence by the issuer. That conclusion is shared by all the supervisors in the developed countries, and there is broad consensus that, when an issuer orders and executes trades in the market, it

must meet certain requirements in order to avoid having a decisive influence on the securities' performance. Those requirements imply three types of limits:

- Quantitative: trading in own shares involve reasonable volumes so as to prevent the institution from dominating the market with sizeable transactions.
- Qualitative: trading in own shares conform to the market trend, never generating its own trend, especially not a trend contrary to the market. Limits are imposed on the timing, price and form in which such trades may be made¹¹.
- Transparency: the market must always know who is involved in the transactions.

In 2003, the CNMV penalised an issuer for practices that were contrary to the free formation of prices through transactions and orders with own shares.

Client financing by brokers

In 2003, the CNMV penalised several brokers for providing finance to clients, as envisaged in article 63.2.c) of the Securities Market Law: "*...the provision of loans or credit to investors for them to arrange a transaction in one or more of the instruments envisaged in item 4 of this article, provided that the lender participates in the transaction*". Unlike broker-dealers, brokers cannot perform that activity¹².

Brokers are forbidden to finance clients so as to preserve their asset stability and liquidity and ensure they are not affected by the risk of default by clients¹³. Based on a logical interpretation of the aforementioned article and on its final purpose, it is irrelevant that brokers finance clients through formal loans or credits or otherwise, that the finance is remunerated or not, that it is partly hedged or that pre-set timing or quantitative limits have been established. Otherwise, the restriction on financing imposed on brokers could easily be evaded and the regulation would be rendered ineffective.

Financing clients in the framework of portfolio management contractual relations is especially serious. The Ministerial Order dated 7 October 1999, which implements the general code of conduct and action guidelines for investment portfolio management, clearly confines¹⁴ management to the assets provided by the client; in this case, financing to clients may cause investors to be at risk or to assume losses that they did not anticipate and, therefore, causing serious, evident risk for the institutions' equity.

Judicial review of disciplinary proceedings

In 2003, the courts issued 38 decisions regarding contentious-administrative appeals filed against penalties and other resolutions by the CNMV or the Economy and Finance Ministry. Of the total (see table 6.7), 26 appeals were resolved by the Supreme Court.

¹¹ The timing limits are established to prevent the issuer from setting the opening or closing price, both of which are considered as benchmarks for the market trend. The price limits are established to prevent the issuer or persons related to it from setting new prices or maintaining the price at level for independent buyers. The form limits refer to the need for all transactions to be made through the same intermediary in order to prevent creating a false appearance of trading if several intermediaries are used.

¹² Article 64.3 of the Securities Market Law.

¹³ Since the regulations envisage lower operating limits for brokers, they also envisage lower equity requirements than for other investment services firms.

¹⁴ Provision 4.e).

Table 6.6
Outcome of disciplinary proceedings in 2003

Reference	Resolutions
(1/03)	<u>CNMV Board Resolution dated 25 February 2003</u> Resolution on the alleged commission of a serious breach by an issuer involving market manipulation (article 100.w of the Securities Market Law). The issuer was fined €60,000 and received a public reprimand.
(2/03)	<u>Ministerial Order dated 9 April 2003</u> Resolution on the issuance by a credit institution of atypical financial contracts without prior registration of the issue with the CNMV (very serious violation of article 99.n of the Securities Market Law). The company was fined €45,000.
(3/03)	<u>CNMV Board Resolution dated 8 May 2003</u> Resolution on the alleged commission of three serious breaches by an investment services firm for failing to comply with the accounting standards, the regulations on informing clients and the codes of conduct (articles 100.c, 100.m and 100.t of the Securities Market Law, respectively). The company was fined €72,000 and received three public reprimands and one director was fined €36,000.
(4/03)	<u>CNMV Board Resolution dated 10 June 2003</u> Decision to suspend the administrative disciplinary proceeding in connection with a SIMCAV and its board of directors for failing to comply with several provisions of the Securities Market Law and the Collective Investment Scheme Law, until the criminal courts issue a final judgment since the two proceedings are substantially identical.
(5/03)	<u>Ministerial Order dated 27 June 2003</u> Resolution on the alleged habitual performance by an investment services firm of unauthorised activities, specifically client financing and proprietary trading which is a very serious violation of article 99.q of the Securities Market Law. The company was fined €61,900 and received a public reprimand; and its directors were fined a total of €42,000.
(6/03)	<u>CNMV Board Resolution dated 10 July 2003</u> Decision to suspend the administrative disciplinary proceeding in connection with an alleged habitual performance by a company and its board of directors of activities reserved to investment services firms without authorisation and without being registered in the corresponding administrative register, which is a very serious violation of article 99.q of the Securities Market Law, until the criminal courts issue a final judgment since the two proceedings are substantially identical.
(7/03)	<u>CNMV Board Resolution dated 22 July 2003</u> Resolution on the alleged commission by an IIC management company of three minor and two serious breaches of the Collective Investment Scheme Law for failing to comply with the general regulations and one serious violation of article 100.n of the Securities Market Law for failing to comply with the codes of conduct. The company was fined €43,823 and the directors were fined a total of €81,135.
(8/03)	<u>CNMV Board Resolution dated 22 September 2003</u> Resolution on the alleged commission of three serious breaches by an investment services firm for failing to comply with the accounting standards, the regulations on informing clients and the codes of conduct (articles 100.c, 100.m and 100.t of the Securities Market Law, respectively). The company was fined €105,100 and received three public reprimands and several directors were fined a total of €235,000.

(Continues over)

(Continued)

Reference	Resolutions
(9/03)	<u>CNMV Board Resolution dated 22 September 2003</u> Resolution on the alleged commission by an IIC management company of three serious breaches of the Collective Investment Scheme Law—two for failing to comply with the investment coefficients and one for failing to comply with the general regulations—and two serious violations of article 100.t of the Securities Market Law for failing to comply with the codes of conduct. The company was fined €30,060 and received five public reprimands; and one of the directors was fined a total of €22,838.
(10/03)	<u>CNMV Board Resolution dated 22 September 2003</u> Resolution on the alleged commission by an investment services firm of two serious breaches for granting credit or loans to investor—an activity that is not authorised—and for failing to comply with the codes of conduct (articles 100.o and 100.t of the Securities Market Law, respectively). The company was fined €60,000 and several directors were fined a total of €19,800.
(11/03)	<u>Ministerial Order dated 10 October 2003</u> Resolution on the alleged commission by an individual of one very serious breach of article 99.p of the Securities Market Law for failing to disclose significant holdings. The person was fined €18,000.
(12/03)	<u>CNMV Board Resolution dated 13 October 2003</u> Resolution on the alleged commission by a real estate investment company of one minor breach of the Collective Investment Scheme Law for disclosing incorrect information to the CNMV. The company was fined €3,000.
(13/03)	<u>CNMV Board Resolution dated 4 November 2003</u> Resolution on the alleged commission by an IIC management company of one minor breach of the Collective Investment Scheme Law. The company was fined €1,500.
(14/03)	<u>CNMV Board Resolution dated 4 November 2003</u> Decision to suspend the administrative disciplinary proceeding in connection with an issuer failing to disclose a significant event, which is a very serious violation of article 99.ñ of the Securities Market Law, until the criminal courts issue a final judgment since the two proceedings are substantially identical.
(15/03)	<u>CNMV Board Resolution dated 4 November 2003</u> Decision to suspend the administrative disciplinary proceeding in connection with an investment services firm failing to comply with the codes of conduct, which is a serious violation of article 100.t of the Securities Market Law, until the criminal courts issue a final judgment since the two proceedings are substantially identical.
(16/03)	<u>CNMV Board Resolution dated 4 November 2003</u> Resolution on the alleged habitual performance by eight persons, physical and legal, of activities reserved to investment services firms, which is a serious violation of article 100.o of the Securities Market Law. They were fined a total of €81,216.
(17/03)	<u>Ministerial Order dated 24 November 2003</u> Resolution on the alleged commission by an IIC management company of one very serious breach of the Collective Investment Scheme Law for failing to comply with the minimum investment coefficient. The company was fined €12,020 and its directors were fined a total of €30,050.

(Continues over)

(Continued)

Reference	Resolutions
(18/03)	<u>CNMV Board Resolution dated 4 December 2003</u> Decision to suspend the administrative disciplinary proceeding in connection with the alleged habitual performance by an individual of activities reserved to investment services firms (a very serious violation of article 99.q of the Securities Market Law) and for failing to comply with the codes of conduct (serious violation of article 100.t of the Securities Market Law), until the criminal courts issue a final judgment since the two proceedings are substantially identical.
(19/03)	<u>Ministerial Order dated 19 December 2003</u> Resolution on the alleged commission by an investment services firm of two very serious breaches of the Securities Market Law (articles 99.q and 99.l) for habitually financing clients and for failing to comply with the general securities market regulations, respectively. The company was fined €150,200 and received two public reprimands; and several of its directors were fined a total of €175,000.
(20/03)	<u>Ministerial Order dated 19 December 2003</u> Resolution on the alleged commission by an IIC management company of one very serious breach of the Collective Investment Scheme Law for failing to comply with the liquidity coefficient. The company was fined €12,020 and one director was fined €6,010 and received a public reprimand.
(21/03)	<u>Ministerial Order dated 19 December 2003</u> Resolution on the alleged commission by an investment services firm of two very serious breaches—one of article 99.e of the Securities Market Law for accounting regulations and two of articles 99.l of the Securities Market Law for failing to comply with the general securities market regulations. The company was fined €372,000 and received three public reprimands; and three directors were fined a total of €178,200.
(22/03)	<u>Ministerial Order dated 19 December 2003</u> Resolution on the alleged commission by an issuer of one very serious breach of article 99.ñ of the Securities Market Law for disclosing information to the CNMV that omitted significant data, and by another company, shareholder of the former, of one very serious breach of article 99.p of the Securities Market Law for disclosing significant holdings incorrectly. The issuer was fined €90,152 and one director was fined €30,050; the other company was fined €60,101.
(23/03)	<u>CNMV Board Resolution dated 29 December 2003</u> Resolution on the alleged commission by an IIC management company of three serious breaches—one of article 100.t of the Securities Market Law for failing to comply with the codes of conduct and two of the Collective Investment Scheme Law for failing to comply with the general regulations—and by the group parent company of one serious breach of article 100.t of the Securities Market Law for failing to comply with the codes of conduct. The management company was fined €168,282 and the depository was fined €30,050.

Table 6.7

Court judgements on matters relating to the securities markets in 2003

No.	Date	Court	Appeal no.	Appealed order
1	20/1/2003	Supreme Court	3664/1997	National Court decision 16/12/1996
Upheld the National Court Section Six's decision dated 16 December 1996 regarding the imposition by the Economy and Finance Ministry Resolution of two penalties for a violation of article 99.s of the Securities Market Law.				
2	22/1/2003	National Court	491/2000	Economy and Finance Ministry Order 24/1/2000
Confirmed the penalty imposed by the Economy and Finance Ministry Order dated 24 January 2000 on a broker and its directors for a violation of article 99.s of the Securities Market Law.				
3	27/1/2003	Supreme Court	8211/1997	HCJ* decision 8/4/1997
Upheld the Madrid High Court of Justice Section Nine's decision regarding the appeal against the imposition of a fine by the CNMV Board for a violation of article 100.j of the Securities Market Law.				
4	12/2/2003	Supreme Court	6458/1997	National Court decision 5/5/1997
Upheld the National Court's decision dated 5 May 1997 regarding the penalty imposed by the Economy and Finance Ministry on 7 September 1990 for a very serious violation of article 99.s of the Securities Market Law.				
5	12/2/2003	National Court	1/2000	Economy and Finance Ministry Order 8/11/1999
Partially upheld the appeal, reducing the fine imposed by the Economy and Finance Ministry Order on 18 November 1999 for several violations of article 99.q of the Securities Market Law in connection with article 71.a of said law.				
6	12/2/2003	National Court	7/2000	Economy and Finance Ministry Order 18/11/1999
Partially upheld the appeal, reducing the fine imposed by the Economy and Finance Ministry Order on 18 November 1999 for several violations of article 99.q of the Securities Market Law in connection with article 71.a of said law.				
7	27/2/2003	Supreme Court	8747/1997	National Court decision 19/6/1997
Upheld the National Court's decision dated 19 June 1997 regarding the penalties imposed by the CNMV Board for a violation of article 100.g of the Securities Market Law and by the Economy and Finance Ministry resolution for a violation of article 99.k of that law.				
8	3/3/2003	Supreme Court	6481/1997	National Court decision 16/4/1997
Upheld the National Court's decision dated 16 April 1997 regarding the penalty envisaged in article 105.d of the Securities Market Law for a very serious violation of article 99.i of said law imposed by the Economy and Finance Ministry Order dated 12 July 1993.				
9	10/3/2003	National Court	10427/1997	National Court decision 29/9/1997
Upheld the decision dated 29 September 1997 regarding the penalty for a violation of articles 99.s and 99.i of the Securities Market Law imposed by the Economy and Finance Ministry Order dated 11 February 1993.				

(Continues over)

(Continued)

No.	Date	Court	Appeal no.	Appealed order
10	10/3/2003	Supreme Court	9711/1997	National Court decision 29/9/1997
Upheld the National Court's decision dated 16 April 1997 regarding the penalty envisaged in article 105.d of the Securities Market Law for a very serious violation of article 99.i of that law imposed by the Economy and Finance Ministry Order dated 12 July 1993.				
11	10/3/2003	Supreme Court	8389/1997	National Court decision 9/6/1997
Upheld the appeal for dismissal, changing the fine imposed by the Economy and Finance Ministry Order dated 16 March 1994 for a very serious violation of article 99.p of the Securities Market Law.				
12	11/3/2003	Supreme Court	4979/1998	National Court decision 26/1/1998
Upheld the National Court's decision dated 26 January 1998 regarding the penalty imposed by the Economy and Finance Ministry resolution dated 16 March 1994 for a violation of article 99.p of the Securities Market Law.				
13	11/3/2003	Supreme Court	7879/1997	National Court decision 10/6/1997
Partially upheld the appeal, reducing the fine, against the National Contentious-Administrative Court Section Six's decision dated 10 June 1997, issued in the appeal against the imposition of a fine by the Economy and Finance Ministry resolution for a violation of article 99.p of the Securities Market Law.				
14	13/3/2003	Supreme Court	195/1998	National Court decision 10/6/1997
Upheld the National Court's decision dated 10 June 1997 regarding the Economy and Finance Ministry Order dated 16 March 1994 that imposed penalties for a violation of articles 99.p and 99.s of the Securities Market Law.				
15	20/3/2003	Supreme Court		National Court decision 25/9/2002
Ruling dated 20 March 2003 rejecting the appeal for dismissal, thus making the National Court's decision dated 25 September 2002 final. That ruling partially upheld the appeal against the Economy and Finance Ministry resolution dated 21 October 1999 for a very serious violation of article 99.q of the Securities Market Law (in which the fines were halved).				
16	27/2/2003	Supreme Court	1291/1998	National Court decision 21/10/1997
Upheld the National Court's decision dated 21 October 1997 regarding the Economy and Finance Ministry Orders dated 19 April 1993 and 11 January 1993 for a violation of article 99.l of the Securities Market Law in connection with article 71.j of that law.				
17	31/3/2003	Supreme Court	10426/97	National Court decision 29/9/1997
Upheld the National Court's decision dated 29 September 1997 regarding the Economy and Finance Ministry resolution dated 11 February 1993 for a violation of articles 99.i and 99.s of the Securities Market Law.				
18	1/4/2003	Supreme Court	2219/2001	National Court decision 31/01/2001
Upheld the National Court's decision dated 31 January 2001 regarding the Economy and Finance Ministry Order dated 26 November 1997 that imposed fines for a violation of article 99.q of the Securities Market Law in connection with article 71.a of that law.				

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No.	Date	Court	Appeal no.	Appealed order
19	8/4/2003	Supreme Court	1852/1998	National Court decision 11/12/1997
Upheld the National Court's decision dated 11 December 1997 regarding the penalty for a violation of article 32.4.g of the Collective Investment Scheme Law.				
20	10/4/2003	National Court	275/2000	Economy and Finance Ministry resolution 22/9/1999
Upheld the penalty imposed by the Economy and Finance Ministry resolutions dated 22 September 1999 and 24 January 2000 for a violation of article 99.s of the Securities Market Law.				
21	10/4/2003	National Court	315/2000	Economy and Finance Ministry resolution 22/9/2000
Upheld the fine imposed by the Economy and Finance Ministry resolutions dated 22 September 1999 and 24 January 2000 for a violation of article 99.s of the Securities Market Law.				
22	11/4/2003	Supreme Court	1861/1998	National Court decision 2/12/1997
Partially upheld the appeal against the National Court's decision dated 2 December 1997 regarding the penalty imposed by the Ministerial Order dated 27 July 1994 for a violation of article 99.o of the Securities Market Law.				
23	7/5/2003	Supreme Court	3927/1998	National Court decision 22/1/1998
Upheld the National Court's decision dated 22 January 1998 regarding the Ministerial Order dated 20 December 1993 which imposed a penalty for a violation of article 32.4.b of the Collective Investment Scheme Law.				
24	22/5/2003	Supreme Court	6425/1998	H CJ* decision 27/2/1998
Upheld the Madrid HCJ's decision dated 27 February 1998 regarding the Economy and Finance Ministry resolution dated 24 November 1995 which imposed a penalty for a violation of article 32.3.a of the Collective Investment Scheme Law.				
25	29/5/2003	Supreme Court	6376/1998	National Court decision 1/4/1998
Upheld the National Court's decision dated 1 April 1998 regarding the Economy and Finance Ministry resolution dated 6 May 1994, which imposed a fine for a very serious violation of article 99.o of the Securities Market Law.				
26	9/6/2003	Supreme Court	7921/1998	National Court decision 1/6/1998
Upheld the National Court's decision dated 16 April 1998, which confirmed the Ministerial Order dated 25 July 1995 (acquisition of own shares beyond the provisions of the Spanish Corporations Law: article 32.4.f of the Collective Investment Scheme Law).				
27	20/6/2003	Supreme Court	9699/1998	National Court decision 1/6/1998
Partially upheld the appeal against the National Court's decision dated 1 June 1998 regarding the Economy and Finance Ministry resolution dated 31 October 1994 which imposed a penalty for a violation of article 99.q of the Securities Market Law in connection with article 71.a of that law (reduction of fine).				
28	7/7/2003	Supreme Court	10397/1998	National Court decision 12/6/1998
Upheld the National Court's decision 12 June 1998, which confirmed the Economy and Finance Ministry Order dated 28 December 1994 for a very serious violation of article 99.r of the Securities Market Law in connection with article 60 of that law.				

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No.	Date	Court	Appeal no.	Appealed order
29	10/7/2003	Supreme Court	560/2001	National Court decision 20/6/2001
<p>Rejected the appeal against the National Court's decision dated 20 June 2001 regarding the Economy and Finance Ministry resolution dated 6 May 1994, which rejected the ordinary appeal against the Economy Ministry Order dated 7 February 1994, which imposed a penalty for a violation of article 99.l of the Securities Market Law.</p>				
30	10/9/2003	National Court	126/2000	Economy and Finance Ministry Order 18/11/1999
<p>Partially upheld the appeal against the Economy and Finance Ministry Order dated 18 November 1999, confirmed by the resolution dated 6 April 2000, which imposed a fine for a very serious violation of article 99.q of the Securities Market Law in connection with articles 71.a and 76 of that law. An appeal for dismissal was filed.</p>				
31	6/10/2003	Supreme Court	772/1998	National Court decision 12/11/1997
<p>Upheld the National Court's decision dated 12 November 1997 which annulled the Economy and Finance Ministry Order dated 6 May 1994 regarding a resolution by that ministry for a very serious violation of article 99.i of the Securities Market Law.</p>				
32	6/10/2003	Supreme Court	1267/1998	National Court decision 12/11/1997
<p>Upheld the appeal, in connection with the amount of the penalty, against the National Court's decision dated 12 November 1997 regarding the penalty for a violation of article 99.i of the Securities Market Law through the Economy and Finance Ministry Order dated 14 March 1994.</p>				
33	6/10/2003	Supreme Court	5272/1998	National Court decision 12/3/1998
<p>Decision dated 6 October 2003, which resolved on the appeal for dismissal of the decision dated 12 March 1998 and confirmed the resolution dated 14 March 1994 for a violation of article 99.i of the Securities Market Law.</p>				
34	8/10/2003	National Court	377/2002	Economy and Finance Ministry resolution 23/5/2002
<p>Confirmed the Economy Ministry resolution dated 23 May 2002, upholding the penalty imposed by the CNMV for a violation of article 99.o of the Securities Market Law in connection with article 81.2.a of that law.</p>				
35	16/10/2003	National Court	798/2000	Economy and Finance Ministry resolution 19/6/2000
<p>Confirmed the Economy and Finance Ministry resolution dated 19 June 2000 which imposed penalties for violations of article 99.q of the Securities Market Law in connection with articles 63.1..a and 63.1.d of that law (habitually receiving and transmitting investors' orders and managing client portfolios without the corresponding authorisation and without having registered in the corresponding administrative registers).</p>				
36	20/10/2003	National Court	3/2000	Economy and Finance Ministry resolution 18/11/1999
<p>Partially upheld (amount of fine) the appeal against the Economy and Finance Ministry resolution dated 19 June 2000 which imposed penalties for violations of article 99.q of the Securities Market Law in connection with articles 63.1.a and 63.1.d of that law (habitually receiving and transmitting investors' orders and managing client portfolios without the corresponding authorisation and without having registered in the corresponding administrative registers).</p>				

(Continues over)

(Continued)

No.	Date	Court	Appeal no.	Appealed order
37	30/10/2003	Madrid HCJ*	589/1996	CNMV Board Resolution 6/9/1995
Confirmed the CNMV resolution dated 6 September 1995 which imposed a penalty for several violations of article 32 of the Collective Investment Scheme Law, confirmed by the Economy and Finance Ministry resolution dated 13 February 1996.				
38	5/11/2003	National Court	622/2000	Economy and Finance Ministry Order 8/3/2000
Confirmed the Economy and Finance Ministry Order dated 8 March 2000 which imposed a penalty for several violations of the Securities Market Law (performing activities reserved for investment services firms by habitually receiving and transmitting orders from third parties without the corresponding authorisation and without having registered the company in the corresponding administrative registers).				

ANNEX

REPORT BY THE CNMV'S INTERNAL CONTROL BODY¹

OVERSIGHT REPORT ON WHETHER THE DECISIONS
ADOPTED BY THE CNMV'S GOVERNING BODIES
CONFORM TO THE PROCEDURAL STANDARD
APPLICABLE IN EACH CASE

(Additional Provision Two of Law 44/2002)
Year 2003

¹ A free translation of an internal control report originally issued in Spanish. In the event of a discrepancy, the Spanish language version prevails.

I.- INTRODUCTION.

The CNMV's Directorate of Internal Control has checked whether the decisions adopted by the CNMV's governing bodies conform to the procedural standards applicable in each case, implementing the Internal Control Action Plan approved by the CNMV Board on 2 February 2004, in compliance with Additional Provision Two of Law 44/2002, dated 22 November, on Measures to Reform the Financial System (BOE dated 23 November).

Where applicable, the work conformed to the public sector's audit standards, approved by the State Comptroller's Office Resolution dated 14 February 1997, and to the Plan referred to in the preceding paragraph.

II.- OBJECTIVE AND SCOPE OF WORK.

The objective of this work was to check the appropriateness of the decisions adopted by the CNMV's governing bodies.

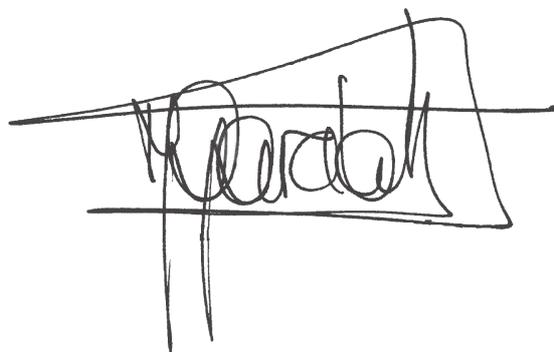
There were no limitations to the scope of our work.

III. OPINION.

In our opinion, the conclusion drawn from our audit work is that in 2003 the CNMV's governing bodies, within the supervisory power entrusted to them by the Securities Market Law and other regulations, complied with all the requirements established in current legislation in terms of the procedures and powers applicable in each case.

Madrid, 9 March 2004

Internal Control Manager

A handwritten signature in black ink, appearing to read 'Margarita García Muñoz', written over a horizontal line. The signature is stylized and somewhat cursive.

Original in Spanish signed by
Margarita García Muñoz

PART II

OTHER ACTIVITIES: INVESTORS AND INTERNATIONAL ACTIVITY

7. Investors

The main purpose of the Investor Department, which was created in 2002, is to reinforce investor protection through disclosures by fostering greater knowledge about securities market products and services, which are increasingly complex.

The Investor Department operates on two levels. Externally, its activities are aimed at raising awareness of investor rights, encouraging queries and enhancing comprehension of the information available and, in general, improving market knowledge. For that purpose, the Department handles investor queries, publishes guides on products and services, participates in or promotes courses and conferences, and monitors issuers' and intermediaries' advertising and marketing activities. Internally, the Investor Department encourages more efficient interaction between investors and the CNMV itself, channelling investors' problems towards the supervision units and facilitating disclosure of supervisory actions to investors.

Information and queries

Investor Assistance Office

In 2003, the Investor Assistance Office handled 14,798 queries, 34.4% more than in 2002. The CNMV's Catalunya office handled 275 queries in 2003.

A large number of queries related to the elimination of tax on the transfer of investments between mutual funds¹ (see table 7.1). The increase in queries relating to "Information from the CNMV" and "Securities" was due to certain mergers and acquisitions and other events related to listed securities (takeover bids, trading suspensions, capital increases and decreases, etc.). There was also a large number of queries about information contained in the CNMV's public registers and web site. Only the number of queries about investment services firms and credit institutions declined.

Through a direct dialogue with the public, the CNMV became aware of certain events which required special treatment. In some cases, specific intervention was required by the various divisions, in line with the usual monitoring and control procedures. In other cases, the CNMV's usual procedures had to be changed or it had to clarify certain questions that could confuse investors, such as information about "boiler rooms", publication of additional significant events, changes in deposit contracts or tariffs charged by the institutions registered with the CNMV which contain confusing clauses, and clarification of prorating in certain takeover bids.

¹ Law 46/2002 on the partial amendment to Personal Income Tax.

Table 7.1
Queries in 2003

Number	2002	2003	%
Information from the CNMV	2,161	4,149	92.0
Legislation	2,028	2,726	34.4
Securities (fixed-income, equities and other)	1,929	2,383	23.5
Investment services firms and credit institutions	1,261	1,012	-19.7
Unregistered institutions	953	1,081	13.4
Collective investment schemes	461	1,046	126.9
Other	2,221	2,401	8.1
Total queries handled	11,014	14,798	34.4

New content in the Investor's Corner on the CNMV web site

Since the launch of Investor's Corner in early 2003, the Investor Department has continued to increase the contents of that section. In October 2003, three significant new features were added:

- "English version": all the texts and sections of Investor's Corner were translated into English (including all Investor Guides) so that foreign investors can obtain information about the functioning of Spain's markets. That initiative forms part of the CNMV's proposals to the CESR (Committee of European Securities Regulators) to foster the exchange of information tools and resources among European regulators.
- "Quality of investor information": this new section groups all the initiatives backed by the CNMV to improve institutions' disclosures to investors when marketing their investment products. At the end of 2003, the following were posted on the web site: the "Guide to Publishing the Three-fold Prospectus" (available only in Spanish), the "Procedural Guide" (available in English) and a list of firms that have adopted the CNMV's Procedural Guide (also in English).
- "Search tool": a powerful search tool is available in both Spanish and English to find any the information available in Investor's Corner.

Access to Official Registers

Investors can access information from the Official Registers in several ways (see table 7.2). In the last few years, the number of queries through the CNMV's web site has increased considerably, making it the most frequently used information channel.

In 2003, the CNMV web site received a daily average of 5,000 visits and 350,000 page views, and up to 150 simultaneous users. Based on the documents downloaded by visitors, the most requested information came from the Official Significant Events Register (an average of 27,000 downloads per day) and Official Collective Investment Scheme Registers (an average of 13,500). Downloads from the Investor's Corner section, which provides access to non-professional investors, amounted to an average of 9,000 pages per day.

Table 7.2
CNMV's official registers: queries

First year available in each format

	Direct queries at the CNMV			Internet	Diskette and CD- ROM
	Paper	Screen	Optical disc		
Advance notifications	1989	1989	1994	1989	
Issues	1989	1989	1990	1989	
Issuers' three-fold prospectuses	1989	1989	1990	2002	
Listings	1989	1989	1990	1989	
Collective investment scheme prospectuses	1989	1989	1989	1989	
Registration of broker-dealers and brokers	1989	1989	1998	1989	1998
Audits:					
<i>Issuers</i>	1986	1986	1986	1986	1990
<i>Collective investment schemes (IICs)</i>	1989	1989	1993		
<i>Investment services firms</i>	1988	1988	1993		
<i>Investment services firms and groups</i>	1993	1993	2002		
<i>Market management companies</i>	1989	1989			
<i>Special reports</i>	1991	1991	2001	2001	
Financial information:					
<i>Issuers</i>	1989	1989		1985	
<i>Financial information on IICs</i>	1991	1991		4 quarters	
Takeover bids	1989	1989	1998	1989	
Book-entry deeds	1989	1989	1998	1994	
Broker fees	1993	1989	1996	1996	
Significant holdings	1990	1990		1990	
Significant events	1990	1989		1990	
Venture capital firm prospectuses	1998		1998	1998	
Brokers' standard contracts	1996	1989	1996	1996	

Education

The CNMV pays special attention to educating investors so that they are aware of their rights and responsibilities. The sector collaborated enormously to ensure that investors received the guides: 115 collaboration agreements were signed. These guides were also promoted through the media, and electronic formats were made available on institutional and private web sites. They are all available in English on the CNMV web site². In 2003, all the guides were reprinted and over 188,000 copies were distributed free of charge to end investors (see table 7.3).

The CNMV also participated in events that presented its services to investors and fostered knowledge about certain matters. Those events were organised in collaboration with consumer associations, chambers of commerce, public and private universities, and financial institutions.

The CNMV believes that the information provided by the media about financial markets and institutions should be rigorous, objective and comprehensible to all users. For that purpose, it has given courses and seminars to journalists which explain the CNMV's objectives, structure and functions, and focus on the information available at the CNMV's web site and how to access it. The CNMV's web site and communications department play an important role as a permanent communication channel

² www.cnmv.es. "Reports and Publications".

Table 7.3
Investor guides distributed

	No. of agreements	No. of copies	%
Markets: stock exchanges and MEFF	5	56,600	30.0
Investor Assistance Office (CNMV)	--	29,223	15.5
Consumer associations	6	5,378	2.8
Securities market institutions	88	87,975	46.6
<i>Broker-dealers</i>	17	32,297	17.1
<i>Brokers</i>	20	12,225	6.5
<i>Portfolio management companies</i>	13	7,300	3.9
<i>Collective investment scheme management companies</i>	35	33,950	18.0
<i>Branches of foreign investment services firms</i>	3	2,203	1.2
Credit institutions ⁽¹⁾	9	7,138	3.8
Universities and other education institutions	7	2,447	1.3
Total	115	188,761	100.0

⁽¹⁾ Many through their investment services firms

Other actions aimed at reinforcing investor protection

Report on the corporate and financial content of listed companies' web sites

The Transparency Law established the obligation for all Spanish listed companies to have a web site with information specifically aimed at shareholders. The CNMV drafted a report to check their existence and the scope of information available, at September 2003, on each of the 232 companies listed on Spanish markets (excluding SIMs and SIMCAVs). The CNMV analysed general information (shareholder information office, dividends, periodic disclosures, bylaws, significant holdings and significant events), information about shareholders' meetings (notice, agenda, directors' reports and meeting regulation) and information about boards of directors (members, type, remuneration, significant holdings, related-party transactions, regulations, commissions, etc.).

The findings showed that shareholder information was quite sparse. Nearly all the Ibex-35 companies had some information but the amount and quality was lower at small companies. The bulk of small caps lacked a web site. This situation has improved substantially in the first months of 2004.

Notices to issuers and marketers

As in previous years, the CNMV reminded issuers and financial institutions to comply with the requirements for issue placements and, in particular, it reminded them of the need to make the issue prospectuses and three-fold summaries available to the public and to comply with certain rules of conduct.

The CNMV randomly selected institutions that placed certain types of issues and requested the record of subscription orders sent by clients. The purpose was to check whether the institutions confirmed customers' subscription orders within the product's marketing period.

Investor information quality plan

To enhance the quality of information received by investors, especially retail investors, the CNMV implemented a quality plan; so far, the following actions have been performed:

a) Procedural Guide for the Provision of Investor Information in the Marketing of Investment Products (available in English)

Because of the increasing sophistication of financial markets and the considerable involvement of retail investors, the CNMV believes that it is vital for institutions that market investment products subject to supervision to adopt certain standards that foster quality in the information they provide to investors during marketing.

With that aim, the CNMV drafted a Procedural Guide with a number of principles and recommendations to make the information more effective. The idea is to make specific, comprehensible and appropriate information available to investors so that they can adopt investment decisions based on extensive knowledge about the product's essential features (liquidity, time horizon, yield expectations, associated risks, etc.). Institutions may voluntarily adopt that text, adapting it to their structure and commercial orientation by drafting a procedural manual that includes the practical application of the CNMV's proposed principles and recommendations: information circuits within the organisation, internal supervision of those circuits, cataloguing of products and their target clients, training of sales networks, etc.

The CNMV's web site includes a list of firms which have adopted the CNMV's quality system³. Those institutions have published the date of adoption and the date on which they plan to send the manual; an unjustified breach of the deadline automatically removes them from the quality system. At 2003 year-end, over 80 institutions were working on the infrastructure to enable them to implement the manual in their organisations, 35 had formally adopted the system and 20 had already sent their proposals to the Investor Department⁴.

b) Guide to Publishing the Three-fold prospectus⁵ (available only in Spanish)

In October 2003, the CNMV published the Guide to Publishing the Three-Fold Prospectus and sent it to issuers, which must comply with it to ensure that investors receive more comprehensible information. This Guide is aimed at standardising content so that, in compliance with Royal Decree 291/1992, dated 27 March, on securities issues and public offerings, prospectuses include all significant information clearly in a form that is comprehensible to any investor, together with certain warnings. The three-fold prospectuses must accredit registration with the CNMV, and must be available to marketers and be distributed to clients.

Three-fold prospectus registration using this new format was implemented in October. The CNMV and the sector are devoting considerable efforts to adapting all the prospectuses to these new application formats for issues of fixed-income, preference shares, primary and secondary public offerings, capital increases, warrants, certificates and atypical financial contracts. This systematisation will be particularly useful for investors.

³ www.cnmv.es. "Investor's Corner", "Information", "Quality of Information".

⁴ At the date of this Report, one institution has already published a manual that complies with the CNMV's recommendations.

⁵ Three-fold prospectuses summarise the main characteristics and risks of the securities issued. A three-fold prospectus must be published for any issue aimed at individual investors.

Financial product advertising

In view of the influence of advertising campaigns on investors' decisions, as evidenced by the queries received at the Investor Assistance Office, the CNMV believes it is necessary to monitor those campaigns. With the aim of delimiting the legal framework for this purpose, the 2004 Budget Annex Law amended article 94 of the Securities Market Law to enable the Economy Ministry to empower the CNMV to establish general rules for financial product advertising in Spain.

Complaints Department⁶

In 2003, the CNMV received 1,355 complaints, nearly 24% more than in 2002 (see table 7.4). As usual, most complaints related to financial institutions (95% of the total), particularly banks and savings banks (75%). Complaints against portfolio management companies, collective investment scheme management companies and securities investment companies increased substantially. In contrast, complaints related to unregistered firms and issuers fell significantly.

Table 7.4
Respondents in complaints

	No. of complaints		%	
	2002	2003	2002	2003
Market management companies and supervisory bodies	2	--	--	--
Financial institutions	969	1,290	89	95
<i>Banks and savings banks</i>	787	1,019	72	75
<i>Brokers and broker-dealers</i>	162	99	15	7
<i>SGC, SGIIC and securities investment companies</i>	20	172	2	13
Unregistered firms	40	14	4	1
Issuers	60	41	5	3
Other	23	10	2	1
Total	1,094	1,355	100	100

Table 7.5
Content of complaints in 2003

	No. of complaints	%
Securities issues	327	24.2
Takeover bids	30	2.2
Significant events	2	0.1
Corporate events	22	1.6
Mutual funds	537	39.6
Securities transactions	367	27.1
Share prices, trading frequency, liquidity, etc.	6	0.5
Portfolio management	20	1.5
Unregistered firms	14	1
Other	30	2.2
Total	1,355	100.0

⁶ Transitory provision one of the Internal Regulation states that this service will be managed by the General Secretariat until the Investor Defence Commissioner is set up. The Spanish Cabinet has already implemented the regulation for that body in Royal Decree 303/2004, dated 20 February, which approves the Regulation governing the Commissioner for the Defence of Financial Services Clients. This regulation will come into force four months after publication in the Official State Gazette (BOE).

The largest single category of complaints referred to mutual funds (39.6%), many of them relating to transfers (see table 7.5). The increase in the number of complaints related to mutual funds was due to the sector's growth and not to any deterioration or irregularities. Securities transactions accounted for 27.1% of total complaints and securities issues 24.2%. Other items were less important.

Table 7.6 summarises the outcome of the complaints. Complaints resolved through pronouncements (for or against the claimant) and by mutual agreement increased in absolute and relative terms. Complaints resolved by sending information to the complainant decreased in relative terms. At 2003 year-end, 8% of complaints were pending resolution.

Table 7.6
Outcome of complaints

	No. of complaints		%	
	2002	2003	2002	2003
<i>Complaints in which there was a pronouncement or resolution</i>	348	600	32	44
Resolved by mutual agreement	102	159	9	12
CNMV report favourable to complainant	50	122	5	9
CNMV report not favourable to complainant	181	297	17	22
Complaint withdrawn	15	22	1	1
<i>Complaints not requiring pronouncement</i>	595	648	54	48
Information provided to complainant ⁽¹⁾	536	594	49	44
Deficient complaints ⁽²⁾	10	11	1	1
Outside CNMV jurisdiction	49	43	4	3
<i>Pending</i>	151	107	14	8
Total	1,094	1,355	100	100

⁽¹⁾ The information which the CNMV supplied to the complainant resolved the matter.

⁽²⁾ Complaints with no name or address of sender, which prevent them from being processed.

Some particularly significant complaints

Atypical financial contracts

There were numerous complaints about atypical financial contracts. Complainants stated that they believed they had signed a fixed-term bank deposit and were disconcerted when, upon maturity, they received shares with a lower value than the initial capital they had invested. In the cases where the institutions were able to furnish the atypical financial contract, the complaint was rejected. In other cases, the problem was resolved by mutual agreement, where the institutions offered the customers a solution they deemed fit. The CNMV paid special attention to those complaints. The CNMV recommends that investors always inform themselves of the characteristics of the financial products in which they are going to place their savings.

Mutual funds

There were many complaints in which the client had not been aware of the application of a back end commission. In those cases, the CNMV required the institutions to provide greater details in their prospectuses about the periods in which the back end commissions do not apply. There was also a significant number of complaints relating to transfers between collective investment schemes. The CNMV adopted the appropriate measures for transfer requests to be handled with due speed and diligence.

Commissions applicable for transfer, administration and deposit of securities

The main complaints about securities referred to the cost that investors have to pay for depository services. Nevertheless, practically all institutions duly applied their official rate sheets and only in some cases did the CNMV have to remind them of the importance of detailing the specific amounts to be charged for the service requested by the client as well as their obligation to deliver a rate sheet when arranging a new service and to notify clients of increases in any applicable commissions and expenses, indicating the clients' rights to change or cancel the contractual relationship as a result.

Public warnings about unregistered firms

As shown in table 7.7, in 2003 the CNMV issued the following public warnings to investors about unregistered firms: (i) one warning about an unregistered intermediary that is undergoing disciplinary proceedings in accordance with article 64.7 of the Securities Market Law; (ii) five warnings about the existence of 79 unauthorised intermediaries, in accordance with article 13 of the Securities Market Law, which requires the CNMV to disseminate any information needed to ensure investor protection; and (iii) in accordance with international cooperation agreements, 24 warnings from foreign regulators about the existence of 74 unregistered intermediaries.

Table 7.7
Public warnings about unregistered firms

Date	Regulator	Firm
CNMV warnings about unauthorised firms undergoing disciplinary proceedings		
01/2003	CNMV	Assinfi Class, S.L.
CNMV warnings about unauthorised firms		
15/12/2003	CNMV	Tresaderns & Partners, S.L.
03/12/2003	CNMV	www.marbellasecurities.com
20/10/2003	CNMV	Carlton Birtal Financial Advisory, S.L. Carlton Capital Management Ltd. Carlton Financial Advisory & Intermediary Services Carlton Birtal Advisory Services, S.L.
15/10/2003	CNMV	AIM Warrants, S.A. Alternative Investment Markets, S.L. Cap Mov Asesores Financieros, S.L. Capital Movimiento, S.L.
09/10/2003	CNMV	Cranley & Associates, S.L. Morgan Paris & Company Clearing Services Via Management Group, S.A. Millennium Financial Ltd. Pacific Federal, S.A. Fielding Clifford Mercantilebanc Inc. Carter James, S.L.

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Date	Regulator	Firm
		Lloyds and Associates Ltd.
		Goodman Hart Associates
		Condor Research
		Hamilton Asset Management
		Hoffman Philips, S.L.
		Morrison Cross Financial Investment Ltd.
		Union Partners, S.L. (formerly Goldberg Kravitz, S.L.)
		Walker Stone
		Willmont Partners, S.L.
		Ainsley Consulting, S.L.
		Allied International, S.A.
		Argus Global Equities Ltd.
		Bid-Midex, S.L.
		Blevins Franks International Ltd.
		Bulltrading, S.L.
		Capital Growth Equities, S.L.
		Fraser, Lindhart and Webb plc (commercial name Trident Market Advisers)
		Fx Midex, S.L.
		Fx Bidmidex, S.L.
		Lidoral, S.L.
		Graves, Stanley & Peabody Ltd.
		Great British Investors, S.L.
		Green-Go Trading, S.L.
		Hayes Vanderbilt Investment, S.L.
		Interstate Financial Group, S.L.
		Cil, S.L.
		Martin & Associates
		Mediterranean Investment Group, S.L.
		Capital Advisers Bull & Bear, S.L.
		Bull & Bear
		Mig Direct
		Multitrading 2002, S.L.
		Smith & Henderson Associates Inc.
		Taylor Atlantic Ltd.
		www.sensibleoptions.com
		JT Strauss Advisory, S.L.
		Mercantile Securities Consultants, S.L.
		Novak & Goode, S.L.
		Bodegon Center, S.L.
		Liberty First Financial Services
		Mendoro
		IBS International
		Sharp Edger Building, S.L.
		Hargreaves Group, S.L.
		ADDA Management, S.L.
		Crozier Financial Services Spain, S.L.
		Kromir XXI, S.L.
		Allied Sovereign Zurich, S.L.
		Mutual Capital
		Raymond Lloyd & Associates Consulting Ltd.
		Network Capital Partners, S.L.

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(Continued)

Date	Regulator	Firm
		Solomon Christie LLC Pacific Continental Securities European Administration, S.L. Windsor Advisory Services, S.A. Windsor Investment Ltd. Fornix 2000 Plus, S.L. Goldberg Kravitz, S.L. Pittsburg Trade, S.L. Premier Equities Europe, S.L. Henry Woods Associates, S.L.
Public warnings from foreign regulators		
22/12/2003	Isle of Man	Crown Capital Partners Limited
18/12/2003	Belgium	Rementon & Fitzgerald
17/12/2003	Isle of Man	Meridian Trust Bank Meridian Trust
17/12/2003	Ireland	Jefferson Management Global Investment Group
03/12/2003	The Netherlands	Everest1 Inc.
13/11/2003	Ireland	Whistler Managers Ltd.
11/11/2003	The Netherlands	J.P. Turner & Company, L.L.C.
07/10/2003	Belgium	Kennedy Investment, Ltd.
06/10/2003	The Netherlands	Cambridge Global Ltd. Harrison Securities Inc. McKenzieking Consultants
06/10/2003	Ireland	Global Tax Consultants
19/08/2003	Denmark	Braun & Bridgewater Capital Corp.
19/08/2003	Belgium	Conexion Nigeriana
28/07/2003	Belgium	Drexel Asset Management
10/07/2003	The Netherlands	B&G Vermögensberatung GmbH
07/07/2003	Malta	Drexel Asset Management
13/06/2003	Belgium	Morgan Paris & Company Goodman Hart Associates
21/05/2003	Belgium	Willmont Partners, S.L. Ainsley Consulting, S.L.
12/05/2003	U K	K P Allen Berkshire Tax Consultants Cambridge Global Inc. Carter James SL Chamberlin Management Inc. Chapman Foster Group SL Condor Research Fielding Clifford First Chartered Capital Corp/First Colonial Trust Globeshare Hamilton Asset Management Hoffman Philips SL Hopkins, Pierce & Co. Limited

(Continues over)

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Date	Regulator	Firm
		Hyda Florsbanc Jefferson Management Kline Management Group Livingstone Asset Management Mercantilebank Securities Inc Millennium Financial Ltd. Morgan Young Financial Consultants Morrison Cross Financial Investments Ltd. Norwich Capital Mutual Funds Limited Pacific Federal SA Phoenix Asset Management SA Phoenix Partners SL Premier Equities Limited Reichman Advisory SL Smith Fairchild Stanley Riebeck Corporation Stein Banc Commerce Sukomo Group Thibault Capital Markets Trident Market Advisors Union Partners SL (formerly Goldberg Kravitz SL) Walker Stone Waterhouse Scott Ltd Webster, Cohen & Galombik Inc West Shore Ventures Limited Willmont Financial SL Windsor Asset Management World Trade Financial Corporation
04/04/2003	Belgium	Jackson Cole Investments
28/03/2003	Ireland	Wells International Investments Limited
11/03/2003	Italy	Francesco Catalano
11/03/2003	Belgium	Quantex Inc.
24/02/2003	The Netherlands	Ocean International Marketing, B.V. Seed International, Ltd. Cupidus.com Ltd. Cupidus.com (Turks & Caicos) Ltd.
21/02/2003	Ireland	Prime Pacific Holdings Limited Cambridge Global Ltd.

Annex 1

CNMV publications

Periodical:

- CNMV Annual Report (Spanish and English)
- Annual Report on the Securities Markets (Spanish and English)
- Annual report on complaints received at the CNMV (Spanish only)
- Annual summary of the audits of issuers received at the CNMV (except SIM and SIMCAV) (Spanish only)
- Monthly report on the market situation (Spanish only)
- Statistics on secondary markets (Spanish only):
 - o Annual summary of securities markets
 - o Basic data of securities markets (annual)
 - o Monthly report on securities markets
- Statistics on listed companies (Spanish only):
 - o Economic and financial information on listed companies (half-yearly)
 - o Economic and financial information on listed companies (quarterly)
- Statistics on primary markets (Spanish only):
 - o Statistics on applications for issuance and listing (half-yearly)
 - o Statistics on placements of commercial paper registered with the CNMV (half-yearly)
- Statistics on collective investment schemes (quarterly) (Spanish only)
- Statistics on investment services firms (Spanish only):
 - o Statistics on investment services firms (quarterly)
 - o Statistics on investment services firms (monthly)

Monographic publications:

- Market abuse regulation in Europe and the US no. 1. 2002 (Spanish only)
- Transparency and principle of best execution no. 2. 2003 (Spanish only)
- Theory of auctions and seller reputation no. 3. 2003 (Spanish only)
- Use and accounting of derivatives instruments in Spanish mutual funds no. 4. 2003 (Spanish only)

Investor guides:

- "What you should know about... the rights and responsibilities of shareholders" (2002) (Spanish only)
- "What you should know about ... fixed-income products" (2002) (Spanish and English)
- "What you need to know about ... fly-by night operations" (2002) (Spanish and English)
- "What you should know about... investment services firms" (2002) (Spanish and English)
- "What you should know about ... mutual funds and collective investment" (2002) (Spanish and English)

Legislation and case law:

- Securities market legislation (September 2000) (Spanish only)
- Ten years of Securities Market Case Law (1988-1998) (Spanish only)
- Electronic book on the Securities Market Case Law (Spanish only)
- Securities market regulation indexes (Spanish only)

Working papers:

- Hedging bond portfolios with futures (1992) (Spanish only)
- Financial services agreement within the GATS framework (1995) (Spanish only)
- Derivatives: risk control and disclosure (1997) (Spanish only)
- Analysis of Spanish stock market liquidity and impact of regulations on minimum price changes (1997) (Spanish only)

Other documents:

- Report of the Special Commission to study a code of ethical conduct on companies' board of directors. (Olivencia Commission) 1998 (Spanish only)
- Report on securities market competitiveness. 1999 (Spanish only)
- Results from a survey on internal codes of conduct and Chinese walls. 1999 (Spanish only)
- A decade of transformation in the securities markets. 1999 (Spanish only)
- Report of the Special Commission for the promotion of transparency and reliability on securities markets and listed companies. (Aldama Commission) 2003 (Spanish and English)

Spain's National Securities Numbering Agency (Agencia Nacional de Codificación de Valores):

- ISIN Codes. Securities listed in official Spanish markets and mutual funds (Spanish only)

8. International activity

The CNMV's international activity focuses on: (i) participation in international regulatory and supervisory forums, mainly IOSCO and CESR; (ii) the development of European Union legislation relating to the securities markets; and (iii) bilateral and multilateral cooperation (MOU¹ and Multilateral MOU) with other regulators, particularly with Latin American regulators, through various channels such as the Instituto Iberoamericano del Mercado de Valores.

Table 8.1

Attendance at international meetings and participation in technical assistance missions

Organisation	Number of meetings	
	2002	2003
CESR	62	59
IOSCO	57	42
European Union	59	64
OECD	5	7
ANNA ⁽¹⁾ /ISO	6	4
Other forums	14	12
Total	203	188
Technical assistance missions	6	2

⁽¹⁾ ANNA: Association of National Numbering Agencies.

Committee of European Securities Regulators (CESR)

The documentation and tasks undertaken by the CESR in 2003 can be basically grouped in three large sections, as detailed below.

CESR Expert Groups

- "Standard No. 1 on financial information"², developed by CESR-Fin³, establishes a harmonised system among supervisory bodies for controlling the application of financial reporting standards with which securities issuers must comply, with reference to powers of enforcement and sanction. Furthermore, the CESR held a public consultation of "Standard No. 2 on financial information - Coordination of enforcement activities"⁴, which aims to improve coordination of enforcement activities with regard to financial reporting.

¹ Memorandum of Understanding.

² Dated 21 March 2003. CESR/03-073.

³ Accounting harmonisation working group.

⁴ Dated 7 October 2003. CESR/03-317b.

- The CESR recommendations regarding the implementation of International Financial Reporting Standards (IFRS)⁵ analyses the way listed companies should approach the transition to IFRS, applicable from 2005 onwards. The CESR believes that careful supervision of this transition is essential to ensure that listed companies comply with their reporting obligations and that investors can understand the effect of the new standards on financial reporting.
- Two documents by the CESR/ESCB⁶ group were submitted for public consultation regarding standards for securities clearing and settlement systems in the EU⁷ and their scope of application⁸.

European Commission mandates for technical consultation on level 2 standards

- Market Abuse Directive: New mandates were received from the European Commission in 2003 to develop technical measures for the implementation of the Directive with respect to (i) accepted market practices⁹ and the concept of insider trading relating to derivatives on commodities; (ii) preparation of a list of insiders; (iii) disclosure of transactions by specific persons; and (iv) suspicious operations. The Market Abuse Directive was the first to be developed under the new regulatory approach of the Lamfalussy Report and a set of level 2 legislation has already been published in the Official Journal of European Union¹⁰.
- Prospectus Directive¹¹: The CESR submitted three reports regarding the minimum disclosure requirements, incorporation by reference and publication of prospectuses, format of the prospectus and its supplements, and prospectus formats for specific types of marketable securities. The reports were prepared following extensive public consultation and the Commission is currently preparing level 2 measures based on the reports.
- Directive on Markets in Financial Instruments (formerly the Investment Services Directive). Three working groups were created within the CESR to implement specific articles of the Directive, by comitology. The following box details the operation and tasks of the working groups.

CESR working groups on the Investment Services Directive (ISD)

The European Commission has charged the CESR with the implementation by comitology¹ of the provisions of the ISD, with a deadline of January 2005. Accordingly, three expert groups and a work coordination group were created, the latter consisting of the Chairs and Secretaries of the working groups and of the CESR in general.

⁵ "European Regulation on the application of International Financial Reporting Standards in 2005–Draft Recommendations for additional guidance regarding the transition to IFRS". October 2003. CESR/03-323b.

⁶ European System of Central Banks. See box in chapter 2.

⁷ Standards for Securities Clearing and Settlement systems in the European Union. August 2003.

⁸ Standards for Securities Clearing and Settlement systems in the European Union – Scope of Application. August 2003.

⁹ See box in chapter 2.

¹⁰ "Regulation on Buy-back and Stabilisation", CR (EC) No 2273/2003; "Definition of Public Disclosure and Market Manipulation", CD 2003/124/EC; "Fair Presentation and Disclosure of Conflict of Interest", CD 2003/125/EC.

¹¹ Directive 2003/71/EC.

The three groups are as follows: (i) market expert group, which studies issues relating to pre/post trading transparency and the listing of marketable financial instruments; (ii) intermediary expert group, which analyses the organisational requirements of investment services firms, codes of conduct and conflicts of interest, the execution of orders on behalf of customers and the best execution principle; and (iii) cooperation and information exchange group, which studies disclosure requirements for securities transactions and the procedure for the exchange of information between competent authorities.

¹ Implementation by comitology was one of the main proposals of the Lamfalussy Report, and refers to implementation of the basic concepts of legislation by committees, thus speeding up the process of rule-making.

European Regulation Seminars

The CNMV held its II and III European Regulation Seminars (in March and November, respectively), to inform financial market participants of the progress with the proposed Directives and other legislative measures being implemented by the EU to promote integration of European securities markets.

Through these seminars, the CNMV attempts to foster greater participation in public consultations on Community legislation. During the seminars, which were attended by over 400 market, consumer and listed company representatives, detailed information was given regarding the progress and outlook of the Financial Services Action Plan, such as proposed directives and directives on takeover bids, investment services, market abuse, prospectuses, transparency, collateral, clearing and settlement, UCITS, financial conglomerates, capital adequacy and accounting standards. The November seminar was preceded by a meeting with financial journalists at which the status of proposed EU regulations was explained in order to furnish them with information which would increase the quality of their analysis.

Permanent Working Groups

- Permanent group on International Accounting Standards (CESR-Fin). In 2003, the group focussed on matters relating to transition to IFRS and the need for better supervision of financial reporting activities. As mentioned previously, the group developed "Standard No. 1 on financial information".
- Permanent group on surveillance and the exchange of information (CESR-Pol). The group's activities centred on (i) analysis of the effectiveness and operation of the Multilateral MOU¹² between members of the CESR and incorporation of EU accession countries as signatories of the Multilateral MOU; (ii) pooling and analysis of experiences with non-cooperative countries and jurisdictions; (iii) internet surveillance of activities related to the securities markets; and (iv) analysis of the systems and criteria used to prioritise assignment of funds to investigations. Furthermore, in order to improve collaboration and the exchange of information between members, an automatic disclosure system was created to disseminate public warnings regarding entities which are not authorised to offer investment services. The CNMV joined this system in 2003.

¹² IOSCO Multilateral MOU, May 2002. IOSCOPD126.

IOSCO

- In 2003, the work that had commenced in 2002 continued with the approval of the new "Multilateral MOU concerning Consultation, Cooperation and the Exchange of Information" between the regulatory and supervisory bodies of securities markets; accordingly, the legislation of those jurisdictions wishing to join the MOU must be revised.
- The Financial Action Task Force approved the revision of the "Forty Recommendations"¹³ aimed at helping individual countries to adequately adapt their respective legislation in order to prevent the use of securities markets for money laundering. IOSCO, the Basel Committee on Banking Supervision, and the International Association of Insurance Supervisors also issued a joint note, "Initiatives by the BCBS, IAIS and IOSCO to Combat Money Laundering and the Financing of Terrorism"¹⁴, describing the initiatives currently in force.
- A "Methodology for Assessing Implementation of the IOSCO Objectives and Principles of Securities Regulation"¹⁵ was adopted, enabling identification of priority action areas and the development of plans to undertake the necessary reforms. During development of the methodology, there was significant presence and cooperation from the World Bank and the International Monetary Fund which, along with IOSCO experts, will help countries to assess their implementation of the methodology.
- IOSCO's Technical Committee issued two Statements of Principles to advise securities market regulatory and supervisory bodies: the "Statement of Principles for Addressing Sell-Side Securities Analyst Conflicts of Interest"¹⁶ and the "Statement of Principles Regarding the Activities of Credit Rating Agencies"¹⁷. Both documents analyse the problems and aim to provide the basis for an appropriate regulatory framework.
- As Spain's representative in the IOSCO Technical Committee, the CNMV participated actively in all of the Standing Committees and Project Teams. A summary of the main activities of each is given below.

Multinational offerings of securities, accounting and auditing

IOSCO continues to show its concern for good practices in accounting, auditing and disclosure of financial information following recent accounting scandals, by designing independence standards for auditors of listed companies aimed at fostering conditions where auditors are free from any influence, interest or relation which could affect their judgement or professional objectivity. The Technical Committee worked jointly with the International Federation of Accountants and other international regulators to develop international accounting standards.

Following on the "Principles for Ongoing Disclosure and Material Development Reporting by Listed Entities"¹⁸ issued in 2002, IOSCO published a new series of prin-

¹³ Financial Action Task Force on Money Laundering: The Forty Recommendations, June 2003.

¹⁴ Dated June 2003. IOSCOPD146

¹⁵ Dated October 2003. IOSCOPD155.

¹⁶ Dated September 2003. IOSCOPD150.

¹⁷ Dated September 2003. IOSCOPD151.

¹⁸ Dated October 2002. IOSCOPD132.

principles¹⁹ in 2003 concerning the information contained in the management report regarding a company's earnings, recommending that the information be conveyed in a clear, precise, easily-understandable manner.

Secondary markets

The "Report on Transparency of Short Selling"²⁰ warns of the capacity to increase risk in markets, to facilitate abusive practices and to generate problems in settlement due to deficiencies in the delivery of securities. Despite this, short selling offers advantages to market users and contributes to efficiency in price setting. Furthermore, disclosure and transparency of short selling provides valuable information, improving comprehension of market processes and building confidence in the market.

Another report published in 2003, "Indexation: Securities Indices and Index Derivatives"²¹, analyses various issues arising from the proliferation of investment strategies relating to indices and products linked to indices.

Intermediaries

During 2003, this working group prepared a report on "Regulation of Remote Cross-Border Financial Intermediaries"²² analysing regulatory aspects concerning the provision of financial services by entities which do not have a physical presence in the jurisdiction in which the services are provided.

Enforcement and exchange of information

Membership requests to join the Multilateral Agreement on Cooperation and the Exchange of Information (Multilateral MOU)²³ were reviewed by a working group comprising of members of the Technical Committee and the Emerging Markets Committee. During the first year, members from 24 jurisdictions, including Spain, signed the Multilateral MOU²⁴. Moreover, a subcommittee was created to review and assess the capacity to cooperate with countries which have insufficient securities market regulation, or with countries which only cooperate in certain matters.

Collective investment schemes (CIS)

Given the increasing popularity of hedge funds among individual investors, IOSCO published a report entitled "Regulatory and Investor Protection Issues arising from

¹⁹ "General Principles regarding Disclosure of Management's Discussion and Analysis of Financial Condition and Results of Operations", February 2003. IOSCOPD141.

²⁰ Dated June 2003. IOSCOPD147. This document elaborates on the issues covered in the "Report on Transparency and Market Fragmentation", November 2001. IOSCOPD124.

²¹ Dated February 2003. IOSCOPD143.

²² Dated February 2004. IOSCOPD162.

²³ "IOSCO Multilateral MOU", May 2002. IOSCOPD126

²⁴ Signatories of the Multilateral MOU: the supervisory and regulatory bodies of Alberta, British Columbia, Ontario, and Quebec (Canada); Australia; France; Germany; Greece; Hong Kong; Hungary; India; Italy; Jersey; Lithuania; Mexico; New Zealand; Poland; Spain; South Africa; Turkey; the UK and the US.

the Participation by Retail Investors in Hedge Funds²⁵. The report included two basic recommendations for regulating hedge funds in jurisdictions where they can be sold to individuals: (i) information regarding risk should be adequate and sufficient so it is comprehensible to investors; and (ii) hedge funds should be managed by professionals with appropriate experience and capacity.

The "Collective Investment Schemes as Shareholders: Responsibilities and Disclosure" report²⁶ focuses on the exercise of voting rights in companies where CIS hold shares. Rights associated with securities held by CIS should be considered and exercised by their managers solely in the fund's best interest, and investors in the fund must be informed of voting decisions and other policies relating to the governance of the company.

In 2003, IOSCO published and submitted for public consultation its "Performance Presentation Standards for Collective Investment Schemes: Best Practice Standards" report²⁷, which establishes best practice standards for the presentation of CIS performance information in advertisements.

Project teams

The project team working on "Use of the Internet in securities-related activities" organised a series of roundtable meetings attended by regulators, consumer associations, financial services entities, relevant financial reporting entities and Internet service providers. The aim of these meetings was to discuss existing and emerging practices, and the potential risks derived from the use of this technology. A summary of these discussions is included in the "Report on Securities Activity on the Internet III"²⁸.

CESR and IOSCO seminars on investor education

In July, at the initiative of the CNMV, the CESR held a seminar in Madrid entitled "The role of training and information in investor protection", aimed at identifying areas of common interest where it is possible to exchange information, tools and experience between regulators with regard to activities directed at investors. A commitment was undertaken to create a network of working groups to collaborate in the aforementioned exchange, with assistance from the CESR. Among other items, there are plans to establish common pan-European databases (authorised intermediaries, prospectuses, etc.), disseminate information regarding the operation of markets in different jurisdictions, improve awareness of the profile and behaviour of European investors, and foster the joint use of disclosure tools.

In November, a seminar dealing with issues relating to investor education was held in Madrid as part of IOSCO's Seminar Training Program. More than 80 representatives from 40 countries in Europe, Asia, Africa and America attended. Although individual countries face different problems depending on the stage of development of their securities markets, the seminar identified a large number of common concerns, including: the fight against financial fraud, the need to improve investors' financial knowledge, mechanisms for the effective dissemination of financial information, etc. Cooperation with other organisations and countries forms one of the main lines of action to be undertaken by regulators.

²⁵ Dated February 2003. IOSCOPD142.

²⁶ Dated October 2003. IOSCOPD158.

²⁷ Dated February 2003. IOSCOPD144.

²⁸ Dated October 2003. IOSCOPD159.

Cooperation with Latin America

In 2003, considerable technical assistance was provided to Latin American securities commissions and supervisory bodies by responding to queries, assisting representatives of those bodies on visits to Spain, and sending CNMV professionals to the region in order to analyse the various spheres of action, share experiences and develop proposals.

The CNMV attended, as an observer, meetings of the Latin American Council of Securities Regulatory Authorities which discussed issues such as SME financing and regional integration processes. European experiences in such matters are of great interest to the Council.

Furthermore, the CNMV participated in seminars²⁹ to train staff of Latin American regulatory bodies as members of the IOSCO working group for the development of a methodology to assess the level of adoption and compliance of the thirty regulatory principles proposed by IOSCO³⁰.

The first online course for Latin American officials on Regulation and Supervision of Securities Markets was held by the CNMV in collaboration with the Spanish distance learning centre for economic and technological development (CEDDET).

First online course on regulation and supervision of securities markets

Within the framework of the World Bank's training program, the CNMV (in collaboration with CEDDET¹) held an online course on regulation and supervision of securities markets, based on the Spanish model, aimed at officials from the regulatory and supervisory bodies of Latin American securities markets.

The course commenced in September 2003 following several months of preparation and, during the introductory phase, course materials were developed and tutors were trained in the use of the IT platform. The nine-week course included seven week-long modules: 0) Use of online platform tools; 1) regulatory and supervisory objectives and instruments; 2) primary markets; 3) secondary markets and derivatives; 4) supervision of intermediaries and CIS; 5) enforcement and sanction; and 6) investor information, training and protection.

A total of 31 students took part, from 10 different countries², and both students and tutors were highly satisfied with the progress and outcome of the course. The course provided considerable feedback to the CNMV as students were frequently evaluated whilst carrying out multiple activities and raised numerous queries.

The students visited Spain in February 2004 to receive their diplomas from the CNMV and they also visited entities representative of the securities market,

²⁹ One of the most significant seminars was that held in Tegucigalpa, attended by Central American regulators and market representatives.

³⁰ "IOSCO Objectives and Principles of Securities Regulation" IOSCOPD154. The thirty principles relate to: regulators, self-regulation, implementation of regulation, cooperation between regulators, issuers, collective investment, intermediaries and secondary markets.

including private institutions chosen for their considerable presence in Latin America. The lectures organised by those entities and the overall experience proved to be very positive and enriching.

¹ Distance Learning Centre for Economic and Technological Development. CEDDET is a member of the World Bank's Global Development Learning Network and is sponsored by the World Bank and the Spanish Economy Ministry. The programme aims to transfer knowledge to developing countries using new technologies.

² Bolivia, Costa Rica, Chile, Ecuador, El Salvador, Honduras, Panama, the Dominican Republic, Uruguay and Venezuela.

³ CNMV, Banco de España, IOSCO, Bolsa de Valores de Madrid, MEFF, Telefónica, BBVA, BSCH, Renta

⁴ and Endesa.

Instituto Iberoamericano del Mercado de Valores (IIMV)

The CNMV worked closely with the IIMV and participated in its activities, particularly in the development of accounting harmonisation processes and the Unified Internet Notification System (SUNI). The CNMV also participated in the joint working group, coordinated by the IIMV, between the Federación Iberoamericana de Bolsas de Valores and supervisory bodies in order to achieve the gradual integration of stock exchanges in the region.

Information about international activities and regulation on the CNMV web site

A new section covering international activities has been added to the CNMV web site, with subsections for Spanish and foreign users, each including the following information: (i) international information for Spanish markets, including EU and CESR consultation drafts; (ii) the schedule of international activities of the CNMV; (iii) reports from other countries and organisations; and (iv) a directory of the principal international institutions.

There is also a section providing information for foreign users regarding new features of Spanish regulation, Spanish markets, and the CNMV's activities. The information is available in both Spanish and English.

Other activities

The CNMV maintained an active presence in other international forums such as the Joint Forum³¹ and the CPSS-IOSCO joint group. Three documents were published by the Joint Forum regarding (i) joint initiatives to combat money laundering and the financing of terrorism; (ii) trends in the integration and aggregation of risks; and (iii) transfer of the operational risk through financial sectors. The CPSS-IOSCO joint group developed a document containing recommendations for central counterparties,

³¹ The Joint Forum was established in 1996 under the auspices of the Basel Committee on Banking Supervision, IOSCO and the Association of Insurance Supervisors.

emphasising the management of their business risk and the requirements to which they should be subject. The document will be published in 2004 following a period of public consultation.

The CNMV also played a role in work undertaken by the OECD through its participation in the Steering Group on Corporate Finance, which aims to develop and revise the Corporate Governance Principles approved in 1999 by the ministries of member countries. Furthermore, the CNMV was active in the development of the "Latin American White Paper on Corporate Governance"³².

³² Dated 13 November 2003.

PART III

REGULATION

9. Regulation

The year 2003 was a prolific one in terms of legislation, both in Spain and Europe. In Spain, some of the most significant events were the approval of the new Collective Investment Scheme Law¹, which aims to liberalise the investment policies of such schemes and reinforce investor protection, and the Transparency Law², which establishes new obligations for listed companies with regard to transparency. Also noteworthy was the issue of the new Royal Decree regarding takeover bids³.

In Europe, considerable progress has been made in the Financial Services Action Plan of the European Commission, which aims to accelerate the creation of a single market in financial services, with just 6 of the 42 planned measures still to be completed. Some of the major measures adopted in 2003 included the Market Abuse Directive⁴, the first to be enacted in accordance with the Lamfalussy Report, and the Prospectus Directive⁵. Significant progress was also made in accounting harmonization with the publication of the European Commission Regulation⁶ which requires listed companies to employ International Accounting Standards in the preparation of their consolidated financial statements from 1 January 2005 onwards, and several CESR initiatives regarding application of these standards⁷.

New Collective Investment Schemes Law

The new Collective Investment Schemes Law, which came into effect on 5 February 2004, aims to adapt regulation of such schemes to the changing needs of a sector characterised by increasing quality- and price-driven demand and greater competition between providers of management services. The basic principles of the Law, whose specific technical features will be implemented by regulation, are:

- Liberalisation of investment policy. The approach based on multiple legally-defined categories of IIC and restricting assets eligible for investment has been abandoned in favour of greater flexibility and freedom in the definition of IIC investment profiles.

¹ Law 35/2003, of 4 November, on Collective Investment Schemes.

² Law 26/2003, which modifies the Securities Market Law 24/1998 of 28 July, and the consolidated text of the Spanish Corporations Law, approved by Legislative Royal Decree 1574/1989, of 22 December.

³ Royal Decree 432/2003, of 11 April, which modifies Royal Decree 1197/1991, of 26 July, regulating takeover bids.

⁴ Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation (market abuse).

⁵ Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading and amending Directive 2001/34/EC.

⁶ Commission Regulation (EC) No 1725/2003 of 29 September 2003 adopting certain International Accounting Standards in accordance with Regulation (EC) No 1606/2002 of the European Parliament and of the Council.

⁷ The initiatives are available (in Spanish) from the CNMV web site (www.cnmv.es), under "Publications", "IFRS/IAS".

- Reinforcement of investor protection through new instruments. In order to prevent possible conflicts of interest, it was considered appropriate to reinforce the transparency obligations and codes of conduct.
- Improvement of the regime regulating administrative intervention. This has a two-fold objective: to speed up administrative process and to reinforce legal certainty for investors.

Although the ultimate impact will depend essentially on the implementing regulation, the many significant new features introduced will help to anticipate future necessary changes. The main new features of the Law are detailed below, grouped by area of incidence:

- Legal regime. The most significant features in this area are: (i) relaxation of the regime regulating the IIC offering, in line with existing legislation in other countries, by enabling the creation of IIC broken into divisions and the possibility of offering different classes of shares or units within a single IIC; (ii) replacement of the existing classifications used for financial investment funds with categories based exclusively on the investment approach, to be determined by the CNMV; (iii) the new regime relating to investment firms, under which only open-end securities investment company (SICAVs⁸) will qualify as IICs; (iv) elimination of the listing requirement for these companies; and (v) the speeding-up of the administrative process, evidenced, among other measures, by the possibility of creating funds without a public instrument and shortening the time for the majority of procedures.
- Financial regime. The most significant aspect in this area has been the broadening of the range of assets in which IIC can invest. Other noteworthy aspects include: (i) the introduction of new categories of assets (deposits at credit institutions, unlisted money market instruments and any derivative of an eligible asset); (ii) greater flexibility with regard to certain investment limits (allowing investment of over 5% but less than 50% in other IICs); and (iii) the possibility, within the scope of the new law and through the corresponding implementing regulation, of regulating hedge funds.
- Investor protection regime. The most significant provisions in this area are: (i) periodic reporting, particularly the obligation to disclose all fund or company costs in the simplified prospectus and in quarterly reports; (ii) fund management companies must now have an investor relations department (in line with the obligation already imposed on investment services firms) and may appoint an investor ombudsman; (iii) fund managers must inform investors how they vote the shares owned by the funds they manage and must justify their decisions in this area; and (iv) the possibility of regulating cases where exercise of the aforementioned voting rights is obligatory, according to the size and stability of the stake held by the fund in a listed company.
- Regime regulating fund managers and IIC depositories. Fund managers may also provide individual portfolio management services and investment advice. With regard to depositories, the new IIC law requires that they be members of the clearing, settlement and registration systems of the markets in which they operate, either directly or through another member entity.
- Cross-border transactions. The new law incorporates the latest EU amendments regarding IICs into Spanish legislation and regulates, among other aspects, the use of the European passport by Spanish fund managers that wish to provide services in other EU countries and, reciprocally, to fund managers from other EU countries wishing to operate in Spain.

⁸ Accordingly, closed-end investment companies (SIMs) will cease to exist.

Transparency Law

The Transparency Law was approved on 17 July 2003 with the aim of enhancing the transparency of listed companies. The Law introduces a new Title X to the Securities Market Law, establishing certain criteria to be applied to listed companies. The most important are as follows:

- Shareholder agreements which regulate the right to vote at Shareholders' Meetings or restrict or impose conditions on the free transmission of shares must now be disclosed.
- Listed companies must now approve a Shareholders' Meeting Regulation which envisages all matters relating to the Meeting, in accordance with the provisions of the law and the company bylaws.
- The Board of Directors of a listed company must approve a regulation regarding the Board's internal rules and functioning.
- Both the Board of Directors Regulation and the Shareholders' Meeting Regulation must be communicated to the CNMV along with a full copy of the text and they must subsequently be registered in the Mercantile Register corresponding to the domicile of the listed company⁹.
- With regard to the duties of directors of listed companies, the Law establishes that:
 - Directors who have obtained a proxy via public solicitation may not vote the proxies at the Shareholders' Meeting if there is a conflict of interest.
 - Transactions between directors or persons acting on their behalf and the listed company or a company within its group which do not form part of the normal course of business or which are undertaken other than in arm's-length conditions must be disclosed in the company's Annual Report.
 - Directors may not carry out or suggest operations involving securities of companies about which they have privileged or inside information, insofar as the information is not made public.
- The following two obligations have been introduced with regard to corporate reporting:
 - Listed companies must publish an annual Corporate Governance Report¹⁰, which must include at least the following six sections: (i) capital structure; (ii) management structure; (iii) related-party transactions; (iv) risk control systems; (v) functioning of the Shareholders' Meeting; and (vi) the level of compliance with corporate governance recommendations and an explanation of any lack of compliance.
 - Listed companies may comply with the reporting obligation established in the Spanish Corporations Law by any technical, computerised or telematic means, without prejudice to the shareholders' right to request the information in

⁹ The Law does not establish the minimum required contents of the aforementioned regulations but requires that they comply with the law and with the Bylaws. In the case of the Board of Directors Regulation, the Law establishes a reference framework, stating that the Regulation "shall contain measures to guarantee optimum management of the company".

¹⁰ Entities that issue securities which are listed in an official secondary market and savings banks are also required to publish a Corporate Governance Report, with content according to the specific legal nature of each entity.

print. Listed companies must also have a web site to respond to the shareholders' right to information and to disseminate significant information, in accordance with Article 82.5 of the Securities Market Law.

Other significant measures introduced with regard to listed companies include the following:

- The right to vote at Shareholders' Meetings may be exercised or delegated using any distance communication media.
- The Regulation regarding the right to information has been broadened.
- Directors must remain duly abreast of the performance of company and must remain loyal to the interests of the company in the discharge of the duties imposed on them by law and the Bylaws.

With regard to the director's duty of loyalty:

- Directors may not use the company name or invoke their status as director in order to carry out operations on their own account or on the account of parties related to them.
- Directors may not make use, for their own benefit or for the benefit of parties related to them, of the company's business opportunities unless the company has ruled out the investment or operation in question without any influence from the director.
- Directors must inform the Board of Directors of any situation in which they may have a direct or indirect conflict of interest.
- Directors must disclose: (i) any stakes, positions or powers held in competing companies; and (ii) the performance, either on their own account or on account of others, of activities in competition with the company and this must also be disclosed in the Annual Report.
- Directors' duty of confidentiality has been elaborated.
- Directors are now liable for damage caused to shareholders, creditors and the company by acts and omissions arising as a result of their failure to fulfil the duties inherent to their post.
- *De facto* directors are also now liable for acts in breach of the law, the bylaws and the duties imposed on directors by the Spanish Corporations Law.

Measures relating to the securities market which are included in the Law on Fiscal, Administrative and Labour Measures

This Law¹¹ establishes various regulations regarding fiscal and labour measures, staff working for public authorities, management and administrative organisation, and administrative action in the different sectors, and supports the economic policy objectives set by the 2004 General State Budget Law. Among the most significant measures relating to the securities markets are:

¹¹ Law 62/2003, of 30 December, on Fiscal, Administrative and Labour Measures.

- The regulation of the synthetic securitisation of loans and other receivables (see box in Chapter 3 on information to be disclosed to the market).
- Amendments to the Securities Market Law regarding regulation of the mandatory Audit Committee for entities issuing securities which are listed in official secondary markets, and possible authorisation of advertising for the activities envisaged in that Law.
- Amendments to the Transparency Law regarding specific aspects of the annual Corporate Governance Report which savings banks must publish and file with the CNMV.
- Amendments to Law 13/1985, of 25 May, on investment coefficients, equity and the reporting obligations of financial intermediaries, to comply with the Directive of the European Parliament and of the Council amending Directives 78/660/EEC, 83/349/EEC, 86/635/EEC and 91/674/EEC on the annual and consolidated accounts of certain types of companies, banks and other financial institutions and insurance undertakings.
- Amendments to the accounting standards incorporated in mercantile legislation. The accounting regulation established in Law 2/1995 of 23 March on limited liability companies has been adapted to incorporate the proposals of the Intergovernmental expert group on International Accounting Standards and Reporting¹², as well as the positive law of other EU member countries.
- Amendments to the Code of Commerce and the Consolidated text of the Spanish Corporations Law, adapting them to Regulation 1606/2002/EC of the European Parliament and of the Council on the application of international accounting standards, and in the transposition of Directive 2001/65/EC of the European Parliament and of the Council of 27 September 2001¹³ as regards the valuation rules for the annual and consolidated accounts of certain types of companies as well as of banks and other financial institutions.

Other Spanish legislation

Primary markets

- CNMV Circular 2/2003, of 18 March, amending CNMV Circular 2/1999, of 22 April, regarding prospectuses for warrant issues. It regulates the format of the prospectus required to issue warrants whose underlying assets are shares in the issuer or in the controlling or parent company of the group of which the issuer is a member.

Secondary markets

- Royal Decree 432/2003, dated 11 April, which amended Royal Decree 1197/1991, dated 26 July, on tender offers for securities. In order to guaran-

¹² This group was created within the United Nations Council on Trade and Development (UNCTAD) and has spent twenty years promoting the introduction of improved transparency in business management and the publication of information by companies.

¹³ Amending Directives 78/660/EEC, 83/349/EEC and 86/635/EEC.

tee the equal treatment of all shareholders, the new regulation has introduced the following amendments with regard to corporate control: (i) increase in the number of cases requiring the obligatory launch of a total or partial¹⁴ takeover bid; (ii) changes to criteria exempting the obligation to launch a takeover bid; (iii) regulation of conditional takeover bids; (iv) improved regulation of competing takeover bids; and (v) the deadline for presenting proof of having posted a bond has been moved to two days following the launch of the takeover bid.

- Economy Ministry Order 689/2003, dated 27 March, which approves the Regulation of Sociedad de Gestión de los Sistemas de Registro, Compensación y Liquidación de Valores (see Chapter 2).
- Economy Ministry Order 3519/2003, dated 1 December, publishing the Cabinet Resolution of 7 November 2003 which authorised the creation of an olive oil futures market to be governed by MFAO, Sociedad Rectora del Mercado de Futuros del Aceite de Oliva, S.A. and approving its Market Regulation (see Chapter 2).
- CNMV Circular 1/2003, of 22 January, which implements the specific requirements applicable to industrial members of official secondary olive oil futures and options markets, and regulates the mandatory accounting and statistical information to be supplied by the governing companies of these markets.

Other regulations concerning the securities markets

- Royal Decree 504/2003, of 2 May, governing the CNMV Advisory Committee. (See Chapter 1).
- CNMV Board resolution dated 20 November 2003, which approved the Code of Conduct for non-profit organisations regarding temporary investments (See chapter 2).
- Economy Ministry Order 2714/2003, of 25 September, implementing Royal Decree 1432/2002, of 27 December, regarding the transfer and/or securitisation of the cost corresponding to the mismatch in revenues from regulated activities prior to 2003 and the cost of revisions derived from offshore costs.
- Economy Ministry Order 3722/2003, of 26 December, regarding the annual Corporate Governance Report and other reporting instruments of listed limited companies and other entities. It establishes the minimum content and structure of the report and reporting instruments.

Investment services firms

- Economy Ministry Order 29/2003, of 8 January, which partially amends the Ministry Order of 29 December 1992 on equity and supervision on a consolidated basis of securities companies and agencies and their groups.

¹⁴ The main new feature in this area is the obligation to launch a takeover bid for 10% of the affected company when the bidder plans to hold a stake of under 25% and intends to designate more than one third and less than half plus one of the directors of the affected company (see Chapter 4 with regard to takeover bids).

Collective Investment Schemes

- CNMV Circular 3/2003, of 29 December on reporting by foreign collective investment schemes registered in the CNMV Register. The regulation aims to simplify the ancillary information issued by such entities.

Other regulations containing provisions relating to the securities market

- Organic Law 15/2003, of 5 November, which amended Organic Law 10/1995, of 23 November, on the Criminal Code. In particular, two articles of the Criminal Code relating to market manipulation and insider dealing were amended.
- Law 12/2003, of 21 May, on the prevention and freezing of terrorist financing.
- Law 19/2003, of 4 July, on the legal regime for capital movements and financial transactions with foreign countries, and on measures to prevent money laundering.
- Law 22/2003, of 9 July, on Insolvency (see box).
- Law 36/2003, of 11 November, on measures for economic reform.
- Economy Ministry Order 1064/2003, of 29 April, which amends the Order of 28 December 2001, regarding agreements to foster asset securitisation funds to boost business financing.
- Resolution, dated 5 March 2003, of the Directorate-General of the Treasury and Finance Policy regulating market makers in public debt issued by the Kingdom of Spain.
- Bank of Spain Circular 5/2003, of 19 December, for certified appraisal companies and services, which amends Bank of Spain Circular 3/1998, of 27 January, regarding information to be submitted to the Bank of Spain.
- Collaboration agreement between the CNMV and Executive Service of the Commission for the Prevention of Money Laundering and Monetary Offences (SEPBLAC). The agreement, signed on 18 June 2003, aims to formalise and foster closer collaboration with respect to the supervision of procedures and bodies to prevent money laundering at entities obliged to collaborate by Law and which operate in the securities market¹⁵.

Special features of the insolvency regime of entities supervised by the CNMV

The Insolvency Law¹ was approved on 9 July 2003 and reforms one of the oldest regulations in Spanish law. Despite the fact that the Law envisages a general regime for arrangements with creditors, which is applicable both to business and civil law debtors, there are special regulations for entities subject to financial supervision, the most significant of which are as follows:

¹⁵ See further information in Chapter 6: Market Integrity.

- There are special regulations regarding notification to the CNMV of the application for protection from creditors (Article 13) and the declaration of protection from creditors (Article 21.5).
- The CNMV is empowered to designate one of the receivers in the event of receivership of investment services firms or securities issuers (Article 27.2).
- In the event of intervention with dissolution and liquidation of the company, regulation is envisaged for coordination according to the classification of the bankruptcy (Articles 174 and 175).
- There are special regulations with regard to auditing of securities issuers and entities supervised by the CNMV (Article 46).
- The existing regulations regarding financial guarantees, the finality and multilateral clearing of payments, and the exemption for transactions made under the payment systems (Article 71.5) from the regime of actions for recovery of the bankrupt estate, have been grouped together.

¹ Insolvency Law 22/2003, of 9 July.

EU regulations approved in 2003

- Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation (market abuse). A new uniform regulation has been established with regard to insider dealing and market abuse, which repeals Council Directive 89/592/EEC of 13 November 1989 coordinating regulations on insider dealing. Particularly significant were the definitions of "insider dealing" and "market abuse", and the establishment of a regime for cooperation and exchange of information between member countries in order to prosecute such conduct. This is the first directive to be enacted in accordance with the Lamfalussy Report¹⁶, which required the adoption of various implementing measures, described below:
 - *Commission Regulation (EC) No 2273/2003 of 22 December 2003 implementing Directive 2003/6/EC of the European Parliament and of the Council as regards exemptions for buy-back programmes and stabilisation of financial instruments.*
 - *Commission Directive 2003/124/EC of 22 December 2003 implementing Directive 2003/6/EC of the European Parliament and of the Council as regards the definition and public disclosure of inside information and the definition of market manipulation.*
 - *Commission Directive 2003/125/EC of 22 December 2003 implementing Directive 2003/6/EC of the European Parliament and of the Council as regards the fair presentation of investment recommendations and the disclosure of conflicts of interest.*
- Directive 2003/71/EC of the European parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered

¹⁶ A detailed explanation is available in the CNMV 2001 Annual Report.

to the public or admitted to trading and amending Directive 2001/34/EC. The new Directive, which came into force on 31 December 2003, establishes a single European passport for issuers of securities. Therefore, companies registered in the EU or in third countries will be able to sell or list securities on any regulated European market with the authorisation from a single competent authority in the EU. The supervisors of the host country will not be able to impose additional requirements. Issuers from the EU can freely choose the authority with which to file the prospectus in the case of debt or derivatives issues but not in the case of share issues, where the competent authority is that of the issuer's domicile. Issuers from third countries have freedom of choice for all types of securities.

Under the new regime established by the Directive, issuers will save costs not only because the issue and listing procedures will be simpler and faster but also as a result of the new rules on prospectus translation and advertising. Prospectuses need not be translated into all EU languages; it will be sufficient to produce them in a language commonly accepted by the financial markets and, if the supervisor of the host country wishes, a summary of the prospectus will be translated into the local language.

- Commission Regulation (EC) 1725/2003 of 29.9.2003 adopting certain International Accounting Standards in accordance with Regulation (EC) 1606/2002 of the European Parliament and of the Council. The Regulation determines the direct application of the International Accounting Standards in force on 14 September 2002 by listed companies in the preparation of their annual consolidated financial statements as of 1 January 2005 (see section on European accounting harmonisation at the end of this chapter).

Development of the EU's Financial Services Action Plan

Development of the Financial Services Action Plan (FSAP¹⁷) continued in 2003, with the completion of five of the eleven measures which were pending at the start of the year (the FSAP comprises 42 measures in total). Of the five completed measures, the two most important have been mentioned above (Market Abuse Directive and the Prospectus Directive¹⁸). Of the other six measures pending at 2003 year-end, three relate to the securities markets (Markets in Financial Instruments Directive—formerly the Investment Services Directive, Takeover Directive and the Transparency Directive¹⁹), another corresponds to credit institutions and securities firms (Review of the Directive on the capital adequacy of financial institutions²⁰), and the remaining two measures are of a more general nature (Review of the Tenth and Fourteenth Directives on Company Law).

Given the imminent completion of these measures, the European Commission created four expert groups in October 2003 in the areas of banking, insurance, securities

¹⁷ The Financial Services Action Plan was published in May 1999 at the instances of the Council of Economy and Finance Ministers (ECOFIN). The Plan envisages the implementation mainly of legislative measures to stimulate the integration of the EU's financial services markets.

¹⁸ The other three completed measures relate to the modernisation of the accounting regulations in Fourth and Seventh Directives, pension funds and cross-border savings.

¹⁹ These Directives have the political support of the Council of the European Union. The European Parliament has made a first reading and a second reading is scheduled before April or May 2004.

²⁰ Presumably, the European Commission will present an update of the Capital Adequacy Directive for discussion within the European Council once the Basel Committee on Banking Supervision completes its studies. The launch of this project is likely to be after the creation of the European Parliament of the 25 member countries. The work undertaken by the European Commission has been preparatory so far; there is no formal project.

and asset management which will each issue a report in April 2004 evaluating the real status of integration of the European Union's Securities markets. These reports will serve as a basis for the opening of a second phase of public consultation and debate.

The work of the Committee of European Securities Regulators (CESR) in the securities market integration process has been particularly noteworthy. The aim of the Committee, which operates under the Lamfalussy process, is to produce reports regarding technical measures for implementing level 1 standards (Directives of the Council and of the European Parliament). These reports are approved by the European Securities Committee (ESC), which is comprised of representatives from the member countries, and, following its approval, the European Commission is empowered to enact level 2 standards (Commission Directives or Regulations), based on the proposals of the CESR.

The first two implementing regulations (level 2) of the Market Abuse Directive²¹ have been developed, based on the recommendations of the CESR reports, and the CESR is also working on developing the first regulations (level 2) under the Prospectus Directive²². The usefulness of this Committee has led the European Commission to create similar committees in the banking (CEBS²³) and insurance (CEIOPS²⁴) sectors.

Progress in the preparation of the Markets in Financial Instruments Directive¹

In October 2003, following the first reading by the European Parliament of the proposed update of this Directive, the Council of Economy and Finance Ministers (ECOFIN) reached a policy agreement with regard to its content. The main new features of the Directive proposal are as follows:

- Free establishment (physical presence, branch or remote presence) in any European Union member country for all entities registered in any member country, for investment services firms, generally, and regulated markets and multilateral trading systems, specifically, with generic mention of the settlement and clearing systems, albeit imprecise.
- The general establishment of the home country principle, not just in matters of authorisation but also for the purposes of supervision and control by the competent authorities.
- Regulation of conflicts of interest, harmonisation of the necessary procedures to protect clients (e.g. the best execution principle or management of customer orders) and establishment of the obligation to keep certain records.
- Regulation of tied agents and creation of "eligible counterparties" whose principal characteristic is their knowledge of the securities markets. Financial intermediaries can negotiate more flexible codes of conduct and customer protection regulations with eligible counterparties.

²¹ Directive 2003/6/EC.

²² Directive 2003/71/EC.

²³ Committee of European Banking Supervisors.

²⁴ Committee of European Insurance and Occupational Pensions Supervisors.

- Establishment of the minimum pre and post trading transparency requirements for both regulated market transactions and internal transactions.
- Strengthening of cooperation between supervisory authorities.

¹ Formerly the Investment Services Directive (ISD).

Reports from the Inter-institutional Monitoring Group of the Lamfalussy Process

The Inter-institutional Monitoring Group of the Lamfalussy Process (IIMG), created by resolution of the European Parliament, European Commission and ECOFIN in July 2002, aims to analyse the application of the Lamfalussy Report in the regulation of the European Union financial sector. In 2003, the group published two monitoring reports (in May and December), which were submitted for public consultation. The conclusions will be published in 2004.

In the first report, the IIMG analysed four of the legislative initiatives envisaged in the FSAP¹. The IIMG advised the European Commission to use the regulation formula to adopt the implementing measures (level 2). It also highlighted the need for extensive public consultation processes, both by the CESR and the European Commission.

The second report draws attention to the consequences that the European Constitution project could have on the regulatory framework envisaged in the Lamfalussy Report, and the need not to delay the implementation of EC directives through the enactment of level 2 regulations. With regard to level 3 activities, the IIMG highlighted the need for harmonised implementation of EC directives by member countries in order to effectively achieve an integrated financial market. It suggests that the CESR prepares recommendations and standards to ensure coordination and the adoption of common criteria in supervising the actions of persons or entities related to the securities market.

¹ The Market Abuse and Prospectus Directives, as well as the proposed Transparency and Markets in Financial Instruments Directives, which are still to be completed.

European accounting harmonisation

On 29 September 2003 Commission Regulation (EC) 1725/2003 was published, adopting certain International Financial Reporting Standards (IFRSs)²⁵ in accordance with Regulation (EC) 1606/2002 of the European Parliament and of the Council²⁶. The

²⁵ The International Financial Reporting Standards (IFRSs) are issued by the International Accounting Standards Board (IASB), while the International Accounting Standards were issued between 1973 and 2001 by the International Accounting Standards Committee (IASC), the IASB's predecessor, and maintain their original denomination (IAS). The preamble to the IFRS published in 2002 made it clear that these standards include the IAS; accordingly, this document will refer to IFRS, except where a concrete IAS is mentioned.

²⁶ The Regulation declared that IFRS which met certain requisites would be applicable in the European Union.

European Commission concluded that the IFRS in existence on 14 September 2002²⁷, and their related interpretations, complied with the validation criteria established in Regulation 1606/2002/EC of the European Parliament and of the Council and, accordingly, must be used by listed entities in the preparation of their annual consolidated financial statements as of 1 January 2005.

Furthermore, the Commission also considered proposed improvements to several IFRSs, but there will not be adopted until they are validated by the European Commission and coherent with Regulation 1606/2002. Some the main IFRS measures adopted by the IFRSB or in the public consultation phase are as follows:

- Approval of IFRS 1 (the first adoption of the international accounting standards) in July 2003. It aims to aid European listed entities with the application of IFRSs for the first time in the preparation of their annual and interim financial statements.
- Publication of new versions of IAS 32 (Financial Instruments: Disclosure and Presentation) and IAS 39 (Financial Instruments: Recognition and Measurement) in December 2003.
- Approval and publication of definitive versions of thirteen IFRSs which were under review and repeal of IAS 15 (Information reflecting the effects of changing prices).
- Issue of Exposure Draft²⁸ 5 (Insurance contracts, phase I) in July 2003, regarding accounting of insurance contracts, which aims to harmonise the accounting criteria for this type of contracts and achieve greater transparency.
- Publication in July 2003 of a new draft of ED 4 (Disposal of non-current assets and presentation of discontinued operations) as part of the convergence project signed in September 2002 between the IFRSB and the FASB²⁹.
- Issuance in May 2003 by the IFRIC³⁰ of an interpretation proposal regarding criteria for accounting for emission rights by companies participating in government plans to reduce polluting emissions, following the Kyoto protocol.

CESR recommendations regarding transition to the IFRS framework

On 30 December 2003, CESR published a series of recommendations for entities in order to aid them in complying with their obligations of reporting and keeping investors and other users adequately informed of the effects of transition to IFRS on specific financial variables. Some the most significant recommendations were as follows:

2003 financial statements. Listed companies are advised to provide information on their plans and the level of compliance with the transition process, describing the general policies applied and the risks and uncertainties associated with transition.

²⁷ With the exception of IAS 32 and IAS 39, relating to the disclosure, presentation, recognition and measurement of financial instruments.

²⁸ Exposure Draft (ED), a draft accounting standard submitted for public comment.

²⁹ Financial Accounting Standards Board, the US accounting standards body.

³⁰ International Financial Reporting Interpretations Committee. The IASB Committee responsible for interpreting the IFRS.

2004 financial statements. Relevant information regarding the impact of IFRS on 2004 financial statements should be available, in accordance with IFRS 1, when the 2005 consolidated accounts are published and will include comparative data and the appropriate reconciliations. In some cases, this information could be considered as sensitive with regard to share prices; therefore, it should be subject to the requirements established in the Market Abuse Directive.

2005 intermediate information. The CESR recommends that any interim financial information published from 1 January 2005 onwards should be prepared in accordance with the IFRS framework. Interim information from previous years should be prepared using the 2005 accounting practices and it is recommended that this information also be provided using the accounting framework in force in the relevant year, with the appropriate reconciliations.

2005 financial statements. The IFRS require publication of comparative data from the previous year (in this case, 2004), prepared in accordance with the principles of IFRS 1, but do not prohibit the presentation of previously published information. Where an issuer is obliged to present financial information from three consecutive years (2003, 2004 and 2005), the CESR recommends that the information be presented as follows: 2003 data as previously published, and 2004 data using both accounting frameworks (IFRS and the accounting standards applicable in 2004).

Supervision of financial reporting by listed companies and CESR recommendations regarding the transition to IFRS

Regulation (EC) No 1606/2002 of the European Parliament and of the Council highlighted the importance of a strict, adequate regime for the supervision of financial reporting ("enforcement") in order to build investor trust. It also proposed to member countries the need to adopt the appropriate measures to guarantee compliance with the IFRS and stated that the European Commission and the CESR should coordinate their actions in order to adopt a common approach to European supervision.

Accordingly, on 21 March 2003, the CESR adopted Standard No. 1 on Financial Information: Enforcement of standards on Financial Information in Europe, which was the first step towards defining and designing a Europe-wide common supervision system. The Committee also presented Draft Standard No. 2 on Financial Information: Co-ordination of Enforcement Activities, which was submitted for public consultation on 7 January 2004 (see box). Various CESR recommendations for entities were also published on 30 December 2003 regarding the transition to the IFRS (see previous box).

Draft Standard No. 2 on Financial Information: Co-ordination of Enforcement Activities

In order to achieve a high level of coordination and convergence in the actions of European supervisory bodies with regard to financial information published by companies listed on EU regulated markets, the CESR raised the need to adopt the following principles:

- Decisions taken by European enforcers must take into account all existing precedents and multilateral consultations should be undertaken, where possible.

- After a reasonable period of time has elapsed following a national enforcer's decision, the content of the decision should be made available to other European enforcers by means of a database, which can also be accessed by interested third parties (issuers, auditors, other supervisory bodies).
- European national enforcers must apply a regime of confidentiality comparable to that applicable to members of the CESR.
- To achieve a high level of harmonisation, the Chairman of the Sub-Committee on Enforcement will convene European Enforcers Co-ordination Sessions (EECS), attended by all national enforcers, to discuss the decisions taken and share experience of applying enforcement regulation.

Accounting harmonisation in Spain

In order to aid Spanish companies in adapting to the International Financial Reporting Standards (IFRS), a working group was created to compare Spanish accounting standards with the IFRS. At 2003 year-end, the working group, headed by the CNMV and consisting of seven Spanish companies listed on the Ibex-35 and two international audit firms, published a document containing the responses to the first CNMV questionnaire regarding the principles and criteria for recognition, measurement and accounting³¹. The document showed that there were discrepancies between Spanish accounting standards and the IFRS in 60% of the aspects surveyed, with discrepancy being understood as a lack of equivalence between both sets of standards, a lack of national regulation, or where the scope of Spanish regulation falls short of the scope of the IFRS³². The results highlight the significant changes faced by Spanish businesses in adapting to these standards.

Creation of a Latin American accounting map

In 2003, an initiative was undertaken under the auspices of the Instituto Iberoamericano de Mercados de Valores (IIMV) to establish the level of comparability in financial reporting by listed companies in Latin America. The initiative involved the creation of an expert accounting group (GEC), whose first meeting was held in Buenos Aires in March 2003 and was attended by representatives of securities market supervisory bodies from 14 member countries of the IIMV.

The GEC aims to create a detailed map of the financial reporting standards in each country in order to identify the similarities and differences between them. The IFRS were chosen as a reference for the comparison. In order to carry out the comparison, the Directorate attached to the President prepared two questionnaires for the GEC; one on "Presentation, Recognition and Measurement Principles" and one on "Breakdown of Information".

As a prelude to the map, each Latin American country in the GEC must create a national accounting mission made up of accounting experts to analyse and iden-

³¹ The document is available (in Spanish) on the CNMV website (www.cnmv.es), under "Publications", "IFRS/IAS", "Regulation & Related Documents".

³² The questionnaire compares 438 aspects, each with an average of three questions.

tify the similarities and differences between national accounting standards and the IFRS. Six missions (Argentina, Bolivia, Brazil, Chile, Spain and Peru) were created in 2003, of which four completed their work within the year (Argentina, Spain, Bolivia and Peru), one is currently at an advanced phase (Chile) and the sixth, which was only created towards the end of the year, is still in an initial phase (Brazil). Another four missions are expected to be created in 2004 (Ecuador, El Salvador, Panama and Venezuela).

Annex 1

European Commission documents for consultation

In the course of the activities undertaken by the CESR and the European Commission, documents are often submitted for public consultation in order to canvass the opinions of all interested parties; both the original documents and the responses are available on the CNMV website³³. Numerous documents were submitted for public consultation in 2003 on the following subjects:

CESR

- Implementing measures of the Prospectus Directive: The CESR submitted three documents for public consultation as part of its role as technical advisor to the European Commission regarding possible level 2 implementing measures for the Directive.
- Implementing measures of the Market Abuse Directive: Following on from work in 2002, the CESR submitted a new document for public consultation in April 2003 regarding possible implementing measures for the Directive.
- Clearing and settlement: In June, the European System of Central Banks (ESCB) and the CESR released two documents for consultation on their respective web sites. This first document contained 19 standards based on the CPSS³⁴-IOSCO³⁵ recommendations of November 2001 regarding securities settlement systems. The second document referred to the scope of application of the standards.
- CESR-Fin: This is a CESR permanent working group which deals with accounting issues. In 2003, the group submitted two documents for public consultation: one regarding the transition to IFRS and the other relating to Standard No. 2 on Financial Information: Co-ordination of Enforcement Activities.
- Collective Investment Schemes: In October, a document was submitted for public consultation regarding the role of the CESR in the regulation and supervision of collective investment schemes and asset management activities in the EU.

European Commission

- Prospectus and Market Abuse Directives: Taking the previous work of the CESR into account, the European Commission published a consultation document on the Prospectus Directive and two groups of documents on the Market Abuse Directive regarding the first implementing measures.
- Financial analysts: A consultation document was published in September 2003 with respect to avoiding conflicts of interest. The result of the consultation process will indicate whether it is necessary to take action at Community level.
- Company Law and Corporate Governance Action Plan: The plan submitted for

³³ (www.cnmv.es), under "Consultative Documents".

³⁴ Committee on Payment and Settlement Systems.

³⁵ International Organization of Securities Commissions.

consultation aims to strengthen shareholder rights, to increase third party protection, and to foster the efficiency and competitiveness of the European business sector.

- The CNMV has repeatedly expressed the need for active participation by all parties in the public consultation process. The greater the involvement, the greater the quality of the eventual regulation. The ability to access documents and issue a response via the web site facilitates and enhances this type of procedure.

PART IV

ADMINISTRATION AND RESOURCES

10. Administration and funding

The CNMV's funding is regulated in article 14 of the Securities Market Law. In accordance with that article, every year the CNMV sends a draft budget to the Finance Ministry, which refers it to the Cabinet for subsequent remittal to Spanish Parliament as part of the General State Budget. The National Audit Office is in charge of the CNMV's economic and financial control, without prejudice to the functions corresponding to the National Audit Watchdog.

Article 14 of the Securities Market Law also determines the regime applicable to the CNMV's personnel and contracts. The CNMV's personnel are subject to labour law. Personnel other than executives are hired through the government recruitment process based on the principles of equality, merit and ability. Asset acquisitions are subject to private law and conform to the provisions of the Consolidated Public Administration Contract Law¹.

Finances

In 2003, the CNMV obtained €38.7 million in revenues and incurred €24.7 million in expenses; therefore, the surplus for the year amounted to €13.9 million.

The bulk of revenues were derived from fees, which amounted to €36 million, up 14.5% on 2002. The remainder came mainly from financial revenues and, to a lesser extent, the sale of publications and other sources (professional information disseminators, recovery of BORME advertising expenses relating to delistings, expenses charged to contract winners, etc.).

Revenues increased in all fee categories (see table 10.1), especially prospectus registration (+31%) and market supervision (+15.9%). The most outstanding features of fee performance are as follows:

- Prospectus registration: the substantial increase was due mainly to higher fixed-income issuance, in terms of both issue prospectus registration and vetting for AIAF listing. There was also a significant rise in fee revenues for authorisation of tender offers.
- Market supervision: there was a considerable increase in revenues for supervision of members of the Securities Registration, Clearing and Settlement System Company, associated with the rise in the balances registered in the System².
- Participant supervision: IIC supervisory revenues, which increased moderately, accounted for 92% of the total. For the second consecutive year, fee revenues for supervision of investment services firms declined significantly due to lower capital requirements.

¹ Legislative Royal Decree 2/2000, dated 16 June.

² The fees are applied solely to the members that, prior to the creation of the System Company, had to be a member of the SCLV. Former members of CADE are not subject to the CNMV's supervisory fees.

Table 10.1
CNMV fee revenues

Amounts in thousand euros

Activity or service	2002	2003	Change (%)
Prospectus and participant registration	8,625.2	10,439.3	21.0
Prospectus registration	6,939.8	9,092.7	31.0
Issue prospectuses	4,571.4	5,530.5	21.0
Listing prospectuses	254.6	108.3	-57.5
Vetting for AIAF listing	2,113.9	3,453.9	63.4
Participant registration	1,302.0	784.4	-39.8
Authorisation of takeover	383.4	562.2	46.6
Market supervision	13,894.8	16,104.5	15.9
Members of AIAF	100.3	111.7	11.4
Members of the System Company	9,245.7	11,157.2	20.7
Stock exchange members	4,212.2	4,590.2	9.0
Members of MEFF RF	3.4	3.4	0.0
Members of MEFF RV	332.9	241.6	-27.4
Members of FC&M	0.4	0.4	0.0
Participant supervision	8,884.3	9,410.5	5.9
IIC supervision	8,069.9	8,641.7	7.1
FIM and FIAMM	7,162.4	7,628.4	6.5
SIM and SIMCAV	834.7	914.7	9.6
Real estate mutual funds	72.9	98.6	35.3
IIC and FTH management companies	193.8	197.1	1.7
IIC management companies	186.3	188.8	1.3
Securitisation fund management companies	7.5	8.3	10.7
Supervision of investment services firms	620.7	571.7	-7.9
Portfolio management companies	23.9	17.9	-25.1
Broker-dealers and brokers	596.8	553.8	-7.2
Issuance of certificates	0.8	1.0	25.0
Total	31,405.2	35,955.3	14.5

Expenses increased 8.7% year-on-year to €24 million. Personnel costs (67.8% of the total) rose 10.8% due to the 10% increase in the workforce. External services (leases, maintenance, utilities, independent professional services, communications, etc.), which accounted for 99% of the other expenses, rose 11% due mainly to leases³ as a result of renting new office space to meet the needs of a larger workforce.

At the suggestion of the CNMV, the Spanish government agreed in December 2003 to transfer €6 million out of the 2002 surplus to the Treasury.

Human resources

In 2003, the CNMV's workforce grew 10.2% (30 people) to 325. The new personnel were mainly technical staff, while the number of administrative staff fell slightly (see table 10.2). The main reinforcements were in the Directorates-General of Markets and Investors (12 employees; +19.0%), Securities Market Participants (12; +11.2%) and Legal Affairs (4; +12.5%). The workforce in other directorates changed very slightly (see table 10.3). Overall, the number of employees in those directorates grew by three (+3.3%).

³ Lease expenses increased by 50.7% from €1.2 million in 2002 to €1.9 million in 2003.

Table 10.2
CNMV staff by professional category

Category	Number of employees	
	2002	2003
Services	9	9
Administrative	52	51
Trainee technicians	8	8
Technicians	207	237
Management	19	20
Total	295	325

The ratio of line to horizontal personnel increased from 1.89 in 2002 to 2.10 in 2003. The personnel were selected through the government recruitment process in all cases; there were eleven processes (31 vacancies).

Table 10.3
CNMV personnel by directorate

	2002	2003	Change (%)
Line Directorates-General:	193	220	14
Securities Market Participants	98	109	11
Markets and Investors	63	75	19
Legal Affairs and Inspection	32	36	13
Directorates	91	94	3
Board	11	11	0
Total CNMV	295	325	10

e-government: CNMV on-line

Since 1998, the CNMV has reinforced e-administration services to facilitate the reception, processing, registration, notification and, as appropriate, dissemination of institutions' documentation. Those services are envisaged in the "CNMV on-line" system, which groups 29 telematic applications. There are three large groups of applications:

- i) The CIFRADO/CNMV encryption and electronic signature system, which covers 22 applications (see table 10.4). The use of this system is obligatory for some processes.
- ii) Fee payment system (four applications), which requires the use of a public key certificate accepted by the Tax Authorities⁴.
- iii) Data feed for professional disseminators, public bodies or authorised users (three applications), which require a username and password.

⁴ Finance Ministry Order 729/2003.

Table 10.4
Applications that can be filed through CIFRADOC/CNMV

Investment services firms

Registration and changes of broker-dealers, brokers and portfolio management companies
 Filing of financial statements of broker-dealers, brokers and portfolio management companies
 Filing of financial statements of consolidable groups of broker-dealers and brokers
 Filing of financial statements of foreign IIC
 Monitoring of applications being processed

Issuers

Disclosure of significant events
 Filing of the commercial paper allocation list
 Filing of quarterly and half-yearly financial statements*
 Filing of information about securitised notes

AIAF market

Listings
 Daily trading

Collective investment schemes

Registrations and updates of IIC prospectuses*
 Disclosure of significant holdings in mutual funds*
 Filing of IIC financial statements
 Filing of statistical information for the European Union
 Filing of financial statements of management companies
 Filing of statistical statements of foreign IICs
 Filing of financial statements of real estate funds
 Filing of quarterly and half-yearly public financial statements of SIM and SIMCAV
 Monitoring of applications being processed

Venture capital firms

Filing of financial statements
 Monitoring of applications being processed

* May only be filed on-line.

Since 1998, over 70,000 applications have been filed through "CNMV on-line" by the 1,050 users that have a stable, regular relationship with the CNMV. In 2003, over 27,000 applications were filed, converting the CNMV into one of the government agencies with the highest utilisation of e-administration. The number of applications filed telematically generated 40,000 entries in the E/E (Entrance/Exit) Register (one-third of the total), stabilising the number of entries on paper. There were 28,000 documents outgoing in the E/E Register (40% of the total). Furthermore, the e-administration sent users over 18,000 e-mails that did not need to be logged containing information about applications.

CNMV office in Catalonia

The office in Catalonia provides the full range of services offered by the CNMV. Its activity has risen steadily since it was established in 1996. In 2003, there was an increase in the number of authorisations and registrations of investment services firms, a large number of registrations of new securities investment funds and expansion in the number of foreign collective investment schemes.

Table 10.5
Applications filed with the CNMV office in Catalonia

	Applications	
	2002	2003
Markets	28	45
Issues	26	43
Listings	2	2
Institutions	93	115
Broker-dealers and brokers	26	62
Portfolio management companies	6	6
IIC management companies	59	39
SGFTH	2	1
IIC depositories	-	7
Collective investment schemes	1,753	2,006
Mutual funds	897	939
SIM	86	43
SIMCAV	758	808
Foreign IIC	12	216

The Catalunya office continued to have 14 employees and two others worked there temporarily to convert paper IIC prospectuses into machine-readable form. Technical and IT improvements were implemented (the data server was replaced, the voice/data communication line contract was improved and the operating systems were updated) to enhance the efficiency, quality and security of the CNMV's local and central systems.

National Securities Numbering Agency (ANCV)

As in previous years, the Spanish National Securities Numbering Agency (ANCV) was very active due, among other reasons, to greater knowledge, dissemination and acceptance of the ISIN (International Securities Identification Numbers) code in Spanish and other securities markets. Movements in the ANCV database increased by 2% to 19,186 in 2003 mainly as a result of the large number of new SIMCAV registrations and issuance of commercial paper and warrants, and the increase in issues by securitisation funds.

Since more users used the CNMV web site to obtain information, the number of queries directly handled by the ANCV declined again, from 2,140 in 2002 to 1,737 in 2003. The decrease in the number of telephone queries contrasts with the increase in queries via the e-mail address provided specifically for this purpose (+63%).

In the international arena, the ANCV continued collaborating actively with the International Association of National Numbering Agencies (ANNA), which, at 2003 year-end, covered agencies from 64 countries, harmonising code allocations and disseminating them among users.

Annex 1

The CNMV's financial statements

SUMMARY OF THE 2003 FINANCIAL STATEMENTS

BALANCE SHEET, STATEMENT OF INCOME AND EXPENDITURE AND CASH FLOW STATEMENT

Balance sheet 2003

Account no.	Assets	2003	2002	Account no.	Liabilities	2003	2002
20	A) Fixed assets	29,676,115.20	28,948,119.80		A) Equity	100,069,765.34	91,858,642.42
21,(281)	I. Investments for general use			100	I. Assets	5,360,740.72	5,091,885.96
22,(282)	II. Intangible assets	29,663,007.96	28,929,002.44	101,103	Own assets	4,204,102.67	4,204,102.67
23	III. Tangible fixed assets			(107), (108)	Assets received in lease or assignment	1,194,338.74	923,028.18
25,26,(297)	IV. Investments managed for other public bodies	13,107.24	19,117.36	(109)	Assets delivered in lease or assignment	-37,700.69	-35,244.89
	V. Permanent financial investments			11	Assets delivered for general use		
27	B) Deferred charges	81,235,091.82	74,847,066.81	120,(121)	Reserves	80,766,756.46	75,427,142.14
				129	Prior years' income	13,942,268.16	11,339,614.32
30,31,32,33,34, 35,36,(39)	C) Current assets	2,427,213.77	1,453,658.31	14	B) Provisions for contingencies and expenses	1,393,350.48	1,143,301.68
45,46,47,55, (490)	I. Inventories	76,470,696.16	70,566,618.04		C) Long-term debt		
54,56,(549), (597),(598)	II. Accounts receivable	2,225,696.25	2,750,380.67	15	I. Debentures and other marketable debt securities		
57	III. Short-term financial investments	111,485.64	76,409.79	17,18	II. Other long-term debt		
480,580	IV. Treasury			259	III. Uncalled capital		
	V. Accruals			50	D) Current liabilities	9,448,091.20	10,793,242.51
				520,526	I. Debentures and other marketable debt securities	9,448,091.20	10,793,242.51
				42,45,47,521, 523,527,528, 529,55,56	II. Payable to credit institutions		
				485,585	III. Accounts payable		
					IV. Accruals		
	General total (A+B+C)	110,911,207.02	103,795,186.61		General total (A+B+C+D)	110,911,207.02	103,795,186.61

Statement of income and expenditure 2003

Account no.	Debit	2003	2002	Account no.	Credit	2003	2002
	A) Expenses	24,741,485.69	22,747,254.83		B) Income	38,683,753.85	34,086,869.15
71	1. Decrease in finished goods and work-in-process inventories			70,741,742	1. Sales and services		
60,61*	2. Cost of services provided			71	2. Increase in finished goods and work-in-process inventories		
64	3. Operating expenses of social services and benefits	24,331,845.20	22,303,249.21	740,744	3. Ordinary income	35,955,290.71	31,405,170.15
	- Personnel expenses and social benefits	16,759,836.86	15,127,917.46	729	- Tax income	35,955,290.71	31,405,170.15
68	- Fixed asset depreciation	524,196.13	414,155.33	76	- Social security contribution		
675,69,(793)	- Change in provisions for and losses on uncollectible receivables	-944,592.12	-374,428.45		4. Other ordinary income	2,727,441.82	2,638,790.68
(794),(796),	- Other management expenses	7,943,767.14	7,134,808.08	773,775,776,777	- Financial income, exchange gains and other similar income		
(798),(799)	- Financial expenses, exchange losses and other similar expenses			78,790	- Other management income	2,532,779.72	2,292,970.77
62,63,676						194,662.10	345,819.91
66	4. Transfers and subsidies	48,637.19	796.79	750,751	5. Transfers and subsidies		
	- Current transfers and subsidies	364,327.20	346,589.83		- Current transfers and subsidies		
650,651				755,756	- Capital transfers and subsidies		
655,656		364,327.20	346,589.83		6. Extraordinary gains and income	1,021.32	42,908.32
	- Capital transfers and subsidies			770,771,774,778,779			
670,671,674,678,679	5. Extraordinary deficit and expenses	45,313.29	97,415.79				
					Deficit		
	Surplus	13,942,268.16	11,339,614.32				

* With negative or positive sign depending on the balance.

**Cash flow statement. Change in working capital
2003**

Change in working capital (summary)	Current year		Previous year	
	Increase	Decrease	Increase	Decrease
2. Accounts receivable	975,677.77	0.00	0.00	741,243.48
a) Trade accounts receivable	975,677.77	0.00	0.00	741,243.48
3. Accounts payable	7,993,020.01	0.00	0.00	7,720,988.25
a) Trade accounts payable	297,767.53	0.00	0.00	375,906.29
b) Other payable	7,695,252.48	0.00	0.00	7,345,081.96
4. Short-term financial investments	5,904,078.12	0.00	4,036,370.95	0.00
6. Other non-bank accounts	0.00	6,649,991.01	302,527.11	0.00
7. Treasury	0.00	524,684.42	0.00	431,068.25
a) Cash	0.00	6,833.36	0.00	76.21
c) Other banks and credit institutions	0.00	517,851.06	0.00	430,992.04
8. Accruals	35,075.85	0.00	0.00	40,038.79
Total	14,907,851.75	7,174,675.43	4,338,898.06	8,933,338.77
Change in working capital	7,733,176.32	0.00	0.00	4,594,440.71

Cash flow statement. Source and application of funds 2003

Funds applied	Current year	Previous year	Funds obtained	Current year	Previous year
1. Funds applied in management operations	23,833,210.71	21,855,567.11	1. Funds from management operations	38.683.753,85	33.938.328,11
c) External services	7,898,100.83	7,119,676.80	e) Fees, charges and special levies	35.955.290,71	31.405.170,15
d) Taxes other than income tax	21,708.02	15,131.28	...g) Financial income	2.532.779,72	2.292.970,77
e) Personnel expenses	16,404,558.93	14,689,218.03	h) Other current management income		
...g) Transfers and subsidies	364,327.20	346,589.83	and extraordinary expenses	195.683,42	240.187,19
...h) Financial expenses	48,637.19	794.92	.3. Direct increase in assets	271.310,56	926.307,44
...i) Other current losses and extraordinary expenses	40,470.66	58,584.70a) Assigned	271.310,56	923.028,18
. j) Provisions for current assets	-944,592.12	-374,428.45b) Leased	0,00	3.279,26
.4. Acquisitions and other fixed asset	1,291,724.48	1,732,375.74	.5. Disposals and other fixed asset		
...c) I. Tangible fixed assets	1,291,724.48	1,732,375.74	withdrawals	10.732,03	1.600,69
.5. Direct decrease in assets	6,002,455.80	15,496,864.80	c) Tangible fixed assets	4.721,91	1.600,69
b) Leased	2,455.80	0.00	d) Financial investments	6.010,12	0,00
c) Delivered for personal use.	6,000,000.00	15,496,864.80			
.7. Provisions for contingencies and expenses	105,229.13	375,869.30			
Total funds applied	31,232,620.12	39,460,676.95	Total funds obtained	38.965.796,44	34.866.236,24
Funds obtained in excess of funds applied (increase in working capital)	7,733,176.32		Funds applied in excess of funds obtained (decrease in working capital)		4.594.440,71

Annex 2

Auditors' report on the CNMV's financial statements¹

AUDITORS' REPORT ON THE
CNMV'S FINANCIAL STATEMENTS

2003

¹ A free translation of an auditors' report originally issued in Spanish. In the event of a discrepancy, the Spanish language version prevails.



**ECONOMY AND
FINANCE MINISTRY**

**COMISIÓN NACIONAL DEL MERCADO DE VALORES
(CNMV)
(Year 2003)**



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SECTION I.- INTRODUCTION

Through the National Audit Office, the State Comptroller's Office, using the powers attributed to it by articles 100 and 129 of the Consolidated General Budget Law and in accordance with additional provision four of Royal Decree 2188/1995, dated 28 February, has drafted this auditors' report.

 The financial statements were prepared initially by the CNMV on 30 March 2004 and arrived at this National Audit Office on 31 March 2004. On 10 May 2004, new financial statements were received which included certain additional information. This report refers to the latter financial statements.

Our audit was performed in line with the audit standards for the public sector.

On 21 May 2004, the provisional report for pleadings was sent. On 26 May 2004, the CNMV stated that they agreed with it.



SECTION II.- OBJECTIVE AND SCOPE OF WORK

The objective of our work is to check whether the financial statements that were examined give a true and fair view of the net worth, financial position and results of the operations in accordance with the applicable accounting standards and principles.

Our examination comprised the balance sheet as at 31 December 2003, the statement of income and expenditure and the notes to financial statements for the year then ended.

 In accordance with current legislation, the figures for 2002 relating to each item in the 2003 balance sheet and statement of income and expenditure were included for the purposes of comparison. Our opinion refers solely to the 2003 financial statements. On 7 July 2003, this National Audit Office issued an auditors' report on the 2002 financial statements, in which we expressed a favourable opinion.

In the performance of our work, there were no limitations to the application of auditing standards and procedures.



SECTION III.- OPINION

In our opinion, the CNMV's 2003 financial statements reasonably give a true and fair view of its net worth, financial position and results of its operations, and contain the necessary and sufficient information for an adequate interpretation and understanding in accordance with the applicable accounting principles and standards.

Madrid, 27 May 2004
National Auditor-Team Manager

Original in Spanish signed by
Beatriz Rodríguez Alcobendas

Manager of Financial Control and Audit
of State Public Sector

Fdo.: Alberto Giron Gonzalez.

Original in Spanish signed by



A handwritten signature in black ink, consisting of a stylized 'S' and 'F'.

SECTION IV.- PLEADINGS TO THIS REPORT

Comisión Nacional del Mercado de
Valores
25 May 2004
Outgoing number-S.G.
No. 2004027552

Having seen the provisional auditors' report on the Comisión Nacional del Mercado de
Valores's 2003 financial statements, I fully agree with it.

Madrid, 24 May 2004
PRESIDENT



Blas Calzada Terrados

I.G.A.E.
National Audit Office
Financial Control and Audit of
State Public Sector
Date: 26-05-04
Incoming: 161

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