

**ANNUAL  
REPORT  
1999**

COMISIÓN NACIONAL DEL MERCADO DE VALORES  
(SPAIN)

ANNUAL REPORT  
1999

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## LETTER FROM THE PRESIDENT OF CNMV

- 1 Looking back on the events of 1999 in the securities markets provides considerable satisfaction but some disconcertment. The changes which are sweeping through the economy as a whole are taking place at breakneck speed in the securities markets. They are of such scope, happen so fast and affect so many factors that we are losing our ability to feel surprise.*
- 2 Within the global economy in which we live, market participants can freely choose the country where they locate their headquarters, the country where they issue securities and the markets in which they trade or invest. Competition has intensified to the highest degree.*
- 3 Keenly aware of these changes, during 1999 the CNMV advanced towards its goal of simplifying procedures and regulations – one of the commitments I made upon my appointment. We carefully considered each new regulatory measure and revised the existing ones. We are aware that a good supervisory system is a factor that will attract business, whereas a poor one will have the opposite effect. We have made, and will continue to make, the utmost efforts to offer the Spanish market a system which judiciously combines investor protection with rigor and responsibility on the part of market professionals.*

*I will cite a few examples. For fixed-income securities, an abridged shelf registration system was implemented to allow a series of issues to be made during the year without the need to file a specific prospectus for each one. In agreement with the stock exchanges and AIAF, a single platform for fixed-income registration, clearing and settlement was established.*

*In the area of equities, the reform of the Spanish Companies Law makes it possible to eliminate the pre-emptive subscription right, subject to the appropriate precautions and provided that it is in the company's interest. This innovation has made it possible for Spanish companies to raise finance through major capital increases using a public-offering style procedure. The requirement of a prospectus for certain modifications to outstanding securities where the cost was not warranted has been eliminated. Also, an agreement with the SCLV, the stock exchanges and the Colegio de Registradores Mercantiles now makes it possible for capital increases to be admitted to listing on T+6.*

*An agreement with the Dirección General del Tesoro made it possible to create and operate master and feeder funds and funds of funds, pending final regulatory rule-making. The use of abridged prospectuses and quarterly reports to mutual fund investors was encouraged. In agreement with Inverco, a new classification of funds was adopted based on the manager's declared investment philosophy, which will improve investors' ability to choose their desired level of risk.*

- 4 By means of broad cooperation, we also made major progress in market information and transparency. The CNMV continues to focus priority attention on supervision of the information released by issuers. In 1999, listed companies reported for the first time on their degree of adoption and compliance with the Code of Good Governance. In addition to the information to be disclosed in this area regarding programs for director and executive remuneration involving shares, the CNMV recommended that such programs be disclosed in issue prospectuses or by the disclosure of a significant event. These measures were found to be insufficient during the year and the Budget Annex Law established a specific reporting system requiring that such remuneration plans be approved by the Shareholders' Meeting and disclosed immediately to the market.*

*We continued to insist on the importance of companies presenting clean audit reports, and good results were obtained in this connection. The quality of audits is one of the pillars sustaining the market. As with other economic activities, the auditing profession has changed at a vertiginous pace. All supervisory bodies have warned of the risk that these changes might undermine auditors' independence and, in consequence, the very raison d'être of auditing.*

*Clearly, we have taken steps to improve financial reporting but we cannot lower our guard. Accurate information is the sap which nourishes an efficient market.*

- 5 *Since the end of 1999, we have had a new securities market – Latibex – where major Latin American companies' shares are traded in euros. The legal structure designed for this market, facilitated by the reform of the Securities Market Law, is so innovative and flexible that it could be described as revolutionary. This market is based on mutual recognition of, and trust in, the regulations and supervision of the issuers' home countries. Latibex has the highest level of self-regulation; supervision, admission, suspension or exclusion of a security, the guarantee that the information available is sufficient and of quality, is the responsibility of the market itself.*

*Also, at the end of 1999, the seed was sown for Spain's Nuevo Mercado (new market), which will flower shortly. It will be a new market for technology and high-growth companies which will finance and facilitate the creation of a new class of company, focused on innovative technology, in Spain. The Nuevo Mercado, which is clearly necessary for our economic development, provides many opportunities but also raises new risks, to which intermediaries, investors and the supervisor itself must become accustomed.*

*Intermediaries underwriting the flotation of a high-growth company must be particularly scrupulous in analyzing the project and be very aware of the responsibility they assume when signing the prospectus. Investors should seek information and obtain professional advice before investing, carefully review the prospects and remember that, in the medium term, the company's ability to generate earnings will be the factor determining its price.*

- 6 *I would like to insist on the need to seize the opportunity to create a large securities market company. We are witnessing the arrival of new competitors in the stock markets' traditional preserve – namely electronic communications networks and alternative trading systems. These are small high-technology firms which use the Internet to offer the services traditionally provided by the stock exchanges: order reception, routing and execution.*

*In the face of these competitive challenges, the stock markets have reacted by strengthening their bonds and building cooperation structures. They have also sought to cooperate internationally. One example is the alliance between eight European bourses, including Madrid, which promises to create a joint trading platform next November for Europe's principal securities.*

*Spain cannot lag behind in this process. We have the opportunity and the duty to create a major securities market company that combines the business, technology and goodwill of the continuous market, the futures and fixed-income markets and the clearing services that have developed over the years in Spain. If combined, these resources will enable us to compete in the international arena. If they remain divided, we will be doomed, in the short term, to becoming a backwater or, in the worst-case scenario, to disappearing.*

*Our market is also readying itself to catch up on another of its shortcomings. The area of securities clearing and settlement is becoming increasingly important because of its major business potential and its implications for the speed, cost and security of transnational securities transactions. This is the area where value-creation will be concentrated, as it is where the trading risk arises. We are witnessing the creation of two large companies at European level. In Spain, the existence of a number of institutions whose mutual isolation may hobble the system requires an in-depth reflection on this area of activity in the immediate future.*

- 7 *The use of the Internet is spreading in the financial markets among issuers, intermediaries and investors. The Internet can be a very efficient system for channeling stock market orders. It provides greater market depth and lower costs. What we cannot allow is for the Internet to become a system for creating parallel, unsupervised markets.*

*The Internet is a new formula and calls for new supervision parameters. No supervisor, not even the powerful Securities and Exchange Commission in the US, can exercise absolute control over “cyberspace.” Consequently, events in this field are not only a cause for concern but also require a new philosophy on the part of investors and market agents.*

*A phenomenon as innovative as the Internet runs the risk of being curtailed by untimely legislation. This is something that the CNMV wishes to avoid at all costs. New technologies require changes in all areas of life – and in the way in which legislation is enacted. We must move towards more flexible systems, based more on self-regulation, self-discipline and responsibility.*

*I am increasingly convinced that “soft law” proposals are the way forward for regulating a multitude of new social phenomena. However, this requires the cooperation of society.*

- 8 *I have mentioned only some of the events that moved the securities markets and the supervisor’s actions. As stated above, many more changes are coming. The configuration of the securities markets remains to be defined, and the individual participants’ positioning strategies are unpredictable. However, despite the maelstrom of changes, certain immutable principles not only remain but have been strengthened. Spanish companies are entitled to have a market capable of financing their plans, and investors have the right to a quality securities market which enables them to maximize the return on their savings.*

*In these times, more than ever, the supervisor’s role is to strengthen these values without hampering the technological, business and legal changes required to ensure that our market is competitive.*

*Madrid, 15 March 2000*

*Juan Fernández-Armesto*

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## ABBREVIATIONS

AIAF:	Asociación de Intermediarios de Activos Financieros / Spanish Broker's Association
ANNA:	Association of National Numbering Agencies
AV:	Agencia de valores / Broker
AVB:	Agencia de valores y bolsa / Broker and market member
CNMV:	Comisión Nacional del Mercado de Valores
DGTPF:	Directorate General of the Treasury and Finance Policy at the Ministry of Economy and Finance
ECSDA:	European Central Securities Depositories Association
EMU:	Economic and Monetary Union
EU:	European Union
FESCO:	Forum of European Securities Commissions
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
FTA:	Fondo de titulación de activos / Asset securitization fund
FTP:	FTPyme (trade mark reserved for FTAs covered by business finance promotion agreements with the DGTPF)
IIC:	Instituciones de inversión colectiva / Collective investment institution
IOSCO:	International Organization of Securities Commissions
ISD:	Investment Services Directive
ISIN:	International Securities Identification Number
LATIBEX:	Market in Latin American securities
MEFF RF:	Mercado de futuros financieros renta fija / Fixed-income financial futures market
MEFF RV:	Mercado de futuros financieros renta variable / Equities financial futures market
MMU:	Market Monitoring Unit

OICVM:	Organismos de inversión colectiva en valores mobiliarios (see UCITS)
OTC:	Over the counter
SCLV:	Servicio de Compensación y Liquidación de Valores / Securities Clearing and Settlement Service
SEPBLAC:	Servicio Ejecutivo de la Comisión de Prevención de Blanqueo de Capitales e Infracciones Monetarias del Banco de España / Bank of Spain Money Laundering watchdog body
SGC:	Sociedad gestora de carteras / Portfolio management company
SGFT:	Sociedad gestoras de fondos de titulación / Securitization fund management company
SGIIC:	Sociedad gestora de instituciones de inversión colectiva / Collective investment institution management company
SIB:	Electronic market
SIBE:	Sistema de Interconexión Bursátil Español / Spain's electronic market
SIM:	Sociedad de inversión mobiliaria / Securities investment company
SIMCAV:	Sociedad de inversión mobiliaria de capital variable / Open-end investment company
SV:	Sociedad de valores / Broker-dealer
SVB:	Sociedad de valores y bolsa / Broker-dealer and market member
UCITS:	Undertaking for Collective Investment in Tradable Securities

## The CNMV organization after the amendment of the Spanish Securities Market Law

The recent amendment of the Securities Market Law endorses the organization structure established for the CNMV in 1988. The governing body is the Board, which can exercise all the powers attributed to the institution by the Law. The Board comprises:

- A President and a Vice-president, both appointed by the Government, at the proposal of the Minister of Economy and Finance, from among persons with acknowledged competence in securities market matters.
- The Director-General of the Treasury and Finance Policy and the Deputy Governor of the Bank of Spain, by virtue of their office.
- Three Commissioners, appointed by the Minister of Economy and Finance, from among persons with acknowledged competence in securities market matters.

The President is the CNMV's legal representative and exercises the functions delegated to him by the Board. The Vice-president replaces the President when the latter's post is vacant, or when the President is absent or ill, and exercises the functions delegated to him by the Board. Each and every delegation of functions of the Board to the President or the Vice-president must be expressly confirmed, amended or revoked whenever a new commissioner is appointed.

The Board has a consultative body: the Advisory Committee. This body is presided by the CNMV Vice-president, who has no vote with respect to the Committee's reports, and comprises representatives of investors, issuers, official secondary markets and Autonomous Regions with security market powers, i.e. those with an official secondary market. Following the reform of the Securities Market Law all the official organized markets are represented on the Advisory Committee (previously only the stock exchanges were represented).

In addition to advising the Board, the Advisory Committee also issues reports about general draft legislation relating to the securities market, which are sent to the government or to the Ministry of Economy and Finance, with the aim of complying with the principle of consulting with all sectors affected in the process of legislative drafting.

### Organization structure

The organization structure of the CNMV did not change significantly in 1999 with respect to 1998. Table 1.1 summarizes the basic supervisory and development activities, which are grouped in four Directorates-General: Strategy, Development, Supervision and Primary Markets. The structure is completed with six other divisions: Inspection, Secretariat to the Board and Legal Department, Research, Information Systems, General Secretariat and Communications. The Office in Catalonia, whose activities in the region are development, supervision, primary markets and customer services, depends structurally on the Directorate-General of Development.



# ORGANIZATION AND MANAGEMENT

Table 1.1

## STRUCTURE OF THE COMISIÓN NACIONAL DEL MERCADO DE VALORES IN 1999

	DIVISION	FUNCTIONS
BOARD	Directorate-General of Strategy	Strategic planning Regulatory implementation: Community directives, Spanish legislation, CNMV regulations Representation of the CNMV in the European Union: High-Level Group of Securities Supervisors (EU)
	Directorate-General of Development	Creation and institutional monitoring of securities firms, collective investment institutions and venture capital companies Institutional relations with securities market companies and Spain's Securities Clearing and Settlement Service (SCLV). Office in Catalonia: provision of all the CNMV's services in Barcelona
	Directorate-General of Primary Markets	Security issues and equity offerings Admissions to listing Significant holdings Treasury stock Tender offers
	Directorate-General of Supervision	"Distance" and on-site supervision and intervention at entities Supervision of secondary markets Reporting of significant events to the market Exclusion from and suspension of trading
	General Inspection	Proposal and processing of disciplinary proceedings. Market Monitoring Unit: inside information, price manipulation and money laundering
	Secretariat to the Board and Legal Department	Secretariat to the Board and the Advisory Committee CNMV Legal Department. CNMV litigation service and relations with the justice system.
	Information Systems	Design, development and implementation of the CNMV's information systems. National Securities Numbering Agency.
	General Secretariat	Administration. Relations with the public. Documentation and Official Registries.
	Research	Analysis of the financial situation. Research on securities markets and the financial system. Data bases: financial statistics.
	Communications	The CNMV's communications policy. Relations with the media.
	International relations	Multilateral forums: IOSCO, FESCO, Joint Forum, High Level Group of European Securities Supervisors (HLSS). Bilateral relations with securities commissions in other countries.

## Administration

Last year saw strong growth in the area of primary markets and admission to listings. In the case of supervised companies, a large number of open-end investment companies were registered. In the other areas under the Commission's supervision, activity stabilized at 1998 levels af-

ter two years of rapid growth. In order to satisfy the increasing demand for services, the CNMV continued its human resources reinforcement plan and improved its IT resources.

### *Financial data*

In 1999, CNMV revenues amounted to 4.5 billion pesetas, of which 4.3 billion pesetas were from fees. This fundamental source of income decreased by 4% because of the tariff cut applied by the government from October 1998 (Royal Decree 1732/1998, dated 31 July, governing the fees applicable to the activities and services provided by the CNMV). The revenues from market members decreased by 80% for the stock exchanges, 84% for AIAF and 70% for MEFF. These reductions were partially offset by a substantial growth in fees for registration of issue prospectuses (122%) and admission of securities to listing (448%), as a result of the considerable activity in both areas.

Operating expenses amounted to 2.6 billion pesetas, 11.9% higher than in 1998. Personnel expenses accounted for 67.7% of that caption. Within this heading, wages and salaries increased by 9.0%, mainly due to the increase in the average work force (7.5%).

Overall, the other expense items increased by 9%. There were noteworthy increases in rentals (57%) to cater for the growth in the number of employees, and in outside professional services (12%) for two reasons: the acquisition of a number of derivatives valuation programs and the extension of the information systems maintenance contract as a result of adapting to the euro and the Y2K effect.

Acquisition of tangible fixed assets totaled nearly 60 million pesetas in 1999, of which 38 million pesetas were for computer hardware and 19 million pesetas for furniture to cater for the increased work force.

The surplus for the year totaled 1.9 billion pesetas. In November, the government accepted the proposal by the Board of the CNMV to distribute the 1998 surplus: 2 billion pesetas were allocated to reserves in order to fund the acquisition of a new head office, and 584 million pesetas were allocated to the State.

### *Human resources*

The forecasts made in 1998, which advised significantly increasing the CNMV's work force, proved to be accurate, as reflected in the levels of activity. The objectives of the human resources reinforcement plan approved in May 1998 have been attained.

Applications were invited in July 1999 for 15 positions; the selection process took place in November and December, and the new employees joined the CNMV in January 2000.

The "Técnicos 2000" program for training recent graduates with a sound academic record by hiring them under 2-year on-the-job training contracts was continued in 1999. Twelve of the technicians who joined the CNMV training program in 1997 are now part of the CNMV staff. Another ten "2000 technicians" selected in July 1998 are continuing their training program. In January 2000, ten technicians joined after the selection process in 1999. The main new feature of this selection process was that, as in the previous year, it was opened up to graduates with a mathematical background (one post allocated) in addition to the traditional focus on graduates in economics and law.

Table 1.2  
CNMV STAFF  
BY PROFESSIONAL CATEGORY

Category	Number of employees	
	1998	1999 <sup>(1)</sup>
Services .....	9	9
Administration .....	44	45
Technicians.....	112	147
Technicians under on-the-job training contracts .....	23	20
Management .....	16	15
Total .....	204	236

(1) Includes Civil Service general employment offer in 1999.

## CNMV 10<sup>th</sup> anniversary commemorative book

Last December, the CNMV published a volume entitled “Una década de transformaciones en los mercados de valores. Libro conmemorativo del X aniversario de la CNMV.” (*A decade of transformation in the securities markets. CNMV 10<sup>th</sup> anniversary commemorative book*). As the name suggests, the publication describes the intense transformation process experienced by the Spanish markets since the Securities Market Law was enacted in 1988.

The book has two parts. The first part offers the reader a broad description of the main changes during the period, which includes aspects of market development and regulations. The second part contains contributions from prestigious specialists in law and economics (\*) who set out their views on significant aspects of market regulation, with total independence and with a critical spirit.

The book contains prologs by Luis Carlos Croissier and Juan Fernández-Armesto, the two CNMV Presidents to date.

<sup>(\*)</sup> Contributing authors: Luis de Carlos Bertrán (“La información sobre las sociedades cotizadas y la transparencia del mercado de valores”), Rafael Suárez de Lezo Cruz-Conde (“Poder informal de la CNMV y garantías de los particulares”), Javier García de Enterría (“OPA y mercado de control”), Álvaro Cuervo García (“El mercado de control de empresas. El *“blindaje”* de los directivos y del *“núcleo duro”*”), Eduardo Martínez Abascal and Pablo Fernández (“Normas y medidas de supervisión prudencial para limitar el riesgo en las instituciones de inversión colectiva en diversos mercados”), Víctor García-Vaquero (“El fenómeno de los fondos de inversión en España: transparencia y rentabilidad”) and José Luis García-Pita y Lastres (“El principio de protección del inversor”).

## *Information systems*

The CNMV has always attached the maximum priority to maintaining its information systems up to date, in terms of both applications and hardware; considerable improvements were made last year in both areas. Application development focused mainly on three areas: (i) improving the tools of the Market Monitoring Unit (UVM); (ii) supervising the markets and the new reporting applications provided to companies; and (iii) registration of venture capital companies' activities, as a result of the CNMV being allocated the supervision of these companies<sup>(1)</sup>.

The CNMV made considerable progress in other application areas, such as adapting its systems, and coordinating companies' and the markets' efforts, to prevent any adverse Y2K effect; adapting to the introduction of the euro; improving information dissemination via the Internet; and developing the CIFRADO/CNMV encryption and electronic signature system for transmitting documents between companies under supervision and the CNMV.

The CNMV also undertook a major renovation of its hardware. Practically all the net server facilities and minicomputers and a large number of workstations were replaced.

## *Supervision of the Y2-K-related tasks in the securities markets*

The tasks to avoid any problems from the Y2K effect in the securities markets' systems started in 1998 and continued in 1999. Apart from reviewing its own systems, the CNMV also coordinated and supervised the action taken by the companies and the market. Market management companies, issuing companies, intermediaries, collective investment institutions and portfolio management companies, and the Securities Clearing and Settlement Service (SCLV) had already been asked in 1998 to adapt with the maximum diligence. The systems were tested several times in 1999 in order to guarantee their total compliance and provide the information required by the international organizations monitoring the problem. The various bilateral trials (stock exchanges-SCLV, stock exchanges-members, SCLV-member companies) and the general trial carried out in September gave totally satisfactory results and no significant anomalies were detected.

The results of dry runs were fully borne out by the fact that no real problems have arisen to date in 2000. During the critical transition to 2000, market regulators, the SCLV and main intermediary companies collaborated with the CNMV, providing the necessary data to analyze the actual impact of the Y2K effect. The CNMV reported to Spain's Oficina Nacional de Transición and the international organizations monitoring the matter.

## *Adapting the CNMV systems to the euro*

All CNMV's basic processes had already been adapted to the euro by 1 January 1999. Only complementary (e.g. statistics-related) compliance work was carried out in 1999. During 2000, compliance work will be conducted with respect to horizontal services (budgets and finance, accounting, payroll, fees, etc.) where the introduction of the euro is still pending, in compliance with regulations.

## *CIFRADO/CNMV*

1999 was a very important year in the development of CIFRADO/CNMV, the encryption and electronic signature system implemented by the CNMV for computer-mediated com-

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(1) Law 1/1999, dated 5 January, regulating venture capital entities and their management companies.



munications with the entities under supervision. Firstly, the system was legally reinforced by the approval in September of Decree-Law 14/1999, on electronic signatures, which includes an express acknowledgement of CIFRADO/CNMV's pioneering role in the implementation of electronic signatures. Secondly, although it is voluntary, a large number of firms opted to use the system regularly during 1999. In December, over half of the collective investment institutions had their monthly reporting filed in this way by their management companies and one-third of brokers and broker-dealers used this system. Overall, about one hundred entities were registered at 1999 year-end as regular users of the new system. From January 2000, the use of the system was extended to issuers with securities admitted for listing, to enable them to file their quarterly and half-yearly financial statements.

## National Securities Numbering Agency

In 1999, there were 9,054 changes (additions, removals and modifications) in the database of the National Securities Numbering Agency (7,042 in 1998). This increase in activity was mainly due to the considerable increase in registration of open-end investment companies, commercial paper programs and stock splits of many companies as a result of redenominating share capital to euros, which entails allocating new ISIN codes.

The number of telephone queries from Spanish users about the codes and data of security issues decreased in 1999, undoubtedly due to the increased use of the Internet by ISIN users to obtain code data from the Agency's web site, and to the increased use of e-mail in communications with the Agency. During 1999, the Agency handled 5,537 queries (a daily average of 23), down from 7,245 in 1998 (a daily average of 30).

In June 1999, the new version of GIAM (a communications system between the world's securities numbering agencies) became operational on the Internet, enabling agencies to exchange data. This channel enables the Spanish Agency to gather the codes allocated to new securities issued in the countries connected to the system (currently 33 countries) on a daily basis and, at any time, it can request any foreign issue code required by a Spanish intermediary or depositary. The new GIAM version maintains foreign codes received in a local database, either systematically or on request, for use in subsequent queries. This facility has enabled the Agency to abandon its old database of foreign securities, which was kept manually.

The CNMV considers that investor protection is stronger if there is an efficient communication channel to handle requests from the public for information. The CNMV provides valuable information for investors and, generally, for all parties interested in the securities markets via its official registries. A substantial part of this information can already be accessed via the Internet ([www.cnmv.es](http://www.cnmv.es)), where other very useful information can also be consulted, in particular the Spanish and EU regulations and public warnings about the activity of unregistered intermediaries (see table 2.6). The use of the CNMV's Internet site increased considerably last year: visits increased from 290,000 in 1998 to over half a million in 1999 and page views increased from 7.7 million to 12 million. The CNMV is continuously improving its service for dealing with complaints and queries that are more than mere requests for information of official registers, and the service is gradually being used by more investors. In 1999 nearly 32,000 queries and about 1,000 complaints were handled.

Table 2.1  
QUERIES AND COMPLAINTS HANDLED BY THE CNMV

	1999	1998
Queries by telephone .....	23,948	24,325
Electronic mail .....	2,015	965
Fax and written queries .....	259	630
On-site queries .....	5,490	4,794
Complaints .....	961	988
Total .....	32,673	31,702

## Complaints department

Because of the considerable increase in small investors' participation in securities markets, the CNMV has had to devote particular attention to the complaints service provided by the Public Relations Department. The CNMV has reviewed the procedures and powers in order to offer a specialized, rapid and efficient system to protect investors and resolve conflicts between them and investment services companies.

To resolve complaints, the CNMV focuses on conciliation between the parties; based on the positive results, this seems to be the appropriate course. In 1999, agreements were reached between the parties in most cases where the CNMV considered that the complainant was in the right, the complaint was quantifiable, and the respondent was invited to remedy the damages caused to its client. The willingness of most respondents to reach mutually satisfactory solutions was decisive in this connection.

# 2

## INFORMATION, QUERIES AND COMPLAINTS

Table 2.2  
RESPONDENTS IN COMPLAINTS

	No. of complaints		%	
	1999	1998	1999	1998
Management companies and supervisory bodies .....	5	7	1	1
Finance entities .....	699	806	73	82
Issuers of securities .....	256	171	26	17
Other .....	1	4	0	0
Total .....	961	988	100	100

Most of the complaints that are received do not have a specific solution, since they arise from the non-fulfillment of expectations of investment returns, or because they relate to listed companies, from which the CNMV can only require transparency and information disclosure. Other complaints are subject to laws outside the CNMV's jurisdiction. The main protection for the investor in these cases is in the tasks of inspection and supervision, in imposing penalties and regulations, and in stimulating investors' financial understanding.

The average complaint response period was shortened substantially in 1999: from two months to just over a month and a half (46.3 days). The CNMV intends to reduce this further, to about 30 days.

Table 2.3  
FINANCE ENTITIES AGAINST WHICH COMPLAINTS WERE FILED IN 1999\*

Entities with more than two complaints filed against them	Complaints	Of which	
		Resolved by mutual agreement	Decision in favor of the complainant
BANKS AND SAVING BANKS	446	66	88
ARGENTARIA, CAJA POSTAL B.HIPOTECARIO S.A.	63	9	7
BANCAJA	6	1	2
BANCO ATLANTICO, SA	10	1	4
BANCO BANIF BANQUEROS PERSONALES S.A.	7		2
BANCO BILBAO VIZCAYA S.A.	34	4	7
BANCO CENTRAL HISPANO S.A.	7	3	
BANCO DE FINANZAS E INVERSIONES S.A. Fibanc	3		
BANCO DE LA PEQUEÑA Y MEDIANA EMPRESA S.A.	4	2	
BANCO ESPAÑOL DE CREDITO S.A.	30	7	7
BANCO POPULAR ESPAÑOL, S.A.	3		
BANCO SANTANDER CENTRAL HISPANO S.A.	63	8	18
BANCO SANTANDER DE NEGOCIOS S.A.	5	1	2
BANCO SANTANDER S.A.	16	1	7
BANCO URQUIJO S.A.	5	2	2
BANCO ZARAGOZANO, SA	3		
BANKINTER, SA	12	3	2

Table 2.3 (cont.)

## FINANCE ENTITIES AGAINST WHICH COMPLAINTS WERE FILED IN 1999\*

Entities with more than two complaints filed against them	Complaints	Of which	
		Resolved by mutual agreement	Decision in favor of the complainant
BILBAO BIZKAIA KUTXA	7	2	1
CAJA DE AHORROS DE ASTURIAS	3		2
CAJA DE AHORROS DE CATALUÑA	5	1	
CAJA DE AHORROS DE GALICIA (CAIXAGALICIA)	3	1	1
CAJA DE AHORROS DEL MEDITERRANEO	3		
CAJA DE AHORROS Y PENSIONES DE BARCELONA			
La Caixa	21	1	1
CAJA INSULAR DE AHORROS DE CANARIAS	3		1
CAJA DE AH. Y MONTE DE PIEDAD DE MADRID Cajamadrid	26	5	4
CITIBANK ESPAÑA S.A.	4		1
DEUTSCHE BANK S.A.E.	5	2	2
IBERCAJA	7		2
MIDLAND BANK Plc. Branch in Spain (AVA case)	9	1	3
OPEN BANK S.A.	5	3	1
SOCIETE GENERALE Branch in Spain	3		
UNICAJA	6	1	2
OTHER	65	7	7
<b>BROKER-DEALERS AND BROKERS</b>	<b>122</b>	<b>21</b>	<b>33</b>
AB ASESORES BURSÁTILES BOLSA S.V.B. S.A.	6		1
ADEPA AVB, S.A.	6		4
AGENTES DE BOLSA ASOCIADOS AVB, S.A. - ABA AVB	4		
AVA ASESORES DE VALORES A.V., S.A.	16		1
BBV INTERACTIVOS, SVB, SA	5		1
BENITO Y MONJARDIN, SVB, SA	16	2	6
BETA CAPITAL, SVB, SA	4		
EUROSAFEI SVB,S.A. (GRUPO SAFEI)	3		
GAESCO BOLSA, SVB, SA	3		
GESTIÓN DE PATRIMONIOS MOBILIARIOS, AVB, SA	3		
IBERSECURITIES AVB,S.A.	3		
INTERMEDIARIOS FINANCIEROS, AV, SA	8	8	8
MAPFRE INVERSIÓN, SV, SA	3		1
MERCADOS Y GESTIÓN DE VALORES AVB S.A.	4	1	1
NORBOLSA, SVB, SA	3	2	
RENTA 4, SVB, SA	17	7	9
OTHER	18	1	1
<b>SGIIC, SGC AND SIMs</b>	<b>40</b>	<b>1</b>	<b>3</b>
ARGENTARIA GESTIÓN SGIIC S.A.	4		
BBV GESTINOVA SGIIC,S.A.	5		1
SANTANDER GESTIÓN, SA, SGIIC	6		1
OTHER	25	1	1
<b>UNREGISTERED FIRMS</b>	<b>91</b>	<b>Not applicable</b>	<b>84</b>
AGRUPACION DE CAPITALES S.A.	1		1
AMBER GROUP / AMBER CAPITAL ASSETS	1		1
ARGENT INTERNATIONAL SPAIN / LEONARD BERNEY	1		1
ASFIN AND INVESTMENT S.L.	1		1

Table 2.3 (cont.)

## FINANCE ENTITIES AGAINST WHICH COMPLAINTS WERE FILED IN 1999\*

Entities with more than two complaints filed against them	Complaints	Of which	
		Resolved by mutual agreement	Decision in favor of the complainant
ASOFI	2		2
CAFI S.L. Consultoría y Asesoría Financiera S.A.	7		7
CARTERA CONDAL S.C.C.L.	2		1
CENTRAL IBERICA DE VALORES S.A.	1		1
CORPORACION DE SERVICIOS FINANCIEROS S.L.	1		1
DANF MARKETING SERVICES S.L.	5		3
DIAGONAL DIVISAS S.A.	1		1
DINÁMICA DIRECTIVA S.L.	13		11
DUAL INVEST S.L.	2		2
EURO CAPITAL GROUP – EGC	1		1
EUROPA MINING AND INVESTMENT (GROUP) CORP.	2		2
FOREX GESTIÓN S.A.	4		4
AFINSA Bienes Tangibles S.A. / FORUM	1		1
GESTION FINANCIERA PRIVADA S.A.	1		1
GLOBAL CURRENCIES S.A.	3		3
GRUPO AZIMUT	1		1
KONFOR DIVISAS INTERNACIONALES S.A.	4		4
MARBELLA INSURANCE S.L.	1		
MONDIAL DIVISAS S.A.	2		2
PERICIA S.L.	2		2
PLAZA CAPITAL / TRADING FLOOR	1		1
PORT KENNY HOLDING S.A.	1		1
PT DOLOK PERMAI (INT. ASSET MANAGEMENT)	1		1
SCHERK ASESORES INVERSIONES Y BOLSA	1		1
SOCIEDAD EUROBROKER S.A.	1		1
TRANSWORLD FINANCIAL SERVICES S.L	25		24
VIKA	1		1

(\*) Data at 14 December 1999.

Note (From April 1999, all the complaints filed against Banco Santander, S.A. and/or Banco Central Hispano, S.A. are considered to be against Banco Santander Central Hispano).

Table 2.4.

## SUMMARY OF THE OUTCOME OF THE COMPLAINTS FILED IN 1999\*

Prior mutually agreed settlement .....	63
Report .....	707
Favorable followed by mutually-agreed settlement .....	25
Other favorable with invitation to remedy .....	38
Other favorable .....	145
Unfavorable .....	146
Other .....	353
Lapsed .....	23
Outside CNMV jurisdiction .....	14
Withdrawn .....	2
Pending .....	152
Total .....	961

(\*) Data at 14 December 1999.

## Some particularly significant complaints

### *Unregistered firms*

Apart from imposing penalties on unregistered firms in 1999, the CNMV also published a number of warnings to the public about their existence. In some cases, the dissemination of detailed information about these firms, via the Internet ([http://www.cnmv.es/inversor/inversor\\_s.htm](http://www.cnmv.es/inversor/inversor_s.htm)) and the business press, proved useful in dissuading investors or advising them on how best to protect their rights.

### *Share allotments in the Terra Networks S.A. IPO*

A number of written complaints were received about the allotment of Terra shares. Some of the complaints related to errors which arose because some of the placing firms posted lists of applicants in alphabetical order of surname, rather than forename as provided in the prospectus. At the request of the CNMV, the firms that acted in error compensated those investors for the damage.

### *Liquidating value applicable to mutual funds*

As in 1998, a considerable number of complaints were received about the liquidating value applied to subscriptions and reimbursement of mutual funds. Once again, the liquidating value being applied was correct in most cases and the complaints were due to insufficient information. Firms need to improve their information applications and systems and the delivery of the mandatory documentation to investors in order to correct these deficiencies, to the benefit of all concerned.

### *Delisting offer prices*

In 1999, some companies made tender offers prior to delisting. The CNMV received written complaints from many shareholders of these companies to the effect that the prices offered by the companies were incorrect. The arguments of the complainants led the companies to offer a higher price in the transaction, where appropriate.

### *Services via the Internet*

Investment services via the Internet are now a reality and the use of this channel will probably increase in the coming years. The CNMV received written complaints from investors who placed orders via the Internet. The problems that arose were similar to those relating to orders made via other channels (in writing or by telephone).

### *Portfolio management*

Some investors who had entrusted management of their securities portfolio to intermediaries complained to the CNMV because they disagreed with the actions of the portfolio managers and the results obtained. Portfolio management is a highly specialized activity which must be carried out rigorously and professionally, but it is not risk-free. In the 1998 report on complaints, the CNMV warned investors not to grant totally discretionary mandates when entrusting their portfolios to professional managers, because of the risks involved. This warning is also carried on the CNMV's web site. A Ministerial Order published in October 1999 details a code of conduct specifically aimed at regulating relations between portfolio management entities and their clients.

### ***Improper conduct by some representatives***

Once again, there were complaints about the conduct of some representatives of authorized investment services companies. Irrespective of the specific reply sent to each claimant, the written complaints were referred to the Inspection Division and, in the cases where it was proved that the representatives had exceeded their powers, the CNMV commenced penalty proceedings that ultimately culminated with the imposition of the proposed penalties.

### ***Delivery of mutual fund prospectuses***

Before signing a new investor, mutual fund marketing companies must give each investor a copy of the fund's prospectus and the most recent annual and quarterly reports. An examination of the complaints shows that, in some specific cases, firms had not complied with these requirements. The CNMV reminded the parties concerned that it is obligatory to provide that documentation and that mere verbal information does not suffice.

### ***Endesa's merger with its subsidiaries***

Following the announcement of Endesa's merger with its subsidiaries, some minority shareholders of Enher, ERZ, Electra del Viesgo and Saltos del Nansa raised objections to the exchange ratios proposed for the merger. The CNMV highlighted that, in these cases, the matter lies with the independent experts designated by the Mercantile Registry, who must express their opinion about the proposed exchange ratio. This information, together with the Merger Plan, must be made available to shareholders before the Shareholders' Meeting that decides on the merger resolution at each of the affected companies. The CNMV has no participation in this process, although it is responsible for ensuring the market's transparency by disclosing information about the operation and, when the time comes, for verifying that the information contained in the corresponding issue prospectus conforms to the regulations governing its contents.

## New recommendations of the CNMV based on complaints

The CNMV web site contains the recommendations to investors and finance entities based on the complaints it has received (see table 2.6, Investor Page). The following recommendations were inspired by the complaints received during 1999:

### *To investors:*

- Consult the “Do’s and Don’ts for Investors” prepared by the CNMV. Obtain information about significant events, warnings and news published on the CNMV web site.
- Before requesting any investment service, obtain information about the associated commissions.
- Before acquiring shares in mutual funds, obtain information about their characteristics and commissions. Do not sell shares in mutual funds just because the investment has suffered a setback. First, ascertain the reasons for the decline and the possibilities of recovery. For this purpose, consult the fund’s Prospectus and its latest Quarterly Reports and discuss these documents with your investment services firm.
- In the case of guaranteed mutual funds, be aware of their maturity date and the new conditions defined by the management company. Before the maturity date, establish whether or not it is appropriate to maintain the investment once the guarantee has expired.

### *To financial entities:*

- Ongoing training is crucial in order to maintain your employees up to date with respect to new products and regulations in the securities markets. Remember that it is obligatory to “establish ongoing training and evaluation programs to ensure the technical and professional capacity of the personnel, especially those who perform commercial functions, prepare analysis and reports for distribution to clients, manage and measure risks or perform activities whose complexity and constant progress requires them to be permanently up to date.”<sup>(\*)</sup>
- Provide the public with all the documents and information that might be relevant when making investment decisions and for correctly monitoring those already made by clients. In particular, in the case of orders, the correct forms must be used for each product to ensure that the investor has the specific clauses governing the order.
- Know and take account of the client’s investment profile when offering your products.
- Provide clients with the information about the commissions applicable to their transactions.
- If you receive orders relating to high-risk securities, warn the client of the possible incidents that could arise in trading.
- Rapidly resolve any incidents or errors that arise in processing your clients’ transactions, especially in situations arising from very volatile markets.

<sup>(\*)</sup>CNMV Circular 1/1998, dated 10 June, about internal control systems, monitoring and ongoing evaluation of risks.



## CNMV official registers and web site

Information is a key tool for investment decision-making. In particular, availability of information places the saver in a better situation to prevent abuse and fraud. The CNMV places a considerable amount of information (issue and collective investment institution prospectuses, broker-dealer and broker files, audits, intermediaries' tariffs, significant holdings, etc.) at the public's disposal by a variety of means (see table 2.5). The Commission has gradually placed all the information available directly at its headquarters on its web site. From 1999, this channel can be accessed to obtain information about tender offers, book-entry deeds, and intermediaries' tariffs and standard contracts.

Table 2.5  
HOW TO CONSULT THE CNMV'S OFFICIAL REGISTRIES

	Direct queries at the CNMV			Internet	Diskette and CD-ROM
	Paper	On screen	Optical disk		
Advance notifications	1989	1989	1994	1989	
Issues	1989	1989	1990	1989	
Listings	1989	1989	1990	1989	
IIC prospectuses	1989	1989	1998	1998	
Registration of broker-dealers and brokers	1989	1989	1998	1998	
Audits:					
Issuers	1986	1986	1986	1986	1990
IIC	1989	1989	1993		
Market subjects	1988	1988	1993		
Market subjects and groups	1993	1993			
Market management companies	1989	1989			
Special reports	1991	1991			
Financial information:					
Issuers	1989	1989		1995	(*)
IIC	1991	1991	1993	1997	
Tender offers	1989	1989	1998	1998	
Book-entry deeds	1989	1989	1998	1994	
Intermediary fees	1993	1989		1994	
Significant holdings	1990	1990		1989	(**)
Significant events	1990	1989		1989	
Intermediaries' standard contracts	1996	1989		1996	

The date information in each box relates to the date of the first entry in the record which can be consulted in the corresponding format.

(\*) ASCII and Windows formats.

(\*\*) ASCII.

Table 2.6  
CNMV WEB MAP

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### About the CNMV

- The CNMV: what it is, what it does.
- Organizational chart
- Advisory Committee
- Annual Report
- Speeches by CNMV officials
- Employment opportunities and Public contracts
- CNMV Services
  - Services to investors
  - IT Services in the relationships with the CNMV

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### Official filings

- Search by Company name
- Price sensitive information
- Official filings of issuers
  - Registered companies
  - Take-overs
  - Annual accounts
    - Auditor's reports
    - Auditor's reports with exceptions
    - Financial statements
    - Periodic financial reports
    - Significant holdings
    - Price sensitive information
- Official filings of issues and trading
  - Initial communications
  - Prospectuses of issues and public offerings
  - Prospectuses of trading
  - ISIN Codes
  - By-Laws
- Official filings of investment funds
  - Registered entities
  - Prospectuses
  - Annual accounts
  - Periodic reports to investors
  - Price sensitive information
- Official filings of brokers and broker dealers
  - Registered entities
  - Annual accounts
  - Price sensitive information
- Fees and commissions
- Standard contracts

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### What's new?

- Press releases
- Today's significant events
- Take-over offers and issues open to subscription
- Delisted, Temporary Halt Trading
- Draft Policy Documents. Request for comments
- Recent Regulations
  - Regulation
  - Interpretative Releases
  - Bulletins from Directors
- Recent publications
- Latest developments in DELFOS

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### Investors' page

- Do's and don'ts for investors
- Investors guide
- Complaints
- Services to investors
- Investor warnings

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### DELFOS

- DELFOS guide
- Regulators and supervisor authorities
- Information Center
- New trends in securities markets
- Legal framework and jurisprudence
- Useful links

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### Regulation

- Latest developments
- Regulation
- Interpretative releases
- Letters from the CNMV Directors
- European Union regulation
- Court opinions
- Advisory opinions of the CNMV
- MOUS
- Protocols and Agreements
- Form contracts

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### ANCV

- ANCV activities
  - Recent developments
  - ISIN Codes
  - Agency data base update
-

# 3

## MARKET DEVELOPMENT

Spain's securities markets, like other markets in the developed countries, are experiencing an accelerated process of change driven by a number of factors, such as mass participation by small savers, a larger number of companies raising capital directly in the market, the major role played by professional investors through collective investment institutions (IIC) and other institutional investors, and the integrating pressure from the euro and new information technologies. Therefore, it is not surprising that the CNMV, in cooperation with other authorities such as the Directorate-General of the Treasury and the market institutions themselves, once again paid special attention to the activities most directly related to the promotion and development of our markets.

There was fruitful collaboration with Inverco, the association of collective investment management companies, which enabled us to put the finishing touches to a new classification system for mutual funds that is more in line with their stated investment objectives and, therefore, of greater use to investors. With the same spirit of collaboration, a convention was prepared to delimit the use of fund classification names such as "ethical", "ecological" and "socially responsible" in order to benefit both investors and the sector itself. Inverco also developed an initiative to self-regulate the IICs' publicity, a subject of considerable interest to the CNMV.

One of CNMV's permanent objectives is to increase efficiency and transparency in the procedural formalities relating to entities under supervision. To this end, the CNMV provided IIC management companies and venture capital companies with a guide of standard procedures and contracts. This initiative facilitates the aforementioned entities' access to the information they need in order to comply with the CNMV's requirements, thus lowering reporting costs and expediting the entire process.

There were many significant developments in the context of the securities markets. The most important were the creation of two markets: LATIBEX, the Latin American securities market, is already in operation; the other, the New Market for fast-growing companies, was approved in December and is due to operate in 2000 (see chapter 7). Also, a single platform was created for registering, clearing and settling fixed-income securities traded on the stock exchanges and AIAF, which is a further step in the development of the private fixed-income securities segment and in the simplification of back-office processes in secondary market transactions.

A very important development in our markets at present are the strategic movements by investment services suppliers to reinforce their competitive position in the EU context. Noteworthy is the impact of the adoption of the euro on organized markets and on the clearing and settlement systems. Chapter 4 explains some of the most important strategic initiatives with an impact on the Spanish markets.

## Registration of firms

### *Investment services companies (ESI) and collective investment institution management companies (SGIIC)*

In 1999, nine investment services companies and three collective investment institution management companies were registered, and ten ESIs and seven SGIICs were removed, mainly because of the numerous merger and restructuring processes that took place last year. Six foreign financial institutions took a controlling stake in Spanish groups, including ESIs and SGIICs (see table 3.3), and Spanish financial groups also played an important role in concentration processes, including the acquisition of controlling interests in independent entities, and the merger between Banco Santander and Banco Central Hispano to form the new BSCH.

Table 3.1  
ADDITIONS AND REMOVALS OF REGISTERED FIRMS IN 1999  
NUMBER OF FIRMS

Type of firm	Registered firms at 31/12/98	Additions	Removals	Registered firms at 31/12/99
Collective investment				
FIM .....	1,675	290	1	1,964
FIAMM .....	206	2	5	203
FII .....	5	0	0	5
SIM .....	230	3	22	211
SIMCAV .....	361	523	1	883
SGIIC .....	131	3	7	127
DEPOSITORIES .....	168	5	4	169
OICVM .....	116	33	12	137
Investment services companies				
SV .....	46	2	3	45
AV .....	58	3	2	59
SGC .....	49	4	5	48
Foreign ESI .....	408	110	39	479
Representatives .....	6,091	549	192	6,448
Venture capital				
FCR .....	12	7	0	19
SCR .....	19	4	0	23
SGEGR .....	10	1	0	11
Securitization				
SGFT .....	9	0	0	9

Table 3.2

## REGISTERED FIRMS AND CONTROL GROUPS: ESI AND SGIC

Firm	Control groups (financial entities)
<b>Broker-dealers (SV)</b>	
Additions	
Gestión de Activos del Mediterráneo, S.V.	Caja Mediterráneo
A.B. Asesores Morgan Stanley Dean Witter, S.V.	AB Asesores Morgan Stanley Dean Witter
Removals	
Nikko España, S.V.	Nikko
BCH Bolsa, S.V.B.	BSCH
A.B. Asesores Bursátiles Bolsa, S.V.B.	AB Asesores Morgan Stanley Dean Witter
<b>Brokers (AV)</b>	
Additions	
Zurich Inversiones, A.V.	Zurich
Infomedas, A.V.	Multigrupo (CIMD, ACF, Capital Markets y All trading)
SGAM Iberia, A.V.	Societe Generale
Removals	
A.B. Asesores Bursátiles Norte, A.V.	AB Asesores Morgan Stanley Dean Witter
A.B. Asesores CFMB Distribución, A.V.	AB Asesores Morgan Stanley Dean Witter
<b>Portfolio management companies</b>	
Additions	
Advance Finance Management, SGC	
Unicorp Patrimonio, SGC	Unicaja
Financial Markets Advisors, SGC	-
Santander Patrimonios, SGC	BSCH
Removals	
Bankinter Gestión y Administración de Carteras, S.A., SGC	BANKINTER
Atlántica de Servicios Bursátiles, S.A., SGC	Bº Atlántico
Laso, Toyo, Ugarte y Asociados, SGC	-
Barclays Gestión Privada, SGC	Barclays Bank
A.B. Asesores Gestión Carteras, SGC	AB Asesores Morgan Stanley Dean Witter
<b>SGIC</b>	
Additions	
UBS Gestión, SGIC	UBS A.G. Suc. En España
Hermes Gestión SGIC	-
Benkers Gestora, SGIC	Benkers
Removals	
Solbank Inversión, SGIC	Bº Sabadell
FG Gestión, SGIC	Merrill Lynch
Gestión y Seguridad, GESEGUR, SGIC	Gesegur
Alcazaba de Inversiones, SGIC	Caja Granada
Banesto Fondos, SGIC	BSCH
BCH Gestión, SGIC	BSCH
Herrero Gestión, SGIC	La Caixa

Table 3.3

## CONTROL CHANGES IN ESI AND SGIC IN 1999

Firm or group		
Name	Composition	Acquirer
1. Take-over by foreign financial institutions		
Gestión Integral	SGIIC AV <sup>(1)</sup>	Credit Suisse
Iberagentes Gestión	SGIIC SV	Banque Internationale à Luxembourg
Bankpyme Gesvalor <sup>(2)</sup>	AV	Grupo Banco de Brescia <sup>(3)</sup>
Gesconsult	SGIIC SGC	Credit Commercial de France
General Gestión <sup>(4)</sup>	SGIIC	Banque Degroof
AB Asesores	SVB SGIIC SGC <sup>(1)</sup> AV	Morgan Stanley Dean Witter
2. Take-over by Spanish firms		
Sindigestión	SGIIC AV	Bancaja
Iberagentes Fondos	SGIIC	Caja Duero (50%) Caja Madrid (50%)
Andino	AVB	Fibanc
Savia	AV	Banco de Inversión
3. Merger processes		
Santander-Central Hispano <sup>(5)</sup>	SGIIC <sup>(6)</sup> SAVB	BSCH <sup>(7)</sup>

(1) Removed subsequently.

(2) The same acquirer also bought 20% of Bankpyme, SGIIC.

(3) Acquisition via subsidiary FIM-ENO, SIM.

(4) Also in 1999, Privat Bank had previously acquired the control of this company.

(5) Merged groups.

(6) The merger also affected Banesto Fondos, SGIIC.

(7) The post-merger group.

### Collective investment institutions

In 1999, the number of open-end investment companies (SIMCAV) grew even faster than in 1998 (523 vs. 232 additions). At 31 December, a total of 883 open-end investment companies (SIMCAV) were registered and, consequently, their total number has increased more than twelve-fold in the last three years. This trend was further highlighted by the transformation of securities investment companies (SIM) into SIMCAVs: nearly all the 22 removals of SIMs were for this reason.

The number of registered mutual funds also increased, but at a slower pace than in 1998 (15% vs. 27%); in May, the 2,000-mark had been surpassed and at 1999 year-end there was a total of 2,172 registered funds. There was a predominance of new funds with investment policies

focused at least partially on equities (69% of total) and international markets; 44% of the new funds included assets denominated in currencies other than the euro, whereas 35% focused exclusively on euro zone assets.

There was a decline in the number of new guaranteed funds: whereas in 1998 they represented 41% of additions, the 62 new guaranteed funds registered in 1999 represented nearly a fifth of all additions. The number of FIAMM funds decreased slightly (from 206 in 1998 to 203 in 1999). Guaranteed and FIAMM funds experienced strong competition from bank deposits, since the latter's tax treatment improved considerably as a consequence of the personal income tax reform.

Table 3.4  
NEW FIMs, BY INVESTMENT POLICY

Type of FIM	1999		1998	
	Number	% of total	Number	% of total
Short-term fixed-income (RFCP)	13	4.48	16	4.01
Long-term fixed-income (RFLP)	7	2.41	14	3.51
Mixed fixed-income (RFM)	44	15.17	35	8.77
Foreign fixed-income (RFI)	9	3.1	9	2.26
Foreign mixed fixed-income (RFMI)	15	5.17	10	2.51
Mixed equity (RVM)	23	7.93	34	8.52
Spanish equity (RVN)	4	1.38	18	4.51
Mixed foreign equity (RVMI)	20	6.9	11	2.76
Euro equity (RVE)	10	3.45	28	7.02
Foreign equity (RVI)	62	21.38	52	13.03
Guaranteed fixed-income (GRF)	12	4.14	25	6.27
Guaranteed equity (GRV)	50	17.24	137	34.34
Global funds (FGL)	21	7.24	10	2.51
Total	290	100.00	399	100.00

### Mutual fund mergers

Because of the spectacular growth in the number of mutual funds in recent years and the changing market conditions, which require managers to rapidly modify the composition of their products, in 1998 a fund merger system was legislated for in the IIC Law<sup>(2)</sup> to enable management companies to rationalize their products and provide an alternative to dissolution and liquidation where the net worth stipulations or the minimum required number of participants were not complied with. The procedure for processing these transactions was established in December 1998 by agreement between the CNMV and the Directorate-General of the Treasury and Finan-

(2) Additional Provision Two of Law 20/1998, dated 1 July, reforming the judicial and tax regimes of real estate collective investment institutions and relating to the granting of specific credit rights by the State General Administration.

ce Policy (DGTPF). So far, few firms have made use of this new facility. In 1999, two mutual fund mergers were authorized, although only one of them took place in 1999. The current atomization of fund products and the concentration processes in the sector suggest that management companies will make increasing use of this possibility in the future.

### ***Venture capital firms***

In April 1999, the CNMV assumed the power to authorize and supervise venture capital firms and their management companies; between April and 31 December 1999, seven were authorized, six of them new. Venture capital is not subject to limitations on its activities, but registration with the CNMV enables these companies to enjoy tax and financial advantages which, together with CNMV supervision, could stimulate growth in this investment formula, especially in financing new business projects (see the section below on venture capital, in this same chapter).

### ***Securitization fund management companies***

There was no change in the number of registered firms in 1999. However, four of the nine existing firms opted to transform into asset securitization fund management companies in order to take advantage of the new possibilities afforded by Royal Decree 926/1998 and extend their activity to securitization of other debt claims and rights in addition to mortgage assets.

### ***Cross-border transactions***

#### ***Investment services companies (ESI)***

Last year, 110 investment services companies authorized in other European Union member states notified the CNMV of their intention to provide investment services in Spain; a total of 479 firms have performed this process since the Investment Services Directive came into force. An authorization granted in any EU member state allows an investment services company to provide services in any other EU country (“European passport”) via branches or directly, the only requirement being notification to the supervisory body in its home country so that the latter can notify the host country. So far, only two investment services companies that have taken this option to provide services in Spain have declared their intention of establishing branches (both filed their notifications in 1999).



Table 3.5  
DISTRIBUTION OF FOREIGN INVESTMENT SERVICES COMPANIES BY HOME COUNTRY

Country	No. of investment services companies	% of total
United Kingdom .....	384	80.2
France .....	27	5.6
Ireland .....	17	3.6
Holland.....	13	2.7
Belgium .....	9	1.9
Austria .....	7	1.5
Denmark.....	7	1.5
Sweden .....	4	0.8
Norway.....	3	0.6
Germany.....	2	0.4
Luxembourg .....	2	0.4
Portugal .....	2	0.4
Finland .....	1	0.2
Italy .....	1	0.2
Total .....	479	100

### *Collective investment institutions (IIC)*

The number of foreign IICs [OICVM<sup>(3)</sup>] registered to market in Spain grew faster than in previous years: 33 additions and 12 removals (16 and 10 respectively in 1998). All but one of the newly-registered firms are IICs domiciled in other EU member states; their distribution in Spain is covered by the *European passport* granted by the home country under Directive 85/611/EC. The other registered firm was a real estate IIC domiciled in Germany whose marketing is aimed exclusively at institutional and professional investors and whose application to register fell outside the scope of the aforementioned Directive.

Table 3.6  
DISTRIBUTION OF OICVM, BY HOME COUNTRY

Country	Number of OICVM	% of total
Luxembourg .....	93	67.9
France .....	26	19
Ireland .....	9	6.6
United Kingdom .....	4	2.9
Germany .....	3	2.2
Belgium .....	2	1.5
Total .....	137	100

Spanish funds are also marketed abroad. In 1999, the CNMV granted the *European passport* to 19 mutual funds for marketing in Belgium, France, Italy and Portugal.

(3) UCITS - undertaking for collective investment in tradable securities.

## Collective investment institutions

### *Creation and operation of funds and master/feeder funds*

Law 37/1998, reforming the Securities Market Law (LMV), introduced major amendments in the legislation governing IICs in order to broaden and liberalize the product range. Noteworthy is the authorization to create funds of funds, master and feeder funds, IICs specialized in unlisted securities and funds aimed at institutional and professional investors.

Market professionals view funds of funds and the master/feeder funds as being the most important of the new instruments, and expect them to contribute to creating more efficient and competitive management and marketing structures than the current instruments. In order to be well-prepared for the availability of these instruments, and as provided by the Securities Market Law Reform Law itself, in September 1999 the CNMV and the Directorate-General of the Treasury and Finance Policy established provisional operation procedures and rules to be applied in the creation and operation of these IICs until the detailed rule-making process is completed.

As a result, applications have already been filed for five funds of funds, two master funds and two feeder funds.

### *New mutual fund classification*

The classification of funds into groups with similar investment policies is indispensable in order to compare the returns from funds with similar risk levels. Until now, funds were classified on the basis of their portfolio composition at a given date. The advantage of this system was its objectivity; however, it did not reflect the manager's intentions as regards assuming future risks and, therefore, it was of limited usefulness for investors.

In order to overcome this constraint, last June the CNMV adopted a new classification system which was prepared in collaboration with Inverco and based on the fund manager's investment objective as stated in the information prospectus and in the fund's bylaws. The classification splits funds into 15 categories with the aim of attaining greater uniformity with respect to the risk of funds included in the same category.

As shown in table 3.7, the main characteristic in determining a fund's category is its exposure to interest rate, equity and exchange rate risks, according to the policy put forward by the manager and taking account of the positions in cash and derivatives. Other characteristics include the percentage invested in Spanish securities and the existence of third-party guarantees.

Table 3.7  
NEW MUTUAL FUND CLASSIFICATION

Category	Characteristics			
	Fixed-income		Equities	Non-euro currencies
	%	Term	%	%
FIAMM	-	-	-	Maximum 5
International FIAMM (IFIAMM)	-	-	-	Over 5
Short-term fixed-income FIM (RFCP)	100	2 years maximum	-	Maximum 5
Long-term fixed-income FIM (RFLP)	100	Over 2 years	-	Maximum 5
Mixed fixed-income FIM (RFM)	-	-	Maximum 30	Maximum 5
Foreign fixed-income FIM (RFI)	100	-	-	Over 5
Mixed foreign fixed-income FIM (RFMI)	-	-	Maximum 30	Over 5
Mixed equity FIM (RVM)	-	-	30-75	Maximum 30
Spanish equity FIM (RVN)	-	-	Over 75 <sup>(1)</sup>	Maximum 30
Foreign mixed equity FIM (RVMl)	-	-	30-75	Over 30
Euro equity FIM	-	-	Over 75 <sup>(2)</sup>	Maximum 30
Foreign equity FIM (RVI)	-	-	Over 75	Over 30
Guaranteed fixed-income FIM (GRF) <sup>(3)</sup>	-	-	-	-
Guaranteed equity FIM (GRV) <sup>(3)</sup>	-	-	-	-
Global funds (FGL) <sup>(4)</sup>	-	-	-	-

(1) Required percentage of Spanish equities.

(2) Maximum 75% of Spanish equities.

(3) Third-party guarantee funds.

(4) Funds whose investment policies are not precisely defined and funds that do not belong in any other category.

## Ethical and ecological funds

In December 1999, the CNMV approved Inverco's self-regulatory initiative, which establishes the requirements that the mutual funds must fulfil in order to be called "ethical" or "ecological." This initiative stems from the considerable interest shown by IIC management companies in creating these types of funds, with the aim of increasing the transparency of the information reaching investors about the characteristics of the investment products being offered to them. The intention is to avoid misleading investors through the use of vaguely-defined terms in fund names.

The requirements include that the fund's prospectus set out the fund's ethical, ecological or social ideologies and the criteria that its portfolio securities are required to fulfil. The fund's advertising must necessarily refer to its ideology. The only securities or funds that can form part of the portfolio are those chosen by an Ethical Commission, comprising independent experts, that is envisaged and established in the prospectus, and those integrated in ethical indexes published by third parties or those that are so classified by a specialized agency.

## *Inverco's self-regulation on publicity*

Advertising claims about mutual funds must be objective in order to maintain investor trust in this sector, which is vital for attracting small savers. Aware of this, the CNMV in recent years has closely monitored the sector's publicity to ensure that advertising messages are transparent and honest.

In 1998, the CNMV released a compilation of general principles and minimum requirements on advertising in order to improve the sector's advertising quality and avoid undesirable practices. In February 1999, Inverco took a significant step by approving a code of conduct for advertising by its members which benefits both investors and the industry as a whole since it provides clear playing rules that are accepted by all concerned.

## **Venture capital firms<sup>(4)</sup>**

The CNMV took over the supervision of venture capital firms in 1999. The development of this sector could benefit the Spanish economy, including the securities markets. Venture capital is deeply-rooted in the US, whereas it is less developed in Europe although it has grown considerably in recent years<sup>(5)</sup>. With a modest position within the European context, Spain is also participating in this growth trend. In 1998, Spanish venture capital firms raised 695 million euros (+70% over the previous year); 52.4% of portfolio investments were used in pure venture capital transactions, namely to finance start-ups and expansion projects<sup>(6)</sup>. In 1998, 25.4% of the total venture capital investment went to high-technology companies (up from 19.7% in 1997).

The growth potential of venture capital has increased the authorities' interest in this sector. In April 1998, the European Commission announced an Action Plan to eliminate the obstacles to developing this activity in Europe. The Plan established measures to be adopted at EU and country level. At EU level, the plan includes revision of the investment limits imposed, out of prudence, on pension funds, the harmonization of regulations governing prospectuses<sup>(7)</sup> and the extension of patent lifetimes<sup>(8)</sup>. At country level, the recommendations included improved taxation of new companies and venture capital firms, revision of the bankruptcy and insolvency legislation and the development of stock option systems and other employee-ownership schemes that are of interest in developing new business projects.

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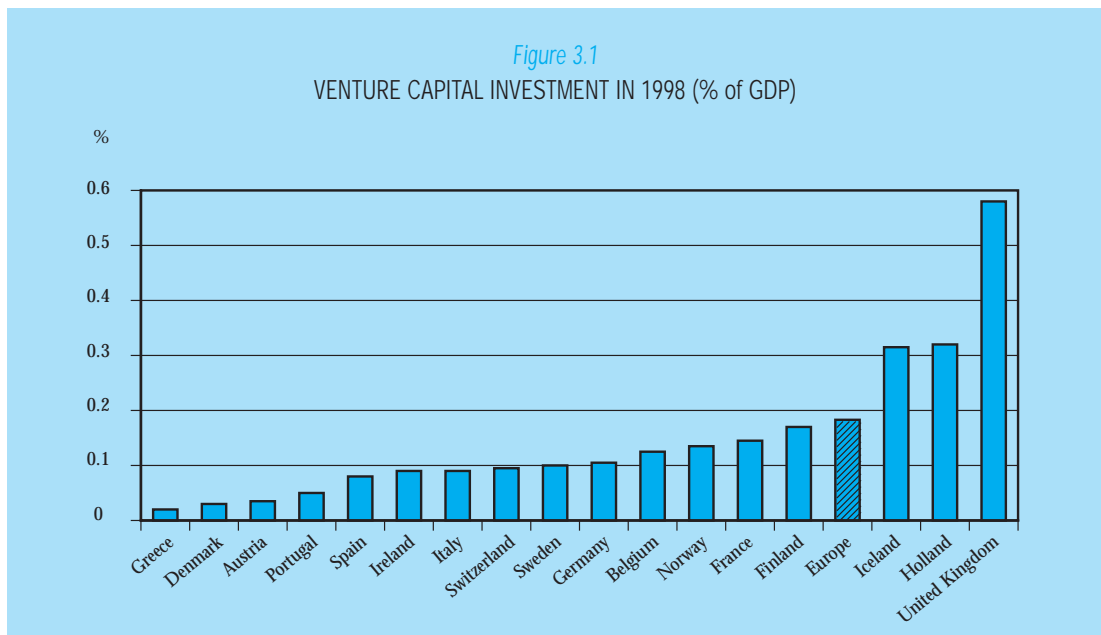
(4) All data referred in this section was provided by the European Venture Capital Association (EVCA).

(5) Both in 1997 and in 1998, the volume of funds raised in Europe totaled 20 billion euros (vs. a low of 3 billion euros and a high of 8 billion euros during 1988-1996).

(6) The other investments were in refinancing (5.3%) and financing acquisitions (42.3%).

(7) Cross-border transactions are particularly important, particularly in fund-raising. In Spain, only 41% of the funds raised in 1998 came from Spain.

(8) The aim of this measure is to favor investment in innovative companies



Source: European Venture Capital Association (EVCA).

In Spain, a number important measures have already been adopted in this area. The Law governing venture capital firms<sup>(9)</sup>, which came into force in January 1999, provides a stable legal framework for this activity and establishes a more favorable tax system for venture capital firms. Venture capital activity will be further enhanced by the creation of Nuevo Mercado, the new market for fast-growth and high-risk companies approved in December 1999. The venture capital sector's growing participation in high-tech companies, which are clear candidates for the new market, and the need to liquidate positions in investee companies once the investment commitment is finalized, make this initiative particularly interesting.

## Asset securitization funds

### *Agreements for the promotion of asset securitization funds (FTA)*

Bank loan securitization offers considerable advantages to banks and also benefits the securities markets and borrowers. Confined to mortgage loans until 1998, securitization can now be extended to other assets<sup>(10)</sup>. Last year, the Ministry of Economy and Finance established the possibility of providing a government guarantee for up to a specific percentage<sup>(11)</sup> of certain FTA issues. This measure is limited to securities backed by loans to small and medium-sized enterprises. Favoring the mobility of these loans should make banks more willing to grant them.

Various requisites need to be fulfilled in order for these guarantees to be granted, including: obtaining a minimum rating granted by a specialized agency recognized by the CNMV; the securities must be listed on an official secondary market; and the ceding banks must undertake to

(9) Law 1/1999, dated 5 January, regulating the venture capital firms and their management companies. The aspects relating to supervision have been developed in a Ministry of Economy and Finance Order, date 17 June 1999, and in the CNMV Interpretative Letter 4/1999, dated 22 September.

(10) Royal Decree 926/1988, dated 14 May, regulating asset securitization funds and securitization fund management companies.

(11) Order dated 28 May 1999, about agreements for promoting asset securitization funds in order to favor business financing.

invest the liquidity thus obtained in loans with the same characteristics. The guarantees require a signed agreement between the Ministry of the Economy, the lending institution and the securitization fund management company. Guaranteed FTAs must include “FTPyme” or the initials “FTP” in their trade name.

In order to facilitate issues of the government-backed FTAs, Fondtesoros were authorized to invest in them<sup>(12)</sup>, thereby broadening the range of products in which these IICs can invest, at a time when net government debt issues have been reduced.

## Markets

### *Admission of capital increases to listing on T+6*

The new shares issued by listed companies when they increase capital often suffer considerable delay in admission for listing, with the consequent detriment to holders. The amendments introduced in the Spanish Corporations Law by the Securities Market Law Reform Law<sup>(13)</sup> have created a new legal framework that reduces the paperwork and shortens the admission periods. In order to take full advantage of this, the CNMV, the SCLV, the four Spanish bourses and the Colegio de Registradores Mercantiles y de la Propiedad (the Property and Mercantile Registrars Association) signed a protocol agreement on 4 May 1999 to revise their procedures and enable the new shares to be admitted for listing on T+6, i.e. six trading days after payment or conversion.

On 4 June 1999, the CNMV issued an Interpretative Letter<sup>(14)</sup> informing all issuers about the protocol agreement and the procedures they need to follow to enable their shareholders to benefit from it<sup>(15)</sup>. After the release of this Interpretative Letter, four companies (Telefónica, Sociedad General de Aguas de Barcelona, Grupo Picking Pack and Adolfo Domínguez) followed the recommendations and their new shares were admitted on T+6.

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(12) Order data 28 May 1999, partially amending the Order dated 7 June 1990, about collaboration agreements with regard to public debt mutual funds.

It is also permitted to invest in private fixed-income with high lending quality, in Ibex-35 securities and in OTC derivative instruments, subject to specific restrictions.

(13) Law 37/1998, dated 16 November, reforming the Securities Market Law.

(14) CNMV Interpretative Letter 1/1999, dated 4 June, on the new procedures for admission to listing of capital increases on D+6.

(15) The protocol agreement and the Interpretative Letter can be consulted at CNMV's web site.

## LATIBEX: the new Latin American securities market

The Spanish Cabinet authorized the creation of the Mercado de Valores Latinoamericanos (LATIBEX) on 29 October 1999, as an organized system for trading Latin American securities. This market was created by the Spanish bourses with the aim of channeling European investment towards Latin America's leading companies and strengthening economic ties between Spain and that region. This new market is very important both for Spanish business groups, whose investments in Latin America are an essential part of their international strategy, and for Latin American companies, as a way of accessing European capital markets. LATIBEX opened on 1 December with five companies from four countries: Aracruz (Brazil), Banco Río de La Plata and Banco Francés (Argentina), Probursa (Mexico) and Banco Santander Puerto Rico (Puerto Rico).

LATIBEX has been formed as an organized system for trading, registration, clearing and settlement. To be admitted in LATIBEX, a security must first have been admitted to listing in a Latin American stock exchange with similar operating rules to the Spanish bourses. Admission can be at the request of the issuer or of market members and, although it is not necessary to register a prospectus at the CNMV, all the relevant information provided or released by the issuers in their home bourses must be made available in the Spanish market.

Trading is carried out in a single trading platform (SIBE) with a single settlement system (SCLV) and in the European single currency, irrespective of the Latin American stock exchange in which the securities are listed. This simplifies matters for investors and intermediaries, who can operate in a familiar setting with lower transaction costs and greater transaction security.

The regulations of LATIBEX are based on recognition of the regulation systems and the competent authorities of the home markets of the securities listed in it. The market is governed by a general regulation, the circulars and operating instructions of its governing bodies, by the SCLV circulars about transaction registration, clearing and settlement and, on a supplementary basis, by the Securities Market Law and its implementing regulations. The market has established rules of conduct for its members and personnel and arbitration and complaint resolution mechanisms. The CNMV is in charge of control and supervision.

### ***A single platform for registration, clearing and settlement of fixed-income securities listed in AIAF and in the stock exchanges***

A common platform for registration, clearing and settlement of fixed-income securities traded in the Spanish stock exchanges and in AIAF was approved in September 1999. This was a very important step in the development of Spain's private fixed-income segment, and had been provided for in the protocol for this purpose signed in 1998 by the CNMV, the SCLV and the aforementioned markets. The single platform will enable the registration, clearing and settlement systems to be standardized and simplified; up to now they had been separated in terms of the market and the form of the securities. This new initiative will simplify operating procedures for the users of these services and, consequently, reduce costs.

In the new system, physical securities are to be phased out (all new issues will be represented by book entries and some issuers have already begun to transform their physical securities). Clearing and settlement will be based on the securities balance system already used in AIAF, which is quicker than the system used to date in the fixed-income market. Some of the new features of the new centralized system include the possibility of settling certain transactions in gross terms and in real time, at the parties' request and provided that the transaction exceeds a certain amount.

The SCLV's core objective is to establish a single registration, clearing and settlement system. On 1 January 2000, the SCLV absorbed ESPACLEAR, the securities agency whose business was to centralize the deposit of physical securities traded in AIAF<sup>(16)</sup>.

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(16) The recent amendment of the Securities Market Law allows the SCLV, which has previously specialized in stocks represented by book entries, to also record securities represented by certificates.



# 4

## IMPACT OF THE EURO ON THE SECURITIES MARKETS

The first year of the euro had a clearly positive impact on the users of financial services in the securities markets. Spanish investors took advantage of the new investment opportunities created by the disappearance of exchange rate risk in the euro zone and added to their portfolios a considerable percentage of foreign securities denominated in the new currency. Companies also benefited from the expansion of primary markets, the favorable conditions for issuing fixed-income securities in the single currency and, generally, the advantages of issuing in a stronger currency. Intermediaries also had a positive year as a result of the euro's general boost to financial activities, although the new European scenario is proving to be much more competitive as the single currency drives European markets to integrate.

### *Positive impact on investors and issuers*

The introduction of the euro has benefited Spanish investors since they can now choose from a broader range of products whereas, until recently, they had been confined in practice to the securities of the Spanish market. Since the exchange rate risk has been eliminated in the euro zone, securities denominated in the euro are readily replaceable in investors' portfolios with other securities of the same type. This has had a positive effect on Spanish investors as they now have the opportunity to invest in risk categories that are comparable to those in the Spanish market.

Investors rapidly adjusted their decisions in order to adapt to the new context generated by the euro and benefit from the investment opportunities. This was the case of the decisions made by the IIC management companies, which channel a considerable amount of household savings in Spain – they manage about 23% of all household financial assets. Within the general trend of increasing investment in foreign securities, non-Spanish securities denominated in euros already occupy a privileged position in IIC portfolios, accounting for approximately 20% of total asset value at 1999 year-end. This segment has seen spectacular growth since the IICs' foreign portfolio amounted to less than 5% of their total assets only two years before. The IICs had already adopted a strategy of investing in foreign securities in the euro zone before the single currency was introduced, since the rapid growth in this area had commenced in mid-1998, once it was known that Spain would be joining EMU.

The impact of the euro has also been felt in the primary markets, especially in the private fixed-income segment, where issues tripled with respect to 1998 [see figure 4.1<sup>(17)</sup>]. It is well-known that Spain's fixed-income markets are underdeveloped, even compared to other European fixed-income markets, which are also less developed than their US counterparts. The adoption of the euro has opened new possibilities in this field because of the potential of widespread circulation of issues in euros<sup>(18)</sup> and the reduction of funding costs due to a more stable

(17) Growth in private fixed-income issues was also boosted by other factors, including the new tax treatment which is comparable to that applied to government bonds (see box in chapter 5).

(18) The euro already looms larger than the dollar in international issues (accounting for 43%-47% of the world's total issues last year). The potential of the euro as an issuing currency in the domestic segment is enormous, considering that the outstanding debt (public and private) denominated in euros issued to domestic markets amounted to 5.6 billion dollars at mid-1999, compared with the figure of 14.7 billion dollars in the US.

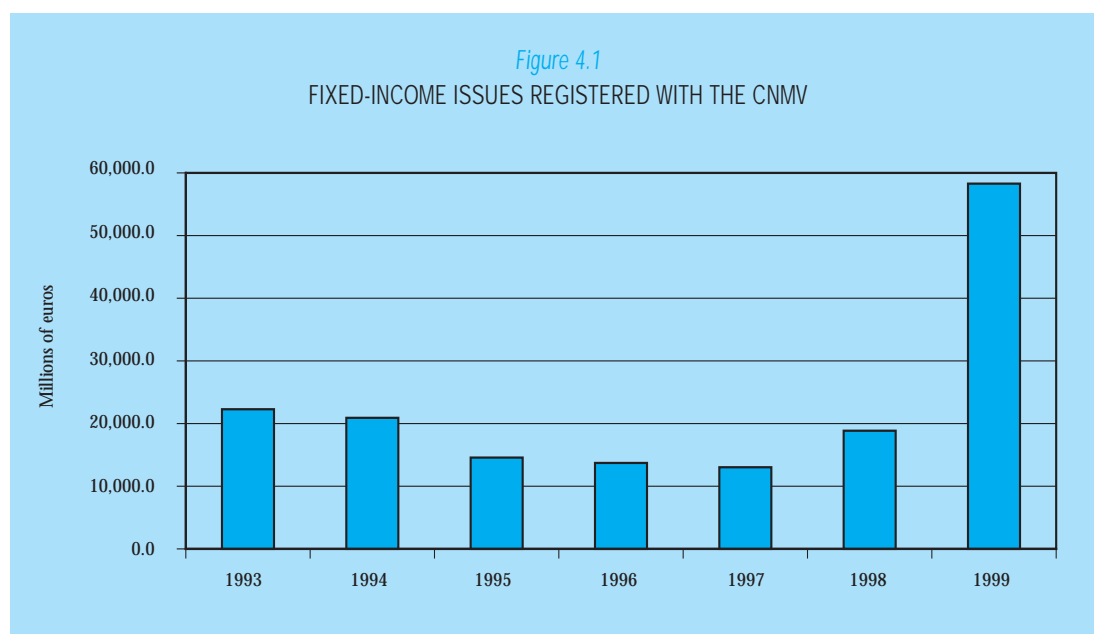
macroeconomic context. Numerous private fixed-income issues have benefited from being classified as acceptable as collateral by Europe's central banks in monetary policy operations, which has boosted demand for these securities by financial institutions (see box below).

Issues denominated in euros are already widely used in AIAF. At 31 December 1999, they amounted to 59.2% of the total outstanding balance of issues admitted for listing in that market. Last year, the euro was the main currency of new issues in the fastest-growing segments (preference shares, commercial paper and asset-backed securities). In the traditional and mortgage bond segments, the euro represents nearly 50% of the total outstanding balance.

Table 4.1  
ISSUES IN EUROS LISTED ON AIAF AT 31/12/1999

Instruments	Number	Issues in euros
		% of balance outstanding
Bonds, mortgage bonds and debentures	47	40.2
Preference shares	13	100.0
Asset-backed securities	43	70.1
Commercial paper and securitization notes	21	95.6
Other issues outstanding	0	0.0
Total AIAF	124	59.2

Figure 4.1  
FIXED-INCOME ISSUES REGISTERED WITH THE CNMV



## The use of private securities in monetary policy operations

The introduction of the euro and the subsequent adoption of a common monetary policy enabled financial institutions, for the first time in Spain, to use private securities as collateral and in repos associated with monetary policy operations. Previously, these operations had been carried out mainly using sovereign debt instruments. On behalf of the European Central Bank, the Bank of Spain specified which fixed-income and equity securities were eligible for this purpose and established the conditions applicable in each case.

The acceptance of private securities for monetary regulation transactions further encourages financial institutions to hold these securities and, as observed in the case of fixed-income, can encourage issues. Anticipating this effect, the Directorate-General of the Treasury, the Bank of Spain, the CNMV, the stock exchanges, AIAF and the SCLV established a task force to identify and analyze the obstacles to efficient use of private securities in these operations, which resulted in the review of various regulations and operating procedures.

The table below shows the considerable increase in transactions related to the injection of liquidity in the Spanish markets, especially in AIAF. The collateral provided by financial institutions to AIAF is instrumented in the form of repos, amounting to a total of 43 billion euros in 1999, equivalent to 50% of total market trading. These operations mainly use asset-backed securities (92% of trading).

Although the role of equities in this type of transaction was not as prominent, it has nevertheless grown considerably. Until now, collateral in the stock market was provided in the form of pledges, whose outstanding balance at 1999 year-end was nearly 4% of the SIB's total capitalization.

### THE USE OF PRIVATE SECURITIES IN MONETARY POLICY OPERATIONS

#### *Stock exchanges: pledges of securities*

	No. registered	<i>of which: Equities</i>	Balance outstanding <sup>(1)</sup> /SIB total capitalization (%)
1998	15	8	1.24
1999	42	41	3.81

#### *AIAF: repos*

	No. of operations	% of total trading in AIAF	% of trading in asset-backed bonds
1999	748	50	92.3

(1) Balance outstanding at year-end.

## *A more demanding scenario for financial services providers*

The introduction of the euro has accelerated the integration of Europe's securities markets. Investors' decisions are no longer confined to the Spanish markets. The result is that Spanish intermediaries, including the organized markets and clearing and settlement systems, are experiencing an increase in competition in their home territory while they can now also extend their business to the rest of Europe. The Europeanization of the securities industry has also been enhanced by the Internet and other information technology breakthroughs, which enable financial services to be provided at a distance.

### *Derivatives*

The euro was expected to have an integrating impact on European markets, but the intensity of this effect in some segments of the market came as a surprise. One example was the considerable shift of business in the interest rates futures and options markets (mainly government bonds and interbank deposits). This segment reflected a sizable displacement of business at European level, mainly towards EUREX (owned 50% each by the German and Swiss bourses). The size of this impact on other European markets triggered a consolidation of international alliances, which had already begun in 1998. In Spain, MEFF (the Spanish financial futures markets) restructured internally in order to be more flexible to the changes in the composition of its business, and continued to develop Euro-GLOBEX, the European alliance in partnership with the French and Italian derivatives markets.

### **Approval of MEFF's participation in the Euro-GLOBEX alliance**

On 11 December 1998, MEFF Holding signed a European derivatives market interconnection agreement with Paris Bourse-SBF, S.A. (owner of MATIF and MONEP) and Borsa de Italia, SpA (owner of MIF and IDEM). Subsequently, the Porto Derivatives Bourse (BDO-Portugal) expressed its intention of joining this initiative. The objective of the agreement, whose entry into force was subject to the approval by the competent authorities in each country, is to create an alliance, called Euro-GLOBEX, between the European markets in financial derivatives in order to meet the competitive challenges of the euro. Following a favorable report by the CNMV, the Spanish Cabinet approved MEFF's participation in this alliance<sup>(\*)</sup> on 5 March 1999.

Euro-GLOBEX will enable its members to interconnect their systems in order to create a European trading network, broaden the range of products traded and increase the number of intermediaries. Its promoters expect the alliance will improve service quality and reduce costs. Euro-GLOBEX is open to other European markets whose infrastructures and product range are sufficiently developed. It also has a global scope through the GLOBEX alliance with the Chicago Mercantile Exchange and other non-European markets.

(\*) The approval of the Spanish cabinet will continue to be valid if new markets are included in the Euro-GLOBEX.

### *Public debt*

The integrating effect of the euro has also been felt considerably in the government bond markets, where yield spreads have been greatly reduced considerably. This has revived issuers' interest in obtaining the best conditions for placing their securities in the primary market and mobilizing them in the secondary market. In Spain, significant steps were made in this direction, such as admitting market makers that did not have a physical presence in Spain, and the creation of an electronic trading platform. In Europe, various initiatives were launched to establish electronic trading services at the European level, such as Euro-MTS (promoted by Euroclear), BrokerTec and Euro-BondClick (both promoted by large investment banks).

### *Securities issued by the private sector*

Although the effects of the euro on securities issued by private companies have not been as outstanding, they have been significant. The positive impact of the euro on private fixed-income issues has already been described. This market is logically more segmented by country in Europe than are government bonds, but we can anticipate strong competition in issuing, trading and clearing/settlement, especially in large company issues. The considerable increase in issues and trading in AIAF last year should stimulate a strengthening of this segment of the brokerage industry in Spain, which commenced in 1998 with the signature of the Protocol for the development of the fixed-income markets. The current initiatives to develop pan-European government bond markets could be followed by an identical solution for private fixed-income securities, and this is already envisaged in some cases.

The integrating effect of the euro on equities can be seen in the widespread use of pan-European indexes, both general and sectorial, which also reflect the increasing importance of Europe-wide strategies by investors, especially institutional investors. Eight large European bourses, including Madrid, signed an alliance aimed at developing a common trading platform for Europe's most liquid securities<sup>(19)</sup>. Even though the final details have not yet been established, this initiative by the big traditional equity markets already faces considerable potential competition from various initiatives proposed by international investment bank groups. These alternative initiatives include electronic trading platforms based on the existing markets such as Britain's Tradepoint, and Internet-based solutions.

The strategic moves by Europe's markets to reinforce their competitive position are not confined to establishing international alliances. One of the main adaptation strategies consists of setting up a more efficient and flexible structure. In this connection, some Europe's largest markets, such as the Scandinavian, Italian, Amsterdam and London bourses, have opted for at least partial demutualization, allowing financial investors to enter their capital and shares to be transferred freely.

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(19) This agreement includes the Madrid, London, Paris, Frankfurt, Milan, Brussels, Amsterdam and the Swiss stock exchanges.

## Strategic moves in Europe's clearing and settlement systems

The increase in international securities transactions inside and outside the euro zone means that the clearing and settlement systems need to integrate and improve efficiency. In Europe, up to now this service had been provided by many national depositaries (some countries, such as Spain, have several institutions of this type) and by the two traditional pan-European providers, Euroclear and Cedel. This hampers international transactions and makes them more expensive.

The new challenges and opportunities generated by the euro and progress in information technology are leading the clearing and settlement systems to adopt strategic measures focused on: (i) improving the system's efficiency; (ii) offering a single entry point to many markets for transactions with shares and bonds; and (iii) standardizing the procedures of the various central securities depositaries. The leading initiatives are as follows:

- The European Central Securities Depositories Association (ECSDA), of which SCLV is a member, has developed protocols to standardize the interconnection systems between its members, both for transfers of securities free of payment, e.g. for European Central Bank monetary regulation transactions, and delivery-versus-payment (DVP).
- In May 1999, Euroclear announced an interconnection project for the European central securities depositaries (CSDs) based on a hub and spoke structure. In this model, the various CSDs (the spokes) interconnect with one another via a hub, which has the capacity to intervene between the parties. The European CSDs can be accessed via a hub or a spoke, depending on the type of operation and the customer's specific needs. A single entry point was also established for non-European markets. In November, France's Sicovam and Clearnet established a strategic alliance with Euroclear to develop this project.
- Another major alternative is related to the European Clearing House (ECH), a pan-European institution which resulted from the merger of Cedel International and Deutsche Börse Clearing (the CSD controlled by the German bourse). This initiative also focuses on establishing a single entry point for international operations, but it proposes an integrative network of Europe's main national central securities depositaries. There are several possible ways of joining the network. The most integrative proposal would be full integration in ECH, but there are other purely operational association formulas. Italy's Monte Titoli and ECH have created a working group to analyze the possibility of Monte Titoli joining the project.

(\*) Sicovam is France's central securities depository. Clearnet, a subsidiary of ParisBourse SA, acts as a clearing house in both regulated and OTC markets.

### *Clearing and settlement*

Back-office activities, such as securities clearing and settlement, also felt the integrating pressure of the euro and technological breakthroughs. These activities are steadily gaining in strategic importance because of their considerable business potential and, especially, the implications for speed, cost and security of international securities transactions. The European Central Securities Depositories Association (ECSDA), of which SCLV is a member, is developing a system for efficient and secure links between the different national clearing and settlement systems. It is not the only alternative available. Europe's large international securities depositories, Euroclear and Cedel (the latter has already merged with the German bourse's clearing and settlement services), are promoting more integrative initiatives based on linking the various national and international systems, in the latter case, or on organizational integration, in the former (see box above). In Spain, the objectives of both the SCLV and the *Central de Anotaciones* (Book-Entry Service) are to develop international connections with other securities depositories (see chapter 8, about the SCLV's international connections). Coordination between the two institutions is essential if the strategy is to benefit users and the Spanish market services industry.

Last year was very favorable for issues, particularly in the fixed-income segment. It was also a very significant year in terms of the number and amount of initial public offerings and because of the importance that some of the newly-listed companies have already attained in Spain's markets. In this context, the need to improve issuers' reporting is, if anything, even more important. Transparency is essential to maintain investor confidence; consequently, improvements in this area will make it possible to exploit current market growth opportunities more effectively.

The CNMV is aware of this and, once again, gave priority to the supervision of issuers' reporting to the market in 1999. It focused in particular on the financial statements and management reports of listed companies. Although the quality of these reports has progressed significantly, it is still possible and necessary to achieve further improvements. In particular, it is the CNMV's aim that auditors' reports should generally be unqualified, since this will enhance the transparency of information for investors.

During 1999, several regulatory changes were introduced to make it easier for companies to have access to the stock markets. In the equity markets, the Ministerial Order dated 22 December 1999<sup>(20)</sup> modified the listing requirements in order to create a specific market segment that permits trading in companies which have not yet met the profit requirement but have high growth potential, are involved in cutting-edge technology or are particularly susceptible to price volatility. As for fixed-income, CNMV Circular 2/99<sup>(21)</sup> introduced the possibility of a single abridged application for shelf registration to cover issues made throughout the year without the need to file specific prospectuses for each issue.

### Issues and public offerings

The primary markets recorded highly significant growth during 1999 due not so much to the increase in the number of issues as to the rise in the amount per issue. As for the assets used, 1999 saw considerable growth in fixed-income securities and warrants. Conversely, equity issues declined slightly due to the reduction in the size of the public offerings. This can be explained by the lower volume of privatizations, since the 1998 figure was distorted by Endesa's public offering; in fact, other secondary offerings amounted to 10.143 billion euros, in comparison with 958 million euros in 1998, and there were significant primary offerings, including most notably Repsol's capital increase.

(20) Ministry of Economy and Finance Order dated 22 December 1999, which creates a special trading segment in the Securities Markets called the «*Nuevo Mercado*» and modifies the listing requirements.

(21) Circular 2/1999, dated 22 April, of the Comisión Nacional del Mercado de Valores, which approves certain prospectus formats for use in issues and public offerings, under powers granted to the CNMV under Article 18 of Royal Decree 291/1992, dated 27 March, on issues and public offerings, as amended by Royal Decree 2590/1998, dated 7 December, modifying the legal regime of marketable securities.

# 5

## ISSUERS' DISCLOSURE



Table 5.1  
ISSUES AND PUBLIC OFFERINGS REGISTERED

Amounts in thousands of euros

	No. of issues and offerings		Amount (*)	
	1999	1998	1999	1998
Fixed-income .....	143	111	58,440,548	18,880,326
Equities .....	104	150	14,964,088	17,296,876
Warrants .....	121	55	5,809,816	562,668
Total .....	368	316	79,214,452	36,739,870

(\*) Effective amount offered only in Spanish tranches.

Table 5.2  
REGISTERED OFFERINGS

Amounts in millions of euros

Company	Amount (*)	Description
Privatizations .....	787.3	
Indra Sistemas .....	446.4	
Red Eléctrica de España .....	340.9	Initial Public Offering
Other .....	10,142.8	
Transportes Azkar .....	244.4	Initial Public Offering
Bodegas y Bebidas .....	54.1	
Grupo Ferrovial .....	993.5	Initial Public Offering
Mecalux .....	80.0	Initial Public Offering
Lucent Technologies <sup>(3)</sup> .....	19.0	
Parques Reunidos .....	183.1	Initial Public Offering
Deutsche Telekom <sup>(3)</sup> .....	208.6	
Telefónica Publicidad e Información .....	634.7	Initial Public Offering
Repsol <sup>(1)</sup> .....	4,762.6	
Sogecable .....	570.0	Initial Public Offering
Agrupació Activ. e Invers. Inmobil. ....	19.8	
OHL <sup>(2)</sup> .....	162.9	
Amadeus <sup>(2)</sup> .....	737.5	Initial Public Offering
Inmobiliaria Colonial .....	441.6	Initial Public Offering
Telepizza .....	245.4	
Terra Networks <sup>(1)</sup> .....	780.4	Initial Public Offering
Bosques Naturales del Mediterráneo <sup>(4)</sup> .....	5.2	
Total .....	10,930.0	

(\*) Including the volume offered in the Spanish and international tranches.

(1) Primary offering of new shares.

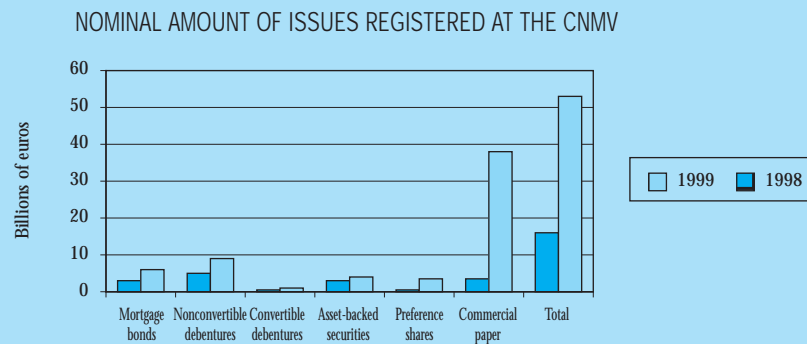
(2) Combined primary and secondary offering. The amount is the combination of the offering of old and new shares.

(3) Not listed in Spain.

(4) Not listed in any market.

## Strong growth in private-sector fixed-income issues

There was strong growth in private-sector fixed-income securities in 1999, as shown in the chart below. Particularly noteworthy was the growth in commercial paper programs registered with the CNMV, the amount of which increased six-fold in comparison with 1998, following a decline in recent years. There was considerable growth in issues related to mortgage financing (bonds and asset-backed securities) and preference shares, first used in Spain's markets in 1998, gained a favorable reception.



The economy's good performance, particularly the increase in business investment and low interest rates, undoubtedly had a favorable impact on private-sector issues. Demand for private fixed-income securities was favored by greater interest on the part of IICs due both to the decrease in net issues of government debt and to fund managers' desire to diversify their offering. Private-sector fixed-income issues were also stimulated by two specific economic policy measures that eliminated major disadvantages of these products with respect to government debt: similar tax treatment due to the elimination of withholding at source from interest paid to legal entities\* and similar treatment in the scope of monetary policy since private securities are now eligible for use as collateral in monetary regulation transactions in the euro area, which enhances the value of holding them from the standpoint of financial institutions (see box in Chapter 4).

Issues were also favored by changes to the securities markets' regulations which notably simplified the paperwork involved. The Securities Market Law Reform Law eliminated the need for a public deed in issues of commercial paper represented by book entries and traded on an official secondary market, provided that there is a prospectus. A CNMV Circular developed and specified the conditions under which an abridged prospectus may be used for shelf registration, which enables issues to be performed throughout the year without the need to file a separate prospectus for each issue. This possibility also applies to issues of warrants.

The increase in issues last year confirms the positive outlook for private-sector fixed-income securities; consequently, it should spur on continued in-depth reform of the primary and secondary private-sector fixed-income securities markets to make them more efficient and attractive in the new European context. As discussed in this chapter, last year an essential step was taken along this path with the creation of a single platform for registration, clearing and settlement, as envisaged in the protocol for the development of these markets that was signed in 1998 by the CNMV, the SCLV, the stock exchanges and AIAF.

(\*) Royal Decree 2717/1998, dated 18 December, which regulates personal income tax prepayments and non-residents' corporate income tax prepayments and amends the Corporate Income Tax Regulation in connection with withholdings and prepayments. The elimination of withholdings for legal entities is restricted, however, to securities represented by book entries which are listed on an official secondary market.

### ***Exceptions to the principle of freedom to issue***

The process to liberalize issues continued in 1999 with the publication of a Ministerial Order dated 28 May which eliminated the only prohibition persisting to date: that on the issue of securities with yields tied to price indexes. Issues of this type now require prior authorization from the Director-General of the Treasury and Finance Policy. This regulatory change has not yet had any impact in practice since no issue of this type has yet been made.

The second change introduced by the Ministerial Order of 28 May 1999 was the abolition of the requirement for prior authorization for issues with a maturity period of more than eighteen months without explicit yields or similar (i.e. bonds issued at a discount). An information system for the tax authorities was set up in these cases to guarantee that issuers and investors comply with tax law. Consequently, the CNMV sends the relevant information on the issues subject to its supervision to the State Tax Administration Office. The number of issues with a maturity period of more than eighteen months and without explicit yields or similar, or with an explicit yield accruing at more than one year, increased considerably in 1999, especially in the form of commercial paper and the new “forward financial contracts” (see “New Products” section).

### ***New features in the equities area***

Important regulatory changes also took place in the equities segment. Changes were made to facilitate access to the stock market by companies with difficulties or limitations in complying with the requirement of justifying the obtainment of future earnings. This includes companies in cutting-edge technology sectors and those with production processes that have a long maturity period and are heavily reliant on capital markets. The reform of the 1967 Stock Markets Regulation took shape in the Ministerial Order dated 22 December 1999, which created a special trading segment on the stock markets called the “*Nuevo Mercado*.” That Order makes listing requirements more flexible; nevertheless, the Board of Directors is required to include a report on the effect on future earnings of business and financial prospects in the documentation that is filed.

Another significant new feature in the area of companies is the reform of the Corporations Law under which the preferential subscription right can be eliminated in certain cases. This change makes it possible to apply all the placement systems characteristic of IPOs to traditional capital increase operations: creation of an underwriting and placement syndicate, duration of the operation, pricing mechanisms, etc. This initiative contributes to maximizing fund-raising by listed companies.

### ***Elimination of the prospectus for modifications to securities in circulation***

Two regulatory reforms<sup>(22)</sup> made it possible to abolish the requirement to write and file a prospectus with the CNMV for modifications to securities in circulation where, even if the change entails an alteration to the rights and obligations of securities-holders, it is so obvious and comprehensible to investors that the preparation of a prospectus is not justified.

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(22) Royal Decree 2590/1998, dated 7 December, modifying the legal regime of the securities markets and Royal Decree 845/1999, dated 21 May, partially modifying Royal Decree 1393/1990, dated 2 November approving the Regulation of Law 46/1984, dated 26 December, governing collective investment schemes in connection with real estate investment funds and companies.

With the aim of facilitating compliance with the regulation, Interpretative Letter 2/1999<sup>(23)</sup>, issued in July, lists some of the most usual operations that do not require the filing of a prospectus:

- Capital increases due to an increase in the par value of shares (without new contributions from shareholders).
- Capital reductions due to the decrease in the par value of shares caused by offsetting of losses or the refund of contributions, provided that the reduction has the same effect on all shareholders.
- Split of the par value of the shares in circulation, accompanied by automatic assignment of new shares with a lower par value.
- Capital increases or reductions which are the result of converting capital stock to euros and in which the increased capital is from the company's reserves or, in cases of capital reductions, the amount of the reduction is allocated to a restricted reserve.

### **New products**

The main innovation in 1999 was the possibility of issuing forward financial contracts. The new wording of the Securities Market Law introduced these instruments under the rules envisaged for marketable securities. A financial contract is an instrument that combines the characteristics of a derivative (an option on shares of listed companies) and a fixed-term deposit since the financial institution remunerates the subscriber with interest during the contract term.

### **Periodic reporting by listed companies**

Two novelties were introduced in 1999 in the procedures for periodic reporting to the CNMV: the possibility of reporting in euros and by electronic means. The first option was chosen only by a minority of issuers in comparison with other supervised entities. The second new feature, the CIFRADOCC/CNMV encryption and electronic signature system, will now be extended to issuers (see box in Chapter 1). The use of this system will mean sizeable operating advantages not only for issuers but also for the CNMV and investors in general due to the greater speed, secure transmission and improvement of the quality of reporting to the market.

Aside from these innovations, the CNMV continued to pay particular attention to the qualitative sections of quarterly and half-yearly reporting formats. Specifically, the “evolution of business” and “bases of presentation and valuation methods” chapters are increasingly important for obtaining a fuller picture of the financial position and activity of the reporting party during the period. Occasionally, reporting changes have affected the inter-year comparability of an entity's financial statements.

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(23) Interpretative Letter of the CNMV 2/1999, dated 19 July 1999, on the modifications of securities in circulation which do not require the registration of a prospectus at the CNMV.

## *Financial statements and auditors' reports*

The CNMV considers that it is the unshirkable duty of issuers to file financial statements with clean audit opinions in order to improve the transparency of information about companies seeking to raise public savings. During 1999, the CNMV pursued the task which it had already commenced in previous years and reminded certain issuers of the need to improve the quality of their financial statements. Nevertheless, the CNMV was satisfied to see the receptive attitude of those issuers which, having filed an auditors' report with a qualified opinion for 1997, had taken the appropriate measures to obtain a clean opinion in 1998.

As shown in Table 5.3, these efforts continued to give satisfactory results. The number of issuers with a qualified auditor's report on the 1998 financial statements (filed during 1999) continued to decrease. The number of the auditors' reports with scope limitations and uncertainties has decreased and, furthermore, auditors' reports with denials of opinion or adverse opinions represent a minority.

In spite of these advances, there is still room for improvement in the quality and quantity of information. In view of the persisting shortfalls in some issuers' financial statements, the principal measures adopted by the CNMV were as follows:

- Demands to companies whose auditors' report on the 1998 individual and consolidated financial statements did not include a clean opinion, where the accounting impact of the qualification(s) was material (27 companies). Table 5.4 lists the responses made to rectify the qualifications; it is noteworthy that most companies responded satisfactorily.
- Particular attention was paid to auditors' reports with scope limitations. In these cases, the companies have been required to provide all the necessary information so that the auditors can perform their work.
- Issuance of demands to certain companies to remedy the lack of information in their financial statements. Two shortfalls were noteworthy: the failure to disclose companies which own more than 10% of the capital stock of the reporting company, and the failure to include information about holdings of 3% or more in listed companies and of 20% or more in unlisted companies.
- As for the suspension of trading arising from auditors' reports with a disclaimer of opinion, the shares of Grupo Fosforera and Euro XYZ (formerly PEBSA) remained suspended due to the extent of the audit qualifications.

Table 5.3

AUDITS OF ISSUERS FILED WITH THE CNMV<sup>(\*)</sup>

	1998		1997		1996	
	No.	%	No.	%	No.	%
1. AUDITORS' REPORTS FILED WITH THE CNMV						
– Individual financial statements .....	406	64.1	420	64.1	421	64.1
– Consolidated financial statements .....	227	35.9	236	35.9	236	35.9
Total auditors' reports filed .....	633	100.0	656	100.0	657	100.0
– Special reports under Ministerial Order 30/9/92 .....	79		93		102	
2. AUDITOR'S OPINION						
– Clean opinion .....	547	86.4	550	83.8	517	78.7
– Qualified opinion .....	86	13.6	106	16.2	140	21.3
3. TYPES OF QUALIFICATION						
– No. of auditors' reports with exceptions .....	54	62.8	54	50.9	65	46.4
– No. of auditors' reports with uncertainties, etc. ....	40	46.5	71	67.0	100	71.4
– No. of auditors' reports with limitations .....	7	8.1	10	9.4	20	14.3
Total qualified auditors' reports .....	86	100.0	106	100.0	140	100.0
4.1. EFFECTS OF EXCEPTIONS ON EARNINGS						
– No. of auditors' reports with positive effects on earnings .....	15	27.8	17	31.5	17	26.2
– No. of auditors' reports with negative effects on earnings .....	28	51.9	24	44.4	41	63.1
4.2. EFFECTS OF EXCEPTIONS ON NET WORTH .....						
– No. of auditors' reports with positive effects on net worth .....	23	42.6	16	29.6	11	16.9
– No. of auditors' reports with negative effects on net worth .....	14	25.9	19	35.2	26	40.0
Total auditors' reports with exceptions .....	54	100.0	54	100.0	65	100.0
5. NATURE OF UNCERTAINTIES, ETC. ....						
– Going concern .....	18	45.0	26	36.6	35	35.0
– Tax contingencies .....	13	32.5	17	23.9	39	39.0
– Recovery of assets .....	21	52.5	29	40.8	35	35.0
– Assets revalued under regional regulations .....	0	0.0	0	0.0	2	2.0
– Litigation .....	11	27.5	17	23.9	21	21.0
– Denial of opinion or adverse opinion .....	3	7.5	6	8.5	12	12.0
– Other uncertainties .....	14	35.0	19	26.8	43	43.0
Total auditors' reports with uncertainties, etc. ...	40	100.0	71	100.0	100	100.0

(\*) Through 31 December 1999.

Table 5.4

DEMANDS ISSUED TO LISTED COMPANIES IN 1999 IN CONNECTION WITH  
THE AUDIT OF THE 1998 FINANCIAL STATEMENTS

Electronic market	Open outcry	Second market
1.- Companies which did not file consolidated auditors' reports and have remedied the situation.		
	GRES DE NULES, S.A. HISPANA TRES, S.A.	
2.- Companies with qualified auditors' reports which have remedied the situation or have set a deadline for remedying it.		
ESPAÑOLA DEL ZINC	BOLSANOR	
GRUPO DURO FELGUERA	CLEOP	
MIDESA	CÍA. TRANSP. E INFORMES Y PROYECTOS	
NH HOTELES		
RADIOTRONICA		
TABACALERA		
URALITA		
3.- Companies with qualified auditors' reports which have stated that que qualifications cannot be corrected in the short term.		
GRUPO FOSFORERA (Suspended from trading)	ALVI	
GLOBAL STEEL WIRE	CARTEMAR	
GRUPO PICKING PACK	GRAND TIBIDABO	
LA SEDA DE BARCELONA	HULLAS DEL COTO CORTÉS	
NUEVA MONTAÑA QUIJANO	JUMBERCA	
SNIACE	MINERO SIDERÚRGICA DE PONFERRADA	
URBAS	EURO XYZ (formerly PEBSA) (Suspended from trading)	
4.- Companies whose notes to financial statements did not contain all the information that is required under the Companies Law.		
- For failing to report on companies that own more than 10% of their capital stock.		
CÍA. VINÍCOLA DEL NORTE DE ESPAÑA	ANDRÉS RUIZ DE VELASCO	AEGIS ESPAÑA
INBESOS	BOLSANOR	CALPE INVEST
	CÍA. DE INVERSIONES CINSA	ESTABANELL Y PAHISA
	CÍA. ESPAÑOLA PARA LA F.M. VIDRIO	ESTEBAN ESPAÑA
	CORP. IVAMOSA	INVERSIONES CERVO
	DALTAR	
	ELECNOR	
	FINANZAS INMUEBLES CISNEROS	
	FORJAS DE BERRIZ	
	FORUM INMOBILIARIO CISNEROS	
	INCRECISA	
	JUMBERCA	
	MERCAPITAL	
	NAVIERA MURUETA	
	PMRK INVESTMENT	
	NOBO	
	PLAYA DE ALBORAYA	
	TERREVA	
	UNIÓN EUROPEA DE INVERSIONES	
	VALENCIANA DE NEGOCIOS	
	UNIÓN CATALANA DE VALORES	
- For failing to provide full information on group companies.		
VISCOFÁN		INMOBILIARIA CARROGGIO

## Disclosure of director and executive remuneration schemes involving stock options

The remuneration programs for directors and managers through options on a company's own stock are increasingly frequent among listed companies. The CNMV has always believed that the market must be informed of the adoption of these systems and it pointed this out as early as 1998, firstly in a letter addressed to issuers and later through an Interpretative Letter aimed at issuers, the stock markets and securities firms <sup>(1)</sup>. During 1999, several companies reported their stock option programs either by specific notifications of significant events or in the framework of more extensive reporting or in issue prospectuses. Nevertheless, during the year it became evident that this system did not provide enough transparency for the market.

### COMPANIES WHICH REPORTED EMPLOYEE OR EXECUTIVE REMUNERATION SCHEMES TO THE MARKET IN 1999

Companies	Reported through:
BANCO ZARAGOZANO, S.A.	Issue prospectuses
BANKINTER, S.A.	Issue prospectuses
BBVA (*)	Issue prospectuses
BSCH (*)	Issue prospectuses
INDRA SISTEMAS, S.A.	Notification of significant event
METROVACESA	Issue prospectuses
OBRASCÓN HUARTE LAÍN, S.A.	Notification of significant event
PARQUES REUNIDOS	Issue prospectuses
PICKING PACK	Issue prospectuses
PULEVA, S.A.	Issue prospectuses
REPSOL, S.A.	Issue prospectuses
SOL MELIÁ	Issue prospectuses
TAVEX ALGODONERA, S.A.	Notification of significant event
TELEFÓNICA, S.A.	Issue prospectuses
TELEPIZZA	Issue prospectuses
TERRA NETWORKS, S.A.	Issue prospectuses
TPI	Issue prospectuses
UNIÓN FENOSA, S.A.	Issue prospectuses

Note: Another 55 foreign companies reported via prior notifications, since the operations are partially exempt from the requirement to draft an issue prospectus.

(\*) Information filed by merged banks prior to the merger.

Through the Spanish Budget Annex Law for 2000, the Spanish Parliament established a specific system of reporting requirements for issuers in this connection. The above-mentioned Law amends the Securities Market Law and establishes as follows:

- 1) Directors of listed companies must notify the market, through the CNMV, about the acquisition or disposal of options on the company's stock under any form.

(1) Letter of the CNMV's Director General for Primary Markets, dated 16 June 1998, addressed to the chairmen of all the issuers, about the procedure to be followed by issuers in notifications about the creation of incentive plans for employees which are linked to the price of the issuers' shares, and reporting thereon to the market and Interpretative Letter 14/1998, dated 28 December, about significant events and notification thereof to the CNMV and the market (Annex 1.c.iv). Both documents are available on the CNMV web site.



- 2) Executives and directors of listed companies must inform the CNMV of the deliveries of shares and stock options which they receive through the implementation of their company's remuneration system. They must also report any remuneration systems which are linked to the value of the shares, and any change in such systems. These notifications will be made public in the same way as significant events.
- 3) Listed entities which, on entry into force of this Law, had any remuneration system in force for their directors or executives involving the delivery of shares or options on shares or any other remuneration system linked to the value of the shares must file with the CNMV a supplement to their current prospectus or a new specific prospectus providing detailed itemized information about the shares and options or settlements relating to directors and executives, prior to the implementation or elimination of the remuneration system. The information on the executives may be filed on an aggregate basis. The resolution of the Shareholders' Meeting at which the remuneration system is approved or ratified must be presented as the accrediting documentation referred to by Article 10 of the Royal Decree 291/1992, dated 27 March, on issues and public offerings.

Likewise, the Spanish Budget Annex Law for 2000 amended the Corporations Law to require that remuneration in the form of shares or options must be specifically envisaged in the company's bylaws and, for it to be applicable, it requires a resolution from the Shareholders' Meeting. In the particular case of the directors of a listed company, the exercise and disposal of the options granted prior to 1 January 2000, where not specifically included in the company bylaws, will in any event require prior approval from the Shareholders' Meeting.

### **Information about the adoption and implementation of the Code of Good Governance at listed companies<sup>(24)</sup>**

The Code of Good Governance was considered a necessary contribution to encourage transparency and to protect shareholders' rights in connection with the operation of the governing bodies of corporations. In 1998, the CNMV prepared standardized formats so that listed companies which voluntarily adopted some or all of the Code's recommendations could report to the market, in a systematic, uniform way that can be readily understood by investors, on the rules of governance used by the company and the extent to which they have implemented the above-mentioned recommendations.

Tables 5.5 and 5.6 provide information about the adoption of the Code of Good Governance filed by companies listed on the continuous market through 31 December 1999, and the companies which have filed the regulations of their Board of Directors with the CNMV<sup>(25)</sup>.

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(24) Information available on the CNMV's web site.

(25) Filing the Regulation of the Board of Directors with the CNMV is voluntary as is the decision to make it public through another channel and it does not mean that said Regulation necessarily meets the recommendations of the Code of Good Governance.

Table 5.5

NUMBER OF ELECTRONIC MARKET COMPANIES THAT HAVE FILED INFORMATION ON THEIR SYSTEM OF CORPORATE GOVERNANCE WITH THE CNMV

Data at 31 December 1999<sup>(1)</sup>

Type of information	Number of companies		% of capitalization	
	Electronic Market Total	Ibex 35	Electronic Market	Ibex 35
1. Board of Directors Regulations .....	42	13	49.3	53.1
2. Annual information on the adoption of CGG <sup>(2)</sup> recommendations .....	67	26	76.7	90.3
Pro memoria: Companies which have filed: 1 + 2 .....	25	9	41.3	51.3

(1) Information available on the CNMV web site.

(2) Code of Good Governance.

Table 5.6

ELECTRONIC MARKET COMPANIES THAT HAVE FILED INFORMATION RELATING TO THEIR SYSTEM OF CORPORATE GOVERNANCE WITH THE CNMV

Data at 31 December 1999<sup>(1)</sup>

Companies which have filed information	Regulations of the Board of Directors	Annual information on the adoption of CBG <sup>(2)</sup> recommendations
Ibex 35 companies		
ACERALIA	Yes	Yes
ACERINOX S.A.	No	Yes
ACESA	No	Yes
AGUAS DE BARCELONA	No	Yes
ALTADIS	Yes	Yes
ARGENTARIA	Yes	Yes
AUMAR	No	Yes
B. POPULAR	No	Yes
BANKINTER	No	Yes
BBV	No	Yes
BSCH	No	Yes
C.C. CONTINENTE	Yes	Yes
C.C. PRYCA	No	Yes
CORP. ALBA	No	Yes
CORP. MAPFRE	No	Yes
ENDESA	Yes	Yes
GRUPO DRAGADOS	No	Yes
GRUPO FERROVIAL	Yes	NA <sup>(3)</sup>
HIDROCANTÁBRICO	No	Yes
IBERDROLA	No	Yes
INDRA	Yes	Yes
NH HOTELES	Yes	No
PULEVA	No	Yes
REPSOL	Yes	Yes
SOL MELIÁ	Yes	No
TELEFÓNICA	Yes	Yes
TELEPIZZA	No	Yes

Table 5.6 (cont.)

## ELECTRONIC MARKET COMPANIES THAT HAVE FILED INFORMATION RELATING TO THEIR SYSTEM OF CORPORATE GOVERNANCE WITH THE CNMV

Data at 31 December 1999<sup>(1)</sup>

Companies which have filed information	Regulations of the Board of Directors	Annual information on the adoption of CBG <sup>(2)</sup> recommendations
URALITA	Yes	Yes
VALLEHERMOSO	No	Yes
VISCOFÁN	Yes	No
Other electronic market companies		
ABENGOA	Yes	Yes
ADOLFO DOMÍNGUEZ	Yes	Yes
ALDEASA	Yes	Yes
AMADEUS	Yes	NA <sup>(3)</sup>
AMPER	Yes	Yes
ASTURIANA DE ZINC	Yes	Yes
AZUCARERA EBRO	No	Yes
BANCO DE VALENCIA	Yes	Yes
BANCO ESFINGE	Yes	Yes
BANCO GUIPUZCOANO	Yes	Yes
BANCO ZARAGOZANO	Yes	Yes
BANESTO	No	Yes
BCO. DE ANDALUCÍA	No	Yes
BCO. DE CASTILLA	No	Yes
BCO. DE CTO. BALEAR	No	Yes
BCO. DE GALICIA	No	Yes
BCO. DE VASCONIA	No	Yes
BCO. PASTOR	No	Yes
BODEGAS Y BEBIDAS	Yes	No
C.V.N.E.	Yes	Yes
CATALANA OCCIDENTE	Yes	No
CÍA. DIST. LOGISTA	Yes	No
CORP. BANESTO	No	Yes
CORTEFIEL S.A.	No	Yes
CRISTALERIA ESP.	Yes	No
ENACO	Yes	Yes
ENCE	No	Yes
ENERGÍA ARAGONESAS	No	Yes
ERCRÓS	No	Yes
FEDERICO PATERNINA	Yes	No
FUNESPAÑA	Yes	No
GRUPO DURO FELGUERA	No	Yes
GRUPO PICKING PACK	No	Yes
IBÉRICA DE AUTOPISTAS	No	Yes
IBERPAPEL GESTIÓN	No	Yes
INM. COLONIAL	Yes	NA <sup>(3)</sup>
INMOBILIARIA URBIS	No	Yes
KOIFE	No	Yes
MAPFRE VIDA	No	Yes
METROVACESA	Yes	Yes
MIQUEL Y COSTAS	No	Yes
NICOLÁS CORREA	Yes	Yes
OBRASCÓN HUARTE	Yes	Yes
PARQUES REUNIDOS	Yes	NA <sup>(3)</sup>
PRIMA INMOBILIARIA	No	Yes

Table 5.6 (cont.)

ELECTRONIC MARKET COMPANIES THAT HAVE FILED INFORMATION RELATING TO THEIR SYSTEM OF CORPORATE GOVERNANCE WITH THE CNMV

Data at 31 December 1999<sup>(1)</sup>

Companies which have filed information	Regulations of the Board of Directors	Annual information on the adoption of CBG <sup>(2)</sup> recommendations
RED ELÉCTRICA	Yes	NA <sup>(3)</sup>
SUPERDIPLO	No	Yes
T.P.I.	Yes	NA <sup>(3)</sup>
TRANSPORTES AZKAR	Yes	Yes
TUBACEX	Yes	Yes
TUDOR	No	Yes
VIDRALA	Yes	Yes
ZELTIA	Yes	No

<sup>(1)</sup> Information available on the CNMV web site.

<sup>(2)</sup> Code of Good Governance. Last year to which the information refers: 1998.

<sup>(3)</sup> Not applicable since this company was listed for the first time in 1999.

# 6

## SUPERVISION OF INTERMEDIARIES AND COLLECTIVE INVESTMENT INSTITUTIONS

The CNMV uses two methods to supervise intermediaries and IICs: distance supervision and on-the-spot supervision. Distance supervision is based on analyzing the periodic reporting which supervised entities must send to the CNMV. This analysis focuses on the on-going control of aspects such as compliance with mandatory coefficients or with the calculation of liquidation values and other specific issues that may affect a given group of supervised firms due to regulatory changes, temporary reasons or incidents of any type. Consequently, during 1999 for example, special emphasis was placed on the analysis of investments abroad, which have experienced spectacular growth in the last two years as a share of investment fund portfolios. Investment firms' internal control systems were analyzed and the action of representatives was checked on the basis of complaints.

On-the-spot supervision is based on checks made at firms' headquarters which supplement distance supervision and whose aim is to verify the information sent to the CNMV or to review aspects which cannot be supervised remotely. Accordingly, in 1999, particular attention was paid to the review of internal control systems, the actions of representatives and compliance with rules of conduct and reporting obligations.

Reporting by the various ESIs and SGIICs serves as the basis for the CNMV to prepare quarterly statistics. These statistics offer investors useful information for decision-making and also represent a way of increasing transparency in the sector. In 1999, the statistics on IICs were changed by taking advantage of the new information available at the CNMV and also in an endeavor to offer new tools of analysis for parties interested in this sector.

### Supervision

#### *Collective investment schemes*

- *Compliance with mandatory coefficients.* The most noteworthy development was the need to adapt control systems as a result of the regulatory modifications in connection with trading in derivatives. The initial results evidenced certain shortcomings in entities' reporting; consequently, specific surveillance measures to alleviate these situations are being developed. There were some isolated cases where the limits were exceeded, in any event for reasons beyond the control of the SGIICs, and the mandatory notification was not sent to the CNMV.
- *Systematic analysis of yields.* Analysis of the calculation of the liquidating values continued and errors arising for a number of reasons were detected. In particular, it was confirmed that numerous fund managers incorrectly valued stocks that had been suspended from trading. As in previous years, the CNMV paid particular attention to cases where the erroneous calculation of the liquidating value had a financial effect on investments and divestments by investors.
- *Specific checks.* Aside from the systematic supervision processes, during 1999 various specific analyses were made, which included most notably:

- *Analysis of investments in foreign securities.* The introduction of the euro and the search for new investment alternatives has led to spectacular growth in foreign investment as a part of IICs' portfolios. As in 1998, this prompted the CNMV to pay particular attention to this point. It was specifically checked that the securities in the portfolios comply with IIC regulations (listing on appropriate markets, valuation, etc.). The results revealed occasional cases of securities that were not listed on authorized markets, although most related to issuers of acknowledged solvency.
- *Review of the reports on the level of compliance with the internal control rules established by each fund manager.* During 1999, the reports on the functioning of the internal control systems that must be approved by the Boards of Directors of entities that trade in derivatives were filed with the CNMV for the first time. A review of their contents disclosed no noteworthy incidents.
- *Content of the periodic reports to investors.* Controls were carried out to check that the reports to investors included all the contents required by regulations and that those contents coincided with the confidential information filed with the CNMV. In general, although some problems were detected, particularly in foreign funds marketed in Spain, these checks gave positive results.

## Abridged prospectuses and quarterly reports

The desire to provide investors with a better understanding of the information supplied by fund managers triggered the approval, at the end of 1998, of a Ministerial Order<sup>(1)</sup> permitting the use of abridged prospectuses and quarterly reports for mutual funds. This rule was developed in 1999 through a CNMV Circular<sup>(2)</sup> which, in addition to specifying the procedure for the registration and updating of the prospectuses and the conditions for their use, established the formats which must be followed in the above-mentioned documents. At the same time, in order to consolidate all the provisions regarding the prospectuses of financial IICs into a single rule, that Circular also included the rules on SIMs and SIMCAVs contained in an earlier Circular<sup>(3)</sup>.

The introduction of abridged quarterly reports is particularly useful for investors since the information provided is clear, concise and uniform and does not preclude the possibility of receiving the full information envisaged in the rule. The new legislation is also useful for fund promoters and marketers since it acknowledges for the first time the possibility of conveying information to investors through electronic media and abridged models which, due to their format, are easily adapted to this purpose. Since the new rule came into force, 221 funds have used abridged prospectuses (10% of all funds).

(1) Ministerial Order dated 1 October 1998, on the causes for updating prospectuses and on the abridged quarterly report of securities investment funds and money market funds.

(2) CNMV Circular 1/1999, dated 14 January, on the prospectuses and quarterly reports of mutual funds.

(3) CNMV Circular/1994, dated 16 March, on the updating of the prospectuses of collective investment schemes.

## Improvements in the quarterly report on IICs published by the CNMV

The quarterly report on IICs published by the CNMV was substantially changed last year. The availability of new information and a new presentation now enable investors, potential investors and financial market analysts to have access to a selection of information of interest for both investment decisions and overall monitoring of the sector.

The most important new feature is the use of the new classification of funds based on investment policies (see box in Chapter 3). The relevant data of the various individual institutions are presented in the same table for each type of fund in order to facilitate comparison. Noteworthy among the information provided for each fund is the yield/risk combination, which is essential for investment decisions, and the fund's investment policy. The risk indicators used are annual volatility and the duration at the end of the quarter in the fixed-income portfolio. Furthermore, itemized information was included about the breakdown of the portfolio by asset type, specifying their source in terms of investment area: Spanish markets, other markets in the euro area and the rest of the world.

In order to facilitate real awareness about the total costs borne by each fund, the itemized information also states the expenses charged to the fund in any connection (management and depository commissions, audit expenses and other service charges) as a percentage of average assets.

Other equally important data in the report are the half-yearly data provided by fund managers with the intention of providing better awareness of the structure of the business in the sector, both in pure management and marketing. Accordingly, the publication provides users with itemized information from each fund manager about results, management fees and commissions paid to marketers.

- *Real estate investment funds*. Modifications in regulations in this sector, together with the growth in assets during the year and the peculiar workings of this sector, led to specific checks of fund operations. These checks identified the need to cover certain voids in the current regulations, basically in the valuation rules for new categories of assets in which investments are permitted.

### Investment firms

The controls of investment services companies' compliance with coefficients were satisfactory. These companies were also subject to other specific controls which include, most notably, the following:

- *Balances receivable and payable*. In the case of balances receivable, the aim of the surveillance measures was to verify whether or not brokers were providing finance to their clients. When it was detected that an entity repeatedly granted finance, the Inspectorate was informed so as to consider the commencement of penalty proceedings. The balances were examined in order to check that they were temporary and instrumental in nature. No breach was detected.
- *Internal control systems*. As a result of the entry into force of CNMV Circular 1/98 on internal control systems of investment firms, during 1999 the mandatory report describing the internal control systems that had been implemented was requested from firms at which there were signs of shortcomings in this area.

- *Follow-up of complaints*. As usual, the complaints filed at the CNMV against investment firms provided the basis for the identification of certain anomalous practices. In 1999 these included, most notably (due to the greater risk entailed), the absence of adequate controls on representatives' actions and the acceptance of verbal orders without the related documentary support. In these cases the CNMV notified the firms involved of the need to review their internal control systems.
- *Provision of investment services by foreign firms*. Due to the operations in Spain of investment firms from other EU countries under the unrestricted provision of services regime, the CNMV considered it necessary to set up the appropriate channels for collaboration between the various supervisors involved. There are aspects in EU regulations which require interpretative criteria to be established, such as the designation of the place where the investment service is deemed to be provided.

### General code of conduct and rules of action in the management of investment portfolios (Ministerial Order dated 7 October 1999)

The discretionary and personalized management of investment portfolios in accordance with the mandates conferred by investors occupies a preferential place among the services that investment firms and credit entities provide to their clients.

The extraordinary development of this business in Spain in recent years has required the development of specific regulations which take into account the characteristic features of investment portfolio management by adapting the more general rules of conduct that regulate the actions of participants in the securities market.

The body of rules of conduct that was created, which is directed specifically at governing relationships between managers and their clients, supplements the general principle of diligence in the behavior of the manager with specific rules that defend clients' interests. It requires that the investment decisions taken by managers coincide with the general investment criteria agreed in writing with each client, and notification must be provided of any changes that arise. For this purpose, an essential requirement, prior to the commencement of the investment activity, is that the manager be aware of the purpose of the investment and its client's risk profile, and that the latter identifies in writing the types of securities in which the manager may invest their assets. Also, in order to protect clients' portfolios, it requires that clients' securities, cash and transactions in progress be identified and separated at all times from those of other clients and the fund manager itself.

Finally, particular attention is paid to conflicts of interest, requiring firms to warn and notify their clients of conflicts of interest which arise in the performance of their business. These requirements must be fulfilled, for example, when the investment is made in securities or financial instruments issued by the fund manager or companies in its group and when the firms receive commissions from third parties arising from commissions or expenses paid by their clients in the framework of the portfolio management contract.

The CNMV is currently working on a Circular that will develop the Ministerial Order dated 7 October 1999.



## Survey of broker-dealers and brokers on internal rules of conduct and Chinese walls

At the beginning of 1999, the CNMV published the results of a survey of broker-dealers and brokers about the use of internal regulations and the creation of information barriers (“Chinese walls”). The aim of this survey was to prompt firms to reflect on issues regarding compliance with rules of conduct and, as a supplement to and independently of the CNMV’s usual tasks of supervision and inspection, to identify the problems encountered when designing and applying their internal rules of conduct. The results are highly representative: the firms that completed the questionnaire account for more than 80% of the sector’s volume of business and are involved in the full range of activities.

According to the replies, there has been wide-spread acceptance among broker-dealers and brokers of the need to ensure effective compliance with rules of conduct by their directors, executives and employees. 75% of the firms disclosed that they have a specific manager in this area who is responsible for designing regulations and supervising compliance. At other firms, this function is assigned to other managers or, in the cases of some banking subsidiaries, to the Group’s head of regulatory compliance.

In the survey, broker-dealers and brokers attached considerable importance to the supervision of the personal transactions of directors, executives and employees so as to prevent the use of privileged information and avoid conflicts of interest. Most firms chose to require prior authorization for these individuals’ private transactions, adding further restrictions in the case of securities issued by the group itself or during “sensitive” periods such as, for example, the days prior to reporting results. These internal control procedures and other supplementary measures, such as the minimum period of holding portfolios or time lags between an order and its execution, effectively contribute to preventing the unfair use of privileged information.

The replies to the questionnaire suggest that firms also pay considerable attention to the regulation of their operations with clients (identification, rules on transactions and counseling, portfolio management limits, complaints, etc.). However, in many cases these rules are not included in the internal rules of conduct, which would be advisable to ensure that the employees involved are more familiar with them. Also, establishing flexible, centralized and transparent procedures for resolving complaints should be a priority for firms.

All the firms with a variety of activities stated that they had adopted some type of “Chinese wall” measures. The preferred system is physical separation, including separate networks and computer files. In other cases, the individuals in each area were asked to make a confidentiality commitment. Although physical separation is more effective in principle, it does not ensure that there will be no information flows. In general, it is necessary for the firms to consolidate the role of the regulatory compliance manager who, among other functions, should be aware of and, if appropriate, approve at all times the flow of sensitive information between individuals from different areas. The replies to the questionnaire indicated that many firms had already established the duty of employees or executives with access to privileged information on a specific issue should refrain from making decisions in this connection.

## On-the-spot supervision

Last year, as in 1998, on-the-spot controls continued to stress aspects such as compliance with rules of conduct and reporting obligations and the formalization of relationships with clients through the appropriate contracts. In 1999, particular attention was paid to the internal risk control systems established by firms, and direct inspections were made of the representatives of some investment firms.

The follow-up of previous inspections was enhanced in order to check that the firms correctly resolved the shortcomings or weaknesses detected by the CNMV's inspection services.

## Solvency of securities firms and fund managers

Good results in trading for their own account enabled broker-dealers and brokers to achieve an aggregate operating margin in 1999 which was similar to the previous year, offsetting the slight decrease in net service revenues and the increase in overheads. The aggregate earnings of the sector dropped, however, by almost 30% due to heavy atypical losses at AB Asesores following its acquisition by Morgan Stanley Dean Witter<sup>(26)</sup>. Net of this effect, the earnings in the rest of the sector grew by around 2% in comparison with 1998.

The good results of broker-dealers and brokers in recent years has had a positive effect on these firms' balance sheet structures. Last year, computable equity rose by 35% to 1.138 billion, 76% of which was represented by broker-dealers.

The equity of Spanish securities firms has always been higher than the mandatory minimum requirements<sup>(27)</sup>. This characteristic was accentuated in 1999, when equity in excess of the minimum requirement reached € 879 million, 41% more than in 1998.

SGIICs are also very solvent. Computable equity amounted to € 1.048 billion which is considerably higher than minimum equity requirements (around €670 million). The same is true of SGCs: their computable equity amounted to € 52 million at 1998 year-end, which represents €34 million of surplus equity above the minimum requirements.

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(26) AB Asesores, which had obtained pre-tax profits of €19.4 million in 1998, incurred losses of €15 million (€100 million including the tax effect) due to early amortization of €180 million.

(27) Broker-dealers and brokers usually calculate their requirements as a percentage of the minimum required capital stock. In 1999, 74% of firms used this calculation.

# 7

## SECONDARY MARKETS

The introduction of the euro and the implementation of European common monetary policy has created a new situation in the securities markets. Growing competition between organized securities markets has led them to look for alliances. New technologies have made their mark on the markets in two ways: through new trading channels and the new listings of technology companies, representing a veritable *revolution* which it is still difficult to evaluate at present.

In this context, the CNMV has collaborated in initiatives such as the creation of LATIBEX – the market in Latin American securities, and the establishment of a segment in the stock market for stocks with high growth potential. From the supervisory standpoint, the most important incidents arose precisely from the buying fever unleashed by technology stocks in the last few months of the year with pricing on the first day of listing of Terra Networks, Telefónica's Internet subsidiary, which was the first company of this type to be floated on the Spanish stock market.

### Surveillance of activity in the secondary markets

The Spanish securities markets lacked a clear trend throughout almost all of 1999 until the end of November, when gains finally predominated and there was high volatility, although less than was observed in 1998. The Spanish securities markets appreciated by less in 1999 than during the previous two years and by less than the other large stock markets in Europe. Trading increased slightly in 1999, due particularly to special transactions (put throughs, block trades, IPOs, mergers, etc.). Large cap stocks accounted for an even larger share of trading.

Trading in private-sector fixed income securities on AIAF doubled in comparison with 1998, showing the upturn of this segment in the primary markets. As indicated in Chapter 4, repos linked to monetary policy increased in importance within AIAF.

The new economic reality of the euro had a more immediate impact on the MEFF derivatives markets. Trading in interest rate contracts plummeted. Trading in interbank interest rate contracts on MEFF RF fell to marginal levels and trading in government bond contracts slumped. Total trading on MEFF RV rose due to the outstanding performance of stock options, which offset the slight decline in futures linked to the stock market index and, particularly, Ibex-35 options. No activity was recorded on the citrus futures market during the year.

## Fixing and open outcry

Half-way through 1998, fixing commenced as a form of trading with the aim of improving the price formation process in a number of quite illiquid stocks, by concentrating trading at specific times during the session. Despite this reform, trading in low liquidity stocks was not increased as a result of joining this segment. In fact, the trading volume in companies which joined the fixing system shrank in 1999, and the number of securities listed in the fixing segment remained practically stable. One possible explanation for the relative failure is the tendency to focus on large cap stocks observed among investors in Spain's market in recent years.

Total trading on the open outcry market rose slightly although it continued to account for a minimal amount of total trading in equities<sup>(\*)</sup>. Increased activity was due to the considerable rise in the number of listed companies, most of which are securities investment companies, i.e. SIMCAVs.

(\*) In 1999, the combined volume of the open outcry segment and the Second Market accounted for slightly more than 1% of total trading in equities.

## Reporting on extraordinary transactions

The reform of the Securities Market Law introduced the possibility of performing extraordinary transactions, defined as transactions that are not subject to some or all of the official markets' operating rules. These transactions can affect the correct formation of prices on official markets and, consequently, the above-mentioned reform made it mandatory to notify extraordinary transactions to the markets' governing companies.

Through a Circular<sup>(\*)</sup>, last year the CNMV established the reporting rules for extraordinary transactions. These rules affect the three cases envisaged in Article 36 of the Securities Market Law, namely, *(i)* extraordinary transactions in which both the buyer and seller reside or have their habitual establishment outside Spain, *(ii)* transactions not performed in Spain, and *(iii)* transactions in which buyer and seller give prior authorization to an investment services firm or credit institution to perform the transaction outside the official markets' operating rules. In the first two cases, the identity of the security, the price, volume and date of registration of the changes of ownership in the book-entry register are requested. The markets' governing companies must disseminate this information immediately after it has been received. In the third case, the identity of the firms authorized to mediate in the transaction (including the member firms of the SCLV that are involved) and the clients' authorization date are also requested. The governing companies must be notified immediately (the buyer may not trade in the securities again until the notification is given) and they will disseminate the information within 48 hours at most.

(\*) CNMV Circular 3/1999, dated 22 September, on the transparency of transactions on official securities markets. In light of the new wording of Article 43 of the Securities Market Law, which empowers the market supervisory bodies and governing companies to determine, within legally established limits, the public information that must be disseminated, the CNMV decided to consolidate the transparency rules of all the official securities markets under its supervision in this Circular. These rules include the rules on extraordinary transactions.

## Temporary suspensions of trading

In 1999 there were 67 cases of temporary suspensions of trading, which affected 45 issuers; the number of both cases and issuers decreased in comparison with the previous year. The most frequent cause was the release of price-sensitive information. Of the suspensions for this reason, 23 related to announcements of tender offers and 9 to news about mergers. The second-most frequent cause was the filing of tender offers with the CNMV, which gave rise to a total of 14 suspensions. One of the biggest increases was in delistings for technical reasons due to the spate of mergers in the banking and construction sectors.

Table 7.1

TEMPORARY SUSPENSIONS OF TRADING ON THE MARKET

	1998	1999
Number of issuers suspended .....	56	45
Number of suspensions .....	80	67
Presentation of tender offers .....	12	14
Release of price-sensitive information .....	62	36
Insufficient reporting .....	1	0
Technical reasons .....	0	7
End of deadline for accepting tender offers .....	5	8
Other .....	0	2

## Delistings

There were a total of 34 delistings in 1999. The most frequent cause was technical due to the mergers of nine companies in total, seven of which belonged to the Endesa group. Other reasons were: (i) delistings conducted by the Autonomous Region governments by use of their powers: Basque Government (five) and Catalan Government (three); (ii) settlements of tender offers performed by the companies themselves for the purpose of delisting (eight), and (iii) delistings requested by the issuer itself (eight). One SIM was also delisted.

## Strategic decisions of the markets

In responding to the new scenario, Spain's securities markets followed in the footsteps of other markets. Internally, they have sought to improve operating processes and reduce costs; externally, they have focused on looking for alliances with other markets and creating new trading segments. The following decisions form part of the external response:

- (i) Participation by the Madrid Stock Exchange in the Pan-European stock market platform promoted by eight European bourses for trading in the major stocks listed on them.
- (ii) The possibility for Spain's government bonds to be traded in London through Euro-MTS, together with those of other European countries.
- (iii) The integration of MEFF in the Euro-Globex trading platform together with the derivatives markets of France, Italy and Portugal.

All markets have tackled the creation of new market segments and new business opportunities. Noteworthy in this connection is the creation of Meff Euroservices, to trade in Monep contracts on Pan-European indexes, and, in particular, due to the ambitious nature of the project, the

creation of the LATIBEX market in Latin American securities, which commenced operations on 1 December. LATIBEX uses Spain's electronic market system, enabling European investors to trade in Latin American stocks<sup>(28)</sup> listed in euros.

In any event, the immediacy of the initiatives undertaken and the as-yet-undefined nature of some alliances make it very difficult to predict the final outcome.

### *The influence of new technologies*

New information technologies are considerably reshaping the securities markets. Alternative trading channels, basically through the Internet and ECN<sup>(29)</sup> have an unquestionable appeal for investors, particularly institutional ones. The other aspect of the change is the entry into the securities market of technological companies, which have had an extraordinary impact on investors. The recent authorization for the creation of the Nuevo Mercado in this type of stocks will provide a more suitable framework for trading in them and will contribute to stimulating the emergence of new companies.

### **Incidents on Terra's first day of trading**

Terra was Spain's first Internet-related company to be floated. The public subscription offering was for 23.6% of capital stock at a benchmark price of  $\text{₣} 13$  in the institutional tranche. Trading commenced on 17 November 1999 on both the SIBE and Nasdaq.

Based on international experience in this type of flotations, the Sociedad de Bolsas established exceptional trading rules for setting the initial price in the pre-opening period on the SIBE. The price was allowed to fluctuate by  $\pm 50\%$ , in comparison with the standard range of  $\pm 15\%$ . The mismatch between supply and demand for Terra in this period (between 09.00 and 09.30, buy orders totaled 42% of the total stock in circulation and amounted to more than 93 times the number of shares on sale) prevented fulfillment of the conditions as regards minimum volume covered, which validate the price as set. In view of this situation, the decision was taken to enlarge the fluctuation band to  $\pm 100\%$  of the benchmark price. Trading did not commence until 11.30 at a price of  $\text{€}26$ .

Trading remained within the  $\text{€}27$  to  $\text{€}29.9$  band until Nasdaq opened at 15.30 Spanish time. The strong surge in trading on Nasdaq strangled trading in Terra on the SIBE until the close of the session. The Sociedad de Bolsas decided to hold an auction from 17.30 to arbitrage the prices on the two markets and to overcome the major imbalance between demand and supply. At the close of the SIBE, Terra had appreciated 185% in its first session.

The incidents which were triggered during Terra's flotation suggest the need to consider a specific trading framework for technological stocks and, in general, for stocks issued by newly-created companies with high growth potential. This was precisely the purpose of the Ministerial Order dated 22 December 1999 which created the Nuevo Mercado (see next box).

(28) More detailed information on the LATIBEX market can be found in Chapter three, in the box "LATIBEX: the new Latin American securities market".

(29) Electronic Communication Networks.

## Creation of the Nuevo Mercado, a stock market segment for high-growth stocks

Expectations of appreciation by companies in sectors with high growth potential (Internet-related businesses, software or information systems, communications, biotechnology, etc.) have made these stocks very attractive and they have appreciated considerably in recent times.

The specific characteristics of these companies, namely the difficulty of projecting their future profits, and their higher volatility on the stock market, make it difficult for them to fit into stock markets where traditional companies are listed. The solution adopted in other countries has been to create a specific market. The largest such market is Nasdaq, and Europe has Germany's Neuer Markt, the Amsterdam Stock Market's NMAX, the Paris Bourse's Nouveau Marché, and Italy's Nuovo Mercato, which were recently brought together in the Pan-European platform called EURO.NM.

In Spain, at the end of the year, the Ministry of Economy and Finance approved a Ministerial Order authorizing the development of a special trading segment for high growth potential companies, called "Nuevo Mercado," as part of Spain's stock markets. This Ministerial Order adapts the listing and trading rules to the characteristics of these companies and makes flotation requirements more flexible by amending the Ministerial Order dated 19 June 1997. In particular, these companies are exempted from the requirement that they be profit-making in order to be listed and that they be able to project profits in future years. This requirement is replaced by providing the CNMV with a report from the Board of Directors about the company's business and financial outlook and its foreseeable impact on earnings. All this information is included in the public offering prospectus; furthermore, the company's status of being listed on the Nuevo Mercado must be specified in any other prospectus, in periodic reporting and in the annual financial statements.

The organization and operation of the Nuevo Mercado will be based on the rules of Spain's Electronic Market. The CNMV was entrusted with developing, through a Circular<sup>(\*)</sup>, the general criteria that determine the stocks which are to be traded on the Nuevo Mercado, and with setting up the specific conditions for stocks to be admitted and to remain in the market. The stock exchanges will establish the Nuevo Mercado's trading and operating rules and will have the mission of disseminating general and special information required from issuers.

(\*) On 9 February, the CNMV approved its Circular 1/2000, which establishes the specific conditions for admission to listing and for remaining in the Nuevo Mercado.

## Tender offers

The amount of tender offers processed in 1999 fell considerably in comparison with the previous year. The 1998 figures were atypical due to Banco de Santander's offer for Banco Español de Crédito, and the 1999 figures, consequently, were more similar to those for 1997.

As for the objectives pursued, of the thirteen tender offers that were processed, almost half (six) were for own shares of the offerer for the purpose of delisting. Four of the offers were aimed at obtaining a holding of more than 50% of the capital stock. Of the remainder, two were performed by the controlling shareholder to provide liquidity for small shareholders and one to attain between 25% and 50% of capital.

Table 7.2  
TENDER OFFERS

Amounts in millions of pesetas

	1995	1996	1997	1998	1999
Filed in the year <sup>(1)</sup>					
Number	22	20	14	18	13
Potential amount <sup>(2)</sup>	285,442	292,457	107,829	779,249	118,356
Performed <sup>(3)</sup>					
Number	22	19	13	18	13
Amount	212,231	268,604	95,663	733,911	99,962

(1) Authorized in the year.

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

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

The characteristics of these operations prompted the CNMV to analyze the consideration offered and to study the valuations used in delistings. Care was also taken to ensure that there was an adequate explanation of the characteristics of the stocks offered in the swap, the share exchange ratio and the valuation, in the only offer of this kind filed in 1999.

Another aspect to which the CNMV gave particular attention was the equal treatment of all stockholders, both in offers aimed at two types of securities and in those where there were prior agreements to acquire the holdings of some of the shareholders of the company in question.

Attempts were also made to simplify procedures. Accordingly, the tender offer involving the swap of newly issued shares made last year by Grupo Ferrovial for Ferrovial Agromán, was the first not to require a specific resolution by the acquirer's Shareholders' Meeting to suppress the preferential subscription right, since it was considered, pursuant to the regulation on tender offers, that said right did not exist. Also, for the first time, in this operation the Shareholders' Meeting which resolved to issue stock to be offered for the swap was held before the offer was filed instead of after authorization of the offer and inside the acceptance period.



## Increasing flexibility for tender offers (Royal Decree 1676/1999 dated 29 October)

In 1999, the regulation on tender offers was partially modified. The reform exclusively affects the system for competing offers and supervening offers. The requirement of payment in cash in the case of competing offers was eliminated. The percentage or threshold which triggers a supervening takeover was increased to 50%, bringing it into line with the limit for take-overs triggered as a result of mergers.

Both modifications intend to make the system more flexible without impairing the protection of investors in the target company. In the first case, the preparation of these operations is facilitated by eliminating a barely-justifiable restriction, and identical treatment is given to take-overs triggered by mergers and those arising from the acquisition of control which, essentially, have the same financial result.

The following tender offers in 1999 were particularly noteworthy:

- *Size.* The largest tender offers were made by Hussmann International, Inc. for Koxka, S.A., amounting to over 19 billion pesetas; by Grupo Ferrovial, S.A. for Ferrovial Agromán, S.A., in which shares with a market value of more than 17 billion pesetas were exchanged. The tender offer of NH Hoteles, S.A. for Sotogrande, S.A., which amounted to 14 billion pesetas, was also large.
- *Offers by foreign groups.* Four operations were filed amounting to Pta. 51 billion in total; in those 42 billion pesetas changed hands.
- *Offers in which the consideration comprised a swap of securities to be issued by the acquirer.* Grupo Ferrovial, S.A.'s tender offer for Ferrovial Agromán, S.A. involved several aspects that distinguished it from the security swap offers made to date, which were mentioned above. The offer targeted the 7% of the shares of Ferrovial Agromán, S.A. which did not belong to the acquirer. It is noteworthy that Grupo Ferrovial, S.A. had been floated a few months earlier. Following the group's corporate restructuring, the aim of the tender offer was to convert the small shareholders of the target into shareholders of the acquirer, which is much more broadly held.
- *Due to their consequences for the stock markets.* Tender offers which, directly or indirectly, involved delisting affected: Hornos Ibéricos Alba, AGF Unión-Fénix, Seguros y Reaseguros, Finanzauto, Banco Mapfre, Estacionamientos Subterráneos, Compañía Valenciana de Cementos Portland, Koxka and GMU.

Table 7.3  
TENDER OFFERS IN 1999

Target	Bidder	Purpose	% of capital stock covered by the offer	Actual cash amount (thousands of pesetas)	Outcome as % of shares initially targeted
Koxka	Husmann International	Acquisition of control	100.00 (minimum=62)	19,697,833	98.89
Hornos Ibéricos Alba	Hornos Ibéricos Alba	Delisting	4.27	2,270,048	94.09
AGF Unión-Fénix, Seguros y Reaseguros	AGF Unión-Fénix, Seguros y Reaseguros	Delisting	5.08	4,211,744	79.76
GMU	Masco Europe Ibérica	Acquisition of control	100.0 (minimum=80)	10,276,820	98.34
Finanzauto	Finanzauto	Delisting	5.69	2,537,904	89.74
Tableros de Fibras	Sonae Industria	Increase stake	18.44 (maximum)	8,027,571	100.00 (prorated)
Banco Mapfre	Banco Mapfre	Delisting	0.96	429,711	86.07
Estacionamientos Subterráneos	Estacionamientos Subterráneos	Delisting	4.20	747,208	92.50
Vidriera Leonesa	Lambda del Piero	Increase stake	100.00 (minimum=47.92)	4,557,606	54.29
Sotogrande	NH Hoteles	Increase stake	62.81	14,420,967	86.52 shares and 99.94 convertible debentures
Ferrovial Agromán	Grupo Ferrovial	Increase stake	6.68	17,634,799 <sup>(1)</sup>	89.60
Compañía Valenciana de Cementos Portland	Compañía Valenciana de Cementos Portland	Delisting	2.13	8,062,044	65.84
Inmobiliaria Zabálburu	Altadis	Increase stake	15.00 (maximum)	7,087,350	99.98 (prorated)

(1) The actual amount was calculated by assigning a price of €7.44 (Ptas. 1,238) to each share of Ferrovial Agromán, resulting from the share exchange ratio (5 shares of Grupo Ferrovial for 12 shares of Ferrovial Agromán), according to the closing price of Group Ferrovial on 5 October 1999, which was €17.85 (Ptas. 2,970).

## Securities Clearing and Settlement Service (SCLV)

The SCLV was also affected by the new situation in the stock markets in 1999. Consequently, a substantial part of its actions were aimed at rationalizing and integrating internal processes that permit a future alliance with other depositaries to be considered and possible link ups to be defined.

Internally, the volume settled by the SCLV increased in line with stock market activity. The high percentage of foreign investment in trading gave rise to a strong concentration of settlement at the member firms that channel non-resident investment.

### *Project development*

In 1999, a considerable number of stocks traded in AIAF by the book-entry system used the technical resources of the SCLV in registration, settlement and clearing operations. Thus, progress was made in the operational integration of Espaclear, a process that will be completed during 2000 with the full absorption of the latter by the SCLV. This advance is a step towards the goal of creating a single registration, settlement and clearing system for private-sector fixed-income securities, regardless of the securities market where they are traded. This objective was already included in the Protocol Agreement for the development of fixed-income markets that was signed in April 1998 (see CNMV Annual Report for 1998, page 33). Accordingly, during the year the guidelines were established for the continued standardization of operating procedures. The single system will foreseeably be implemented during 2000.

### *Initiatives*

The increase in cross-border operations in Europe led the SCLV to establish agreements with other European central securities depositories, under the bilateral interconnection model proposed by the European Central Securities Depositories Association (ECSDA). In fact, accounts have already been opened with Italy's central depository, Monte Titoli, and France's Sico-vam. Negotiations to connect to Interbolsa, Portugal's central depository, are at an advanced stage. These link-ups are only effective, for the time being, in transfers of securities free of payment, although the CNMV considers that, in the near future, they should also be effective for other types of transfer.

The implementation of LATIBEX and the listing of Repsol on the Buenos Aires Stock Exchange led to the establishment of links with central depositories in Argentina (Caja Central de Valores) and Brazil (Câmara de Liquidação e Custódia). These links facilitate the settlement of stock listed simultaneously in these countries and the provision of the registration service entrusted to central depositories.

### *Future outlook*

Increasing the competitiveness of Spain's securities markets, in terms of improved security, efficiency, transparency and ease of operations, requires the creation of a settlement and clearing model which, in the short-term, will be the sole entry point for foreign securities and the sole exit point for Spanish securities. Also, it is necessary to define a policy of alliances or even mergers with other European and international central securities depositories (for more information see chapter 4).

## Market Monitoring Unit

In its third year of existence, the Market Monitoring Unit (MMU) continued to focus on preventing and detecting price manipulation and misuse of inside information.

The unit performed fewer actions than in 1998, due to greater knowledge by market participants of the criteria and guidelines disseminated by the CNMV over the years and their assimilation of same and, in particular, the reduction in the number of investigations into price fixing.

Table 8.1  
ACTION BY THE MARKET MONITORING UNIT

	1998	1999
Investigations conducted	52	40
Inside information	19	20
Price manipulation	24	8
"Client first" principle	-	3
Other	9	9
Subpoenas	764	706
Requests for assistance from foreign institutions	14	5
Visits	35	21
Depositions	44	39
Additional actions	51	28
Reprimands	24	21
Prior notification of breach	20	5
Opening of file	7	2
Assistance to foreign institutions	3	3

### Reprimands

Much of the MMU's work is preventive, aimed at detecting practices and actions which breach good market practices and informing market participants about them. It also works on locating organizational deficiencies, particularly in areas normally regulated by internal codes of conduct, which might lead to risk situations or breach of regulations in the areas in which the institutions operate.

This work rarely leads to penalty proceedings since it pursues activities which are not classified as offenses; nevertheless, it has proved to be extremely useful because firms receiving the resulting notifications have shown themselves to be particularly sensitive to the recommendations. As a result, the internal codes of conduct have been modified where necessary to remove the deficiencies that had been detected or to ensure that the practices or behavior observed is not repeated in the future.

The content of the notifications can be summarized as follows, depending on the type of addressee:

# 8

## MARKET INTEGRITY

- *Stock exchange members*. Six firms were reprimanded, and recommended to: (i) reject orders which, because of their special characteristics, might distort prices, particularly closing prices, of certain securities; (ii) strengthen their material resources to ensure that the mandatory books are kept appropriately; (iii) improve their internal process to ensure that block trades which they perform in the future do not distort trading performed via the ordinary trading systems; (iv) scrupulously respect the requirements of current legislation regarding the sale to clients of securities in the firm's own portfolio.
- *Issuers*. Nine companies received letters advising them to: (i) include clear rules on operations with own shares in their internal codes of conduct; (ii) in the rules of conduct, establish an internal system for handling confidential information and a policy of notifying price-sensitive information; (iii) extend the scope of application of sections of their internal code of conduct relating to the purchase and sale of shares by executives and employees to the personnel in the departments entrusted with drawing up the company's annual report.

Some firms that hold controlling stakes in other listed companies were advised to conduct purchases and sales of the securities issued by those companies at market prices so as not to distort the price-formation process.

- *Financial institutions*. Two notifications, one asking the recipient to adapt its advertising about an issue to the information registered with the CNMV and one asking the recipient not to concentrate the hedging transactions related to an OTC contract in the final moments of trading.
- *SCLV member firms*. Notifications were sent to two firms asking them to respond, in due time and in compliance with the technical requirements, to requests for information on security ownership made by the MMU via the SCLV in the course of its investigations.

### Cooperation with foreign institutions

During 1999, the MMU sent requests for assistance to the Swiss Federal Banking Commission (Switzerland), Financial Services Authority (United Kingdom), Comissão do Mercado de Valores Mobiliários (Portugal) and Bundesaufsichtsamt für den Wertpapierhandel (Germany). During the year, the Unit also provided assistance to the Commission des Opérations de Bourse (France) and Bundesaufsichtsamt für den Wertpapierhandel (Germany).

There was a major development in the field of international cooperation. Whereas requests for assistance had been confined traditionally to queries about the ownership of particular securities, they have now become more complex. With regard to cross-border transactions (take-overs, mergers, etc.), other regulators now want to know all the relevant details which will guide their investigation (date on which the transaction commenced, its progress, the firms providing consulting services on the transaction, identification of individuals inside and outside the companies that had access to information that was not made public, ...) and the final outcome (degree of relationship between persons in inner circle and parties that performed significant transactions in the shares involved prior to public announcement of the transaction, evasion of obligation to report significant holdings, etc.).

## Money laundering

During 1999, the CNMV referred 14 cases to SEPBLAC (Servicio Ejecutivo de la Comisión de Prevención de Blanqueo de Capitales e Infracciones Monetarias del Banco de España), the Bank of Spain's money laundering and monetary transaction watchdog division, basically in connection with illegal activities related to organized crime.

The CNMV called upon the entities under its supervision to take all possible precautions in transactions with financial instruments in which they participate or intermediate. They must necessarily comply with the obligation imposed by Law 19/1993 and its implementing regulations to report to the SEPBLAC any transactions which are considered to be "suspicious" viewed individually and those arising from the systematic monthly reporting. Firms should be particularly alert in the case of purchases and sales of securities and financial instruments with payment in cash or check for over 5 million pesetas made by parties that are not regular clients, and transactions by or with individuals or legal persons resident in tax havens for more than the aforementioned amount.

The supervisor will continue to check the degree of compliance with these obligations by the firms under its control and supervision during any on-the-spot inspections.

## Action by the Inspectorate

The CNMV's disciplinary action in 1999 was reflected in 28 new investigations of violations (see Tables 8.2 and 8.3) and in the imposition of 53 penalties, including fines for a total of more than 21 billion pesetas (see Table 8.4). This amount was unusually high since one of the fines was close to 20 billion pesetas, the largest fine ever imposed by the CNMV.

As a result of the entry into force, in April, of Law 4/1999<sup>(30)</sup>, which reduced from one year to six months the maximum period for investigation and resolution of penalty proceedings, the CNMV had to make considerable efforts in this connection. Although it was possible to strike the necessary balance between speed in the proceedings and full respect for the investigated parties' guarantees and rights, in November, Law 41/1999 restored the period to the duration prior to the April reform as many years' experience have shown that one year is more appropriate due to the complexity of the events and their impact on the financial markets.

(30) Law 4/1999, dated 13 January, amending Law 30/1992, dated 26 November, on the legal regime of the Public Administrations and the common administrative procedure.

Table 8.2  
NUMBER OF VIOLATIONS

	1999	1998
Violations leading to opening of a file	28	54
– Very serious	17	29
– Serious	10	22
– Minor	1	3
Violations on which proceedings concluded	31	39
Very serious violations	20	24
• Proceedings dating from 1997	–	13
• Proceedings dating from 1998	16	11
• Proceedings dating from 1999	4	–
Serious violations	11	12
• Proceedings dating from 1998	9	12
• Proceedings dating from 1999	2	–
Minor violations	–	3
• Proceedings dating from 1998	–	3

Table 8.3  
TYPES OF VIOLATIONS INVESTIGATED

	Opened		Closed	
	1999	1998	1999	1998
Very serious violations:	17	29	20	24
I. Price manipulation	–	–	–	3
II. Failure to report significant holdings	2	1	1	–
III. Forbidden activities	9	7	7	6
IV. Simulated transfers	–	1	1	–
V. Inside information	–	8	5	9
VI. Breach of coefficients	–	1	1	–
VII. Concealment of price-sensitive information	1	–	–	1
VIII. Breach of Company Law	1	2	–	2
IX. Breach of general securities market regulations	1	1	1	–
X. Breach of IIC regulations	–	2	–	2
XI. Accounting offenses	1	2	1	–
XII. Obstruction of inspection	1	1	1	–
XIII. Unregistered issues	1	1	1	–
XIV. Breach of authorization requirements	–	2	1	1
Serious violations:	10	22	11	12
I. Chinese walls	–	3	2	1
II. Accounting offenses	–	2	–	2
III. Violation of the “client first” principle	1	6	–	5
IV. Breach of regulations on orders and transaction records	1	1	–	1
V. Forbidden activities	1	–	1	–
VI. Breach of coefficients	1	2	1	1
VII. Breach of general securities market regulations	2	6	4	2
VIII. Price manipulation	–	1	1	–
IX. Breach of code of conduct	4	1	2	–
Minor violations:	1	3	–	3
I. Breach of code of conduct	1	3	–	3

Table 8.4  
PENALTIES IMPOSED

	1999			1998		
	Number	Amount <sup>(1)</sup>	Period	Number	Amount <sup>(1)</sup>	Period
Fines	42	21,505.5	-	50	1,400.5	-
Disqualification of directors	8	-	66 years <sup>(2)</sup>	-	-	-
Reprimands	2	-	-	2	-	-
Withdrawal of authorization	1	-	-	-	-	-
Total	53	21,505.5	-	52	1,400.5	-

(1) Millions of pesetas.

(2) Total.

The CNMV focused particularly on pursuing code-of-conduct breaches by persons and firms operating professionally in the securities markets (simulated transfers, violation of “client first” principle, provision of incorrect information to investors, etc.). Breaches of the prudential limits established to ensure economic stability (liquidity, solvency, sufficient resources to conduct business, performance of activities not covered by license, etc.) were also inspected and penalized. Charges were brought in this area on 13 occasions.

In this connection, the disciplinary proceedings relating to the crisis at securities firm AVA, Asesores de Valores, S.A. (the “AVA/Socimer” case) were concluded during 1999. The aforementioned company’s license was revoked, several of its directors were disqualified for between eight and ten years, and fines totaling 620 million pesetas were imposed.

In recent years, the prevention, detection and punishment of illicit conduct based on the use of inside information has been one of the CNMV’s priorities. The creation of the MMU in 1997 has made the fight against violations of this type more effective. The MMU has proved particularly effective in detecting and correcting organizational deficiencies at financial institutions that can lead to leaks of material and confidential information. In 1999, several files opened the previous year were closed and penalties were imposed on three people; no new proceedings relating to inside information were commenced in 1999.

The CNMV continued to closely monitor the activities of unregistered firms (see box), which are one of the principal sources of risk to investor interests and to the markets’ reputation and integrity. In this area, the supervisor imposed a very large fine on one firm, Transworld Financial Services, S.L., and its directors. Also, by application of the Securities Market Law Reform Law, charges were brought against a firm, Forex Gestión, S.A., in the first case of investment in foreign-currency based financial products being offered to the public.



## Unregistered firms

During 1999, the CNMV focused very particularly on detecting and punishing intermediation and third-party securities portfolio management by firms not authorized and, therefore, not registered in the official registers, and on pursuing their directors. It also extended its activities vis-à-vis firms seeking to raise public savings by offering securities without first meeting the regulatory requirements.

Forty firms were investigated, most of which are currently inactive. The CNMV brought charges against nine of them and imposed major penalties on six. In many of the cases investigated, the matters were referred to the police and the judicial authorities since there were signs of criminal activity, and the CNMV provided the necessary assistance to pursue the matter. As a result, in 1999 the Criminal Section of the National Court issued the first resolution against a director of a firm of this type, Management Bursátil, S.A., which had already been penalized by the CNMV.

Making use of the new powers granted to the CNMV by the Securities Market Law Reform Law, on seven occasions the opening of disciplinary proceedings was accompanied by a cease-and-desist order against the offender, the imposition of coercive fines and a public warning. These warnings, which are published on the CNMV's web page and sent to the media in the form of press releases, are basically to warn investors about the existence of specific firms operating in the securities markets without authorization. The aim is also to make investors aware of the dangers of dealing with parties of this type.

Although the CNMV constantly strives to enhance its ability to detect and pursue unauthorized intermediaries, care and diligence on the part of investors are the principal defense against the serious harm that can arise from such intermediaries' operations, which are generally unscrupulous and occasionally criminal. The supervisor continually advises investors to postpone investment decisions until they are sure that the party offering them securities represents a duly registered firm; investors can readily obtain this information by consulting the CNMV, by telephone or Internet or by visiting one of its offices. The CNMV web site also has an Investors' Page which carries warnings about particular firms and has links to general advice and recommendation: Do's and Don'ts for investors, CNMV recommendations, Investors Guide and Investor Warnings. The latter section includes a detailed description of the standard *modus operandi* used by unauthorized firms – forms of contacting potential investors, techniques for convincing them, products offered, etc. – which is useful for detecting such parties and avoiding falling victim to them.

Some unauthorized intermediaries operate simultaneously in several countries; in other cases, once the unauthorized party has been put out of business in Spain, they try to transfer to another country in which to prospect for new clients or from which to continue to ply the Spanish market, generally via the Internet. As a result, the cooperation between the CNMV and other country's supervisory authorities stepped up their cooperation in this area in 1999 by means of a steady flow of information. It is necessary to progressively extend this form of international cooperation, particularly with the European supervisory authorities, in order to protect securities market integrity and investor interests within the European Economic Area from the effect of cross-border activities by parties not authorized to operate in any of the countries involved.

Authorized investment services firms and financial institutions can provide a very useful service by immediately notifying the CNMV of any such firm which they detect and by refusing to deal with them or to open accounts for them.

## Criteria of interest in the resolution of disciplinary proceedings

### *Alleged provision of advice to third parties in connection with the securities market*

The CNMV has observed the establishment in Spain of certain parties that claim merely to provide advice to third parties on matters relating to the securities market in the form of what they call “telemarketing” when, in fact, they are providing investment services. By failing to request and obtain the necessary prior authorization and to register with the supervisor, these companies seek to evade its vigilance, which evidently impairs the protection of investors who approach them.

These firms contact potential investors by a number of methods (telephone calls, the Internet, etc.) to offer the financial services or products of providers that are resident in other countries (generally tax havens) and are not authorized to operate in Spain. These firms that allegedly provide advisory services occasionally act as a bridge between the investor and the foreign financial services provider, to which they are connected via a group and/or commercial link, by receiving and relaying orders to purchase securities (generally derivatives) and the related funds. In other cases, they arrange for the orders and the necessary funds to be transferred directly by the investor to the foreign-resident intermediary, but do not intervene directly. In either case, these self-styled advisors charge the client very sizable commissions, either directly or via the foreign intermediary with which they are dealing, for transactions which practically always entail the total loss of the investment.

Individuals and legal entities providing advice and information on securities to third parties are fully subject to the rules of conduct contained in Title VII of the Securities Market Law. Accordingly, the CNMV maintains, and this has been upheld in the resolutions on disciplinary proceedings in this area (including those established by the Ministerial Orders dated 13 July and 18 November 1999), that, in any event, the self-styled advice or “telemarketing” is, in fact, a restricted activity reserved for duly-authorized investment services firms (article 62 *et seq.* of the Securities Market Law), particularly in the case of reception and transmission of orders for third parties. Even though these firms do not directly receive the clients’ orders and funds, the supervisor considers that they are not merely providing advice and that, in fact, their activity is an extension in Spain of the commercial structure of financial intermediaries not authorized to operate in this country and that, therefore, both they and the foreign parties are engaging in intermediation without authorization. Consequently, the CNMV proposes penalties for the performance of reserved activities without the required authorization, which is a very serious offense (article 99.q of the Securities Market Law).

This position was confirmed in the resolution issued on 19 April 1999 by the Contentious-Administrative Section of the National Court.

### *Lack of resources at supervised firms*

Investment services firms are obliged to have, effectively and at all times, an organization, and human and material resources that are technically sufficient for the nature and volume of their activities. This requirement applies with regard to obtaining and retaining the license, and investment services firms acquire an unavoidable commitment in this connection (article 66 of the Securities Market Law, articles 70 and 79 after the reform). Breach of this obligation can be considered a very serious violation (Article 99.l of the Securities Market Law) and may carry sizable penalties.

This requirement is essential for investment services firms in order to safeguard one of the basic tenets of securities market legislation: investor protection.

As established in the General Code of Conduct of the Securities Markets, included as an Annex to Royal Decree 629/1993, firms must organize and control their resources responsibly, and take the necessary steps and employ the appropriate resources to efficiently carry out their activity. In particular, they must establish the administrative and accounting procedures required for adequate control of the activities they wish to perform and of their risks, they must not agree to perform transactions if they do not have the funds and resources to perform them appropriately, and they must adapt their commercial expansion to the existence of the necessary organizational resources. Overall, they must be in a position to comply with the duties and obligations imposed on them by the securities market regulations.

Consequently, the CNMV considers that firms must have sufficient capacity to efficiently conduct their business both at inception and at all times thereafter. It also considers that a violation in this area must be viewed on the basis of the firm's general situation as detected during a CNMV inspection and of the consequences of that situation.

In 1999, the CNMV proposed the revocation of authorization for a broker firm and the disqualification of its directors (Cabinet Resolution dated 23 April) on finding that, during the previous year, the firm had undertaken major commercial expansion, evidenced by the number of clients and the volume of operations, which was not preceded or accompanied by a parallel provision of the minimum sufficient resources for administration, control and accounting. The result was a serious general lack of the mandatory documentation and records, as revealed in an on-the-spot inspection by the supervisor, and an inability to adequately comply with the obligations to inform clients; moreover, the directors were aware and had been warned of the deficiencies arising as a result of such rapid growth but had, nevertheless, done nothing to halt it.

### ***Breach of firm's own internal codes of conduct***

Investment services firms, credit institutions, collective investment institutions, issuers and, generally, all persons or entities performing activities related to the securities market, must respect the specific rules of conduct contained in the Securities Market Law and its implementing regulations. Additionally, they must comply with their own internal codes of conduct, and violation can be a serious offense (Articles 78 and 100.n of the Securities Market Law).

It is logical that firms should have internal codes of conduct, inspired by the principles set out in the Securities Market Law, which contain rules that are appropriate to each firm's individual characteristics: type of entity, activities performed, size, structure, etc. These internal codes of conduct must establish the necessary mechanisms to ensure compliance by the parties involved (the firm itself, directors, employees, representatives, etc.) of the rules of conduct contained in the securities market legislation, while always seeking to ensure investor protection and market integrity and transparency.

This requirement, introduced in the Securities Market Law Reform Law, was applied in 1999. By means of the Resolution dated 20 October 1999, the CNMV penalized a broker firm that had repeatedly allowed a representative to sell securities without respecting the three-month minimum holding period established in its internal code of conduct.

Table 8.5

## OUTCOME OF DISCIPLINARY PROCEEDINGS IN 1999

Reference	Resolution
(1/99)	<u>CNMV Board Resolution dated 14 January 1999</u> Resolution on the alleged breach by a broker firm of the regulations governing relations with representatives. The charges were dismissed.
(2/99)	<u>CNMV Board Resolution dated 28 January 1999</u> Resolution on the alleged communication and use of inside information by two individuals, respectively (art. 100.x of the Securities Market Law). Fines were imposed totaling 1,900,000 pesetas.
(3/99)	<u>Ministerial Order dated 1 February 1999</u> Resolution on the alleged granting of loans to clients by a broker firm (art. 99.l of the Securities Market Law). Fines totaling 3 million pesetas were imposed on the firm and several of its directors.
(4/99)	<u>Ministerial Order dated 1 February 1999</u> Resolution on the alleged failure by an individual to notify the CNMV of significant holdings in the capital of a listed company (article 99.p of the Securities Market Law). A fine was imposed amounting to 350,000 pesetas.
(5/99)	<u>CNMV Board Resolution dated 9 March 1999</u> Resolution on the alleged commission by a broker firm of two very serious violations relating to trading for its own account and the reduction of equity below the permitted level (articles 99.q and 99.k, respectively of the Securities Market Law), and three serious violations due to several breaches of general securities market regulations. The charges of very serious violations were dismissed and, in connection with the serious violations, a public reprimand was imposed on the firm, and several of its directors were fined a total of 60 million pesetas.
(6/99)	<u>Ministerial Order dated 21 April 1999</u> Resolution on the alleged use by an individual of inside information in performing transactions with securities (article 99.o of the Securities Market Law). A fine of 20,327,940 pesetas was imposed.
(7/99)	<u>Ministerial Order dated 21 April 1999</u> Resolution on the alleged obstruction by a firm of the CNMV's inspection activities (article 99.t of the Securities Market Law). The firm and its sole administrator were each fined 50 million pesetas.
(8/99)	<u>CNMV Board Resolution dated 22 April 1999</u> Resolution on the alleged performance by an issuer and a broker-dealer firm of practices designed to distort the free formation of prices of the shares of the former in the securities market (articles 100.w and 100.n of the Securities Market Law). The charges were dismissed.
(9/99)	<u>Cabinet Resolution dated 23 April 1999</u> Resolution on the alleged breach, by a broker firm, of the commitment to have sufficient and adequate organization and material resources to conduct its business (article 99.l of the Securities Market Law). Its license as agencia de valores was revoked and several of its directors were disqualified for periods ranging from eight to ten years.
(10/99)	<u>CNMV Board Resolution dated 19 May 1999</u> Resolution on the alleged breach by a financial institution of the provisions of articles 81.1 and 83 of the Securities Market Law, which are classified as serious violations of articles 100.r and 100.n of that Law, and alleged use of inside information by another institution. The charges were dismissed.
(11/99)	<u>Ministerial Order dated 13 July 1999</u> Resolution on the alleged habitual performance by a company of activities consisting of the reception and transmission of investors' orders and of portfolio management without being authorized (article 99.1 of the Securities Market Law). The company was fined 684,248,945 pesetas and its sole administrator 50,000,000 pesetas.
(12/99)	<u>Ministerial Order dated 22 September 1999</u> Resolution on the alleged use by a broker firm of interposed individuals and the performance of transactions with securities that allegedly involved simulated transfer of ownership of same (article 99.s of the Securities Market Law). The firm and several of its directors and managers were fined a total of 35 million pesetas.
(13/99)	<u>CNMV Board Resolution dated 22 September 1999</u> Resolution on the alleged breach by a broker firm of the accounting regulations and of the regulation governing information to clients (articles 99.e and 100.m of the Securities Market Law). The firm was fined a total of 2,500,000 pesetas.

Table 8.5 (cont.)

## OUTCOME OF DISCIPLINARY PROCEEDINGS IN 1999

Reference	Resolution
(14/99)	<u>CNMV Board Resolution dated 20 October 1999</u> Resolution on the alleged occasional performance by a broker firm of activities for which it was not authorized, and alleged breach of its rules of conduct (articles 100.o and 100.n of the Securities Market Law). Fines totaling 2 million pesetas were imposed.
(15/99)	<u>Ministerial Order dated 21 October 1999</u> Resolution on the alleged habitual performance by a company of activities consisting of reception and transmission of client orders and of managing portfolios without the related authorization (article 99.q of the Securities Market Law). The company was fined 19,685,705,665 pesetas, and each of its two directors was fined 50 million pesetas.
(16/99)	<u>Ministerial Order dated 21 October 1999</u> Resolution on the alleged habitual performance by a company of activities consisting of the reception of funds from the public for investment without being authorized for this purpose (article 99.q of the Securities Market Law). The company and its three directors were fined 50 million pesetas each.
(17/99)	<u>Ministerial Order dated 21 October 1999</u> Resolution on the alleged breach, by a legal person, of the obligations established in article 61 of the Securities Market Law relating to public offering of shares, which is classified as a very serious violation by article 99.r of the Law. The company and its sole administrator were fined 250,000 pesetas each.
(18/99)	<u>Ministerial Order dated 18 November 1999</u> Resolution on the alleged habitual performance by a company of activities consisting of reception and transmission of client orders without the related authorization (article 99.q of the Securities Market Law). The company was fined 410 million pesetas and each of its three directors was fined 50 million pesetas.

## Judicial review of disciplinary resolutions

The court rulings that fully or partly granted the appeals filed by penalized firms or persons against the CNMV related basically to the judicial review of a single case in which a number of resolutions have been issued over the years, some upholding the penalties imposed on some of the accused for certain violations and others revoking the penalties.

Most revocations have been based on the *non bis in idem* principle. Some of the events to which the appealed administrative proceeding relate are also the subject of a simultaneous criminal proceeding and, consequently, the court rulings ordered the administrative actions to be set back to the point immediately prior to the imposition of penalties until the final court decision has been issued. Once this occurs, the CNMV can decide, on the basis of the finding of facts, whether or not to impose administrative penalties.

The courts' decisions on this matter and on any other, as expressed in the rulings that review CNMV disciplinary proceedings (most of which are confirmed), add to a body of precedent which is carefully taken into account in commencing, performing and resolving new disciplinary proceedings for alleged violations of securities market regulations.

Table 8.6

COURT JUDGEMENTS HANDED DOWN IN 1999 IN APPEALS  
AGAINST PENALTIES

No.	Date	Court	Appeal number	Appealed order
1	28/1/1999	National Court	520/96	Ministry of Finance Order 29/4/96
	Confirmed the penalty imposed on the vice-chairman of the Board of Directors of an IIC management company, consisting of a fine of 3.5 million pesetas, for a very serious breach of article 32.4.g of Law 46/1984 (use of a system of representing investments in a mutual fund which failed to reflect the investor's identity).			
2	28/1/1999	National Court	80/96	Ministry of Finance Order 29/12/95
	Revoked the penalty imposed on an individual, consisting of a fine of 5 million pesetas, for a very serious violation of article 99.p of the Securities Market Law (failure to report the indirect acquisition of a significant holding in a listed company).			
3	8/2/1999	Supreme Court	828/95	Cabinet Resolution 13/10/95
	Revoked the penalties imposed on the directors of a broker-dealer firm, consisting of: a) fines of 1.5 million pesetas and 2.5 million pesetas for two very serious violations of article 99.s of the Securities Market Law (participation in or performance of transactions with securities involving simulated transfers of their ownership); b) fine of 1 million pesetas for a very serious violation of article 99.e of the Securities Market Law (defects or irregularities in the accounts which prevent the firm's true net worth position from being known); c) fine of 5 million pesetas for a very serious violation of article 32.4.a of Law 46/1984 (falsity in accounting and mandatory reporting); d) fine of 5 million pesetas for a very serious violation of article 32.4.b of Law 46/1984 (investing in assets other than those legally authorized); e) fine of 5 million pesetas for a very serious violation of article 32.4.m of Law 46/1984 (seriously jeopardizing investors' interests by allowing the sociedad de valores to freely dispose of the assets of the funds under management by it).			
4	8/2/1999	Supreme Court	9/96	Cabinet Resolution 13/10/95
	Partially upheld an appeal by the general manager and a director of an IIC management company by revoking the following penalties: a) dismissal and disqualification as executive or director of any financial institution for a period of five years, for a very serious violation of article 99.s of the Securities Market Law (performance of transactions with securities involving simulated transfers of their ownership); b) definitive suspension and public reprimand for a very serious violation of article 32.4.a of Law 46/1984 (omission or falsity in mandatory accounting and reporting); c) definitive suspension and public reprimand for a very serious violation of article 32.4.m of Law 46/1984 (seriously jeopardizing investors' interests by allowing the broker-dealer firm to freely dispose of the assets of the funds under management by it), setting the proceedings back to the position immediately prior to the imposition of those penalties so that, once the courts had issued a final decision on the criminal case, the Administration could decide whether or not to impose administrative penalties. The court confirmed the penalty of 10 million pesetas and the public reprimand for a very serious violation of article 32.4.b of Law 46/1984 (investing in assets other than those legally authorized).			
5	11/2/1999	National Court	75/96	Ministry of Finance Order 29/12/95
	Confirmed the penalty imposed on the chairman of the Board of Directors of a company, consisting of a fine of 2 million pesetas, for a violation of article 89 in connection with article 81 of the Companies Law (provision of financial assistance for the acquisition of own shares).			
6	1/3/1999	National Court	439/96	Ministry of Finance Order 29/4/96
	Revoked the penalty imposed on the directors of a company, consisting of fines of 2.5 million pesetas and 1 million pesetas, for two very serious violations of article 99.n of the Securities Market Law (issuance of securities without meeting the requirements of article 26 of the Law, insofar as they are strictly applicable).			
7	2/3/1999	National Court	910/95	Ministry of Finance Order 25/7/95
	Confirmed the penalties imposed on a portfolio management company and on its directors, consisting of twelve fines of varying amounts, for a violation of article 99.q in connection with article 71 of the Securities Market Law (breach of the "client first" principle, performance of forbidden securities placement activities, marketing of funds and securities investments).			

*Table 8.6 (cont.)*  
COURT JUDGEMENTS HANDED DOWN IN 1999 IN APPEALS  
AGAINST PENALTIES

No.	Date	Court	Appeal number	Appealed order
8	12/3/1999	Supreme Court	757/95	Cabinet Resolution 13/10/95
	Partially upheld an appeal presented by the general manager of a broker-dealer firm by revoking the penalty of dismissal and disqualification as director or executive of financial institutions for a period of six years, setting the proceedings back to the position immediately prior to the imposition of those penalties so that, once the courts had issued a final decision on the criminal case, the Administration could decide whether or not to impose administrative penalties. The court confirmed the penalty of 3 million pesetas for a very serious violation of article 99.e of the Securities Market Law (defects or irregularities in the accounts which prevent the firm's true net worth position from being known).			
9	15/3/1999	National Court	233/96	Ministry of Finance Order 10/1/96
	Revoked the penalty imposed on a broker firm and its directors, consisting of fines of 3 million pesetas and of 3.5 million pesetas, for a very serious violation of article 99.l of the Securities Market Law in connection with article 71 of same (provision by the broker firm of finance to its shareholders, employees and its parent company).			
10	18/3/1999	National Court	567/96	Ministry of Finance Orders 6/6/96 and others
	Partly upheld the appeal presented by the directors of a portfolio management company by revoking the penalty of dismissal and disqualification and replacing it with a fine of 200,000 pesetas (for a very serious violation of article 99.q of the Securities Market Law in connection with article 71 of same – activities reserved to broker and broker-dealer firms), and proportionally reducing two other fines imposed for the same violation. The court confirmed penalties of 961,564 pesetas, 640,340 pesetas and 6,805,230 pesetas imposed on the portfolio management company for three very serious violations of article 99.q of the Securities Market Law.			
11	29/3/1999	National Court	729/96	Ministry of Finance Order 19/7/1996
	Confirmed the penalty imposed on the chairman of the board of an IIC management company, consisting of a 3 million pesetas fine, for a very serious violation of article 32.4.a of Law 46/1984 (omission or falsity in mandatory accounting and reporting).			
12	6/4/1999	Madrid HCJ*	2043/94	CNMV Board Resolution 20/7/94
	Confirmed the CNMV Board resolution rejecting the appellants' application for access to the files and archives containing the CNMV's investigations relating to certain transactions by a credit institution.			
13	15/4/1999	National Court	532/96	Ministry of Finance Order 29/4/96
	Confirmed the penalty imposed on a broker firm, consisting of a fine of 4 million pesetas, for a very serious violation of article 99.n of the Securities Market Law (issuance of securities without authorization, where such is mandatory, without adhering to the basic conditions set therein, or without first meeting the conditions established in article 26 of the Law, etc.).			
14	19/4/1999	National Court	55/96	Ministry of Finance Order 17/11/95
	Confirmed the penalty imposed on a limited liability company and its sole administrator, consisting of fines of 305 million pesetas and 10 million pesetas, respectively, for a very serious violation of article 99.q in connection with article 71 of the Securities Market Law (marketing of securities and reception and transmission of orders to buy securities without being legally authorized to do so).			
15	13/5/1999	Supreme Court	636/96	Cabinet Resolution dated 21/6/96
	Revoked the penalties imposed on the chairman of the board of a broker firm, consisting of fines of 15 million pesetas and dismissal and disqualification as director and executive in any financial institution of the same type in a period of five years, for violation of articles 99.s, 99.k and 99.e of the Securities Market Law (simulation of transfers, breach of equity requirements and breach of consolidation obligation) but it upheld the administrative proceedings prior to the Resolution that was annulled, and ordered that the disciplinary proceedings continue once Chamber 2 of the Supreme Court has issued its final verdict in the criminal case.			

*Table 8.6 (cont.)*  
 COURT JUDGEMENTS HANDED DOWN IN 1999 IN APPEALS  
 AGAINST PENALTIES

No.	Date	Court	Appeal number	Appealed order
16	17/5/1999	National Court	728/96	Ministry of Finance Order 19/7/96 Confirmed the penalties imposed on the director of an IIC management company, consisting of: a) a fine of 1.5 million pesetas for a very serious violation of article 32.4.a of Law 46/1984 (irregularities in the accounting of the funds under management), and b) a fine of 1.5 million pesetas for a very serious violation of article 32.4.a of Law 46/1984 (omission or falsity in the information to be provided or released).
17	18/5/1999	National Court	273/96	Ministry of Finance Order 1/3/96 Confirmed the penalties imposed on the chairman and directors of a SIM, consisting of fines of 3 million pesetas and 3.5 million pesetas, for violation of article 32.3.j of Law 46/1984 (violation of the provisions of articles 79.4, 202 and 112 of the Companies Law – breach of obligation to report information on treasury stock in the financial statements, refusal by chairman of the board at a Shareholders' Meeting to provide information on treasury stock requested by one of the shareholders, with the result of limiting their possibilities of disposing of the shares which they owned).
18	31/5/1999	Madrid HCJ*	1324/96 CNMV	Resolution 18/4/96 Confirmed the penalties imposed on the founder and chairman of the board of a sporting incorporated company (sociedad anónima deportiva), consisting of a fine of 5 million pesetas, for violation of article 89.1 in connection with article 71 of the Companies Law (originary acquisition of own shares via an interposed person).
19	3/6/1999	Madrid HCJ*	174/97	CNMV Resolution 23/5/97 Confirmed the penalty imposed on a portfolio management company, consisting of a fine of 955,340 pesetas, for a violation of article 100.o of the Securities Market Law in connection with article 84.2 of Royal Decree 1393/90 (performance of forbidden activities due to acquisition for the house account of stocks not admitted to listing on any official secondary market).
20	15/7/1999	Valencia HCJ*	788/96	CNMV Resolution 6/9/95 Revoked the penalties imposed on the director of a broker-dealer firm, consisting of two fines of 500,000 pesetas each, for violation of article 100.g of the Securities Market Law (breach of liquidity coefficient and exceeding the risk concentration limit).
21	26/7/1999	National Court	526/96	Ministry of Finance Order 29/4/96 Confirmed the penalty imposed on a credit cooperative society (depository of a mutual fund), consisting of a fine of 10 million pesetas, for a very serious violation of article 32.4.g of Law 46/1984 (breach of procedure for issuance and reimbursement of shares in a fund).
22	8/9/1999	Madrid HCJ*	262/97	Ministry of Finance Resolution 20/12/96 Revoked the penalties imposed on an IIC management company, consisting of fines of 3 million pesetas and 100,000 pesetas, for serious violations of articles 32.3.a (failure to submit the information required by Law) and 32.3.f (collection of management fees in breach of the limits and conditions imposed by Law) of Law 46/1984.
23	20/9/1999	National Court	118/97	Ministry of Finance Order 5/12/96 Confirmed the penalties imposed on a limited company and its sole administrator, consisting of fines of 308,538,000 pesetas and 40 million pesetas, for violations of article 99.q in connection with article 71 of the Securities Market Law (intermediation in futures and options transactions on commodities without being authorized to do so).

\*High Court of Justice.



# 9

## MARKET REGULATION

Increasing participation in the securities markets by small investors and the accelerating process of European integration are posing major challenges for Spain, as discussed in previous chapters. Regulation can make an effective contribution to successfully meeting such challenges. In recent years, regulatory activity has focused on expanding and enhancing services to intermediaries, the organized markets and the clearing and settlement systems. Restrictions and costs imposed by registration, authorization and supervision systems have been limited and simplified without impairing the legal security of the transactions. No little effort has been devoted to increasing market transparency and integrity, which are indispensable for assuring fair playing rules and maintaining the trust of Spanish and foreign investors.

Much of the market regulation in 1999 involved implementation of the Securities Market Law Reform Law, approved in 1998, but other very important provisions were also approved, such as the transposition of the Directive on securities payment and settlement systems, and the Law governing venture capital. In the area of market development, the Nuevo Mercado, a market for growth stocks, was approved. Another important measure, because of its impact on market transparency, is the new regulation on the reporting requirements for listed companies that distribute stock options among executives and directors. This was accompanied by an amendment to the Companies Law which increases transparency with regard to executive and director remuneration.

### Implementation of the Securities Market Law Reform Law

The reform of the Securities Market Law<sup>(31)</sup> made it necessary to revise and update all the regulations which had been based on the original Securities Market Law<sup>(32)</sup>. Consequently, much of the securities market regulatory activity in the coming years will focus on this need, so as to regulate the new possibilities created by the Securities Market Law Reform Law and to avoid clashes with the new Law. For example, the “European Passport” for investment services companies provided in the Investment Services Directive has been incorporated into Spanish law, which has created sweeping changes in the original Securities Market Law, and the introduction of many liberalizing measures has led to a considerable change in the philosophy underlying many rules based on the original law. The detailed rule-making for the Securities Market Law Reform Law is a complex task since, although the existing regulations will only need modifications, totally new regulations will also need to be written.

(31) Law 37/1998, dated 16 November, for the reform of the Securities Market Law.

(32) Law 24/1998, dated 18 July, on the securities markets.

## Law 41/1999, dated 12 November, on securities payment and settlement systems

The principal aim of Law 41/1999 is to transpose into Spanish law the contents of Directive 98/26/EC on settlement finality in payment and securities settlement systems, by regulating the validity and enforceability of clearing and settlement transactions and of the collateral provided by participants in clearing and settlement systems. It also regulates transactions by Central Banks of the Member States and the European Central Bank and the effects of insolvency proceedings on such transactions and collateral. The Directive contributes to the creation of Monetary Union by providing an appropriate legal foundation for efficient payment systems, including TARGET, which must channel financial flows between the European System of Central Banks, the European Central Bank and credit institutions in common monetary policy operations.

## Other regulations affecting the securities markets

### Law 24/1998, dated 28 July, on the securities markets

- *Additional Provision Seventeen of Law 55/1999, dated 29 December, on tax, administrative and social measures.* Amended the second and third paragraphs of article 53 of the Securities Market Law, making it obligatory for directors of listed companies to report the acquisition or disposal of options on shares of the company. It also added an Additional Provision Fifteen, making it obligatory to notify the CNMV of certain information about the execution of remuneration systems established for executives of listed companies, and an Additional Provision Sixteen, making it obligatory to file with the CNMV a supplement or a new prospectus disclosing information on shares and options or settlements relating to directors and executives<sup>(33)</sup>.

### Primary market in securities

- *Order dated 28 May 1999, implementing article 25 of Law 24/1988, dated 28 July, on the securities markets.* Makes it obligatory to obtain prior administrative authorization to issue securities whose principal or interest are revisable based on the performance of some general price index or the price of some good or service or of indices thereof. Also, certain issues maturing at over 18 months are placed under special supervision by the tax authorities.
- *Circular 2/1999, dated 22 April, of the Comisión Nacional del Mercado de Valores, approving certain forms of prospectus for use in issues and public offerings of securities,* which develops the new abridged shelf registration prospectus and modifies certain types of prospectus regulated in the Order dated 12 July 1993 to adapt them to the special features of fixed-income issues.

### Secondary markets in securities

- *Royal Decree 1676/1999, dated 29 October, partially amending Royal Decree 1197/1991, dated 26 July, on the system of tender offers.* The percentages and thresholds established for supervening tender offers envisaged in article 3.1.c are modified to bring them into line with those established in article 3.1.b. This provides identical solutions to cases which have the same eco-

(33) For more details, see box “Disclosure of director and executive remuneration schemes involving stock options”, in chapter 5.

conomic result, regardless of the fact that they arise from different legal circumstances (merger or take-over). Moreover, the consideration in counterbids can now take any of the forms envisaged in article 10 of Royal Decree 1197/1991.

- *Order dated 22 December 1999, creating a special trading segment in the securities markets called “Nuevo Mercado” and amending the requirements for admission to listing.* This Order creates a special segment of the Spanish securities markets entitled “Nuevo Mercado” for trading in innovative high-technology companies and other sectors offering considerable future growth potential but also higher levels of risk than the traditional sectors. The Order also relaxed the requirements for admission to listing, thereby amending the Order dated 19 June 1997. The requirement of the Stock Market Regulation that the company be profit-making will not apply if the issuer can provide projections of earnings in future years.
- *Circular 3/1999, dated 22 September 1999, on transparency of transactions in the official securities markets.* This Circular regulates the public information that the securities markets, the official futures and options markets and the AIAF market must release regarding market transactions, both ordinary and extraordinary, and, where appropriate, on orders made in them (see box in chapter 7).

### Venture capital entities

- *Law 1/1999, dated 5 January, regulating venture capital entities and their management companies.* This Law establishes a full, stable legal framework for Spanish venture capital entities. Previously, venture capital entities had been regulated by a number of different provisions arising from Royal Decree 1/1986, on urgent administrative, financial, tax and labor measures, which had been amended on several occasions. The main new feature in the law is the establishment of a legal regime for authorization, supervision, inspection and discipline that is comparable to that of the other parties operating in our financial markets. Consequently, the CNMV is appointed as supervisor of venture capital companies and funds and of their management companies.
- *Order dated 17 June 1999, partially implementing Law 1/1999, dated 5 January, regulating venture capital companies and their management companies, empowering the CNMV to issue regulations regarding the procedure for authorizing new entities, accounting rules and reporting obligations for venture capital entities and their management companies.* The purpose of the Order is to empower the CNMV to implement matters relating to the procedure for authorization, accounting and reporting obligations for venture capital entities and their management companies, following a similar procedure to that used in the accounting of other entities under its supervision.
- *Circular 4/1999, dated 22 September, of the Comisión Nacional del Mercado de Valores, on administrative procedures and standardized forms for venture capital companies and their management companies.* Making use of the powers contained in the Order 17 June 1999, this Circular regulates the procedures and standard documents applicable for obtaining authorization to create new venture capital entities and their management companies and to modify the management regulations and bylaws of existing entities.

## Codes of conduct

- *Order dated 7 October 1999, implementing the general code of conduct and rules of action in the management of investment portfolios.* The purpose is to adapt the general code of conduct and rules of action in Royal Decree 629/1993 to the peculiar features of a specific activity, namely portfolio management, which can be performed by resident entities and those acting in Spanish territory under the “European passport.”

## Collective investment institutions

- *Royal Decree 845/1999, dated 21 May, partially amending Royal Decree 1393/1990, dated 2 November, which approves the Regulation of Law 46/1984, dated 26 December, regulating collective investment institutions in connection with real estate investment companies and funds, and containing other financial measures.* The purpose of this reform is to adapt the Regulation of Law 46/1984 to the new features introduced by Law 20/1998, dated 1 July, reforming the legal and tax regime of real estate collective investment institutions and on the assignment of certain debt claims of the State General Administration. The principal amendments include: expansion of these entities’ scope of investment and permission for them to transact with investors or shareholders and with group companies, subject to certain limits and conditions. The reform also implements the regulation governing matters relating the regime of investments and obligations to third parties.
- *Order dated 28 May 1999, partially amending the Order dated 7 June 1990, on collaboration agreements relating to funds investing in government bonds.* This Order allows government bond mutual funds to arrange non-exchange-traded derivatives and to invest in the State-guaranteed part of the assets issued by securitization funds. It also allows a percentage of their portfolios to be invested in other fixed-income securities provided that they have a high credit rating. Newly-created government bond mutual funds are authorized to invest up to a given percentage of their portfolios in equities.
- *Circular 1/1999, dated 14 January, of the Comisión Nacional del Mercado de Valores, regarding mutual fund prospectuses and quarterly reports.* Making use of the powers contained in the Order dated 1 October 1998, in this Circular, the Comisión Nacional del Mercado de Valores regulates the procedure for registration and updating of prospectuses, and establishes a standard prospectus and abridged quarterly report that can be delivered to investors in mutual funds in place of the full prospectuses and quarterly reports.

## Asset securitization

- *Order dated 28 May 1999, on agreements to promote asset securitization funds so as to foster business finance.* This Order's purpose is to comply with the provisions of article 53.4 of Law 49/1998, dated 30 December, which empowers the Minister of Economy and Finance to establish the rules and requirements to be met by agreements made between the Ministry and the asset securitization fund management companies registered in the Registers of the Comisión Nacional del Mercado de Valores<sup>(34)</sup>.
- *Order dated 4 October 1999, governing the delegation of powers to enter into cooperation agreements between the Ministry of Economy and Finance and credit institutions as envisaged in the Order dated 28 May 1999, on agreements to promote asset securitization funds so as to foster business finance.* This Order delegates to the Directorate General of the Treasury and Finance Policy the power to enter into the agreements with credit institutions envisaged in the Order dated 28 May 1999, discussed above.

## Executive acts: Interpretative Letters from the Chairman of the CNMV

The Interpretative Letters which the Chairman of the CNMV sends to entities operating in the markets have the purpose of disseminating criteria and interpretations of actions by the CNMV. The three Interpretative Letters issued in 1999 are summarized below:

- *Interpretative Letter 1/1999, dated 4 June, on the corresponde a «new procedure for admission to listing of capital increases on T+6».* This letter informed all issuers of the new legal framework affecting the admission to listing of shares from capital increases, which led immediately to the signature of a protocol by the stock markets, the Servicio de Compensación y Liquidación de Valores (SCLV), the Colegio de Registradores Mercantiles and the Comisión Nacional del Mercado de Valores. The letter also contains a number of recommendations to be followed by all issuers seeking to benefit from the new regulation so as to attain admission to listing on T+6.
- *Interpretative Letter 2/1999, dated 19 July, on «modifications to securities that do not require registration of a prospectus with the Comisión Nacional del Mercado de Valores».* This Interpretative Letter lists a number of transactions which, though entailing a modification to outstanding securities, do not substantially alter the rights or obligations of the securities-holders or reduce their guarantees and, consequently, do not require registration of a prospectus.
- *Interpretative Letter 3/1999, dated 30 September, on the «agreement between the Directorate General of the Treasury and Finance Policy and the Comisión Nacional del Mercado de Valores on the procedure for authorizing master and feeder IICs and IICs of funds».* This Interpretative Letter publicized the agreement reached between the Directorate General of the Treasury and Finance Policy and the CNMV to establish the procedure, criteria and special rules governing the creation and operation of master mutual funds (Fondos de inversión mobiliaria principales – FIMP) and feeder funds (Fondos de inversión mobiliaria subordinados – FIMS) and funds of funds (Fondos de inversión mobiliaria de fondos – FIMF) during the transition period until approval of the Regulation implementing the provisions of article 23.bis of the IIC Law.

(34) For more details, see the section in chapter 3 entitled: "Agreements for the promotion of asset securitization funds (FTA)."

Financial globalization makes it increasingly important to establish international cooperation with regard to regulation and supervision, as was acknowledged by G-7, which last year fostered the creation of the Financial Stability Forum with the aim of proposing measures to improve transparency and international information flows. There is a long history of international cooperation in the securities markets, in which the International Organization of Securities Commissions (IOSCO) has played an important role.

Since its foundation, the CNMV has participated in all the relevant international forums. In addition to participating actively in IOSCO, the CNMV is a member of the Forum of European Securities Commissions (FESCO), which is playing an increasingly important role in market regulation and supervision in the context of the integration of financial activities in Europe. The CNMV has also established a dense network of bilateral agreements with regulatory authorities worldwide.

### Madrid, new permanent headquarters of IOSCO

At the IOSCO 1999 Annual Conference, held in Lisbon on 22-28 May, the Presidents' Committee resolved to relocate the organization's General Secretariat from Montreal, where it had been established since 1986, to Madrid. The decision was taken unanimously, and Madrid was chosen over other candidates such as Paris, Amsterdam, Basle, Frankfurt, London, Montreal and Singapore. Spain's candidacy was proposed by the Comisión Nacional del Mercado de Valores and sponsored by Spain's Ministry of Economy and Finance. Concessions to IOSCO in Madrid include certain tax and social security exemptions, a subsidy of 300 million pesetas and indefinite use of a building located in central Madrid.

IOSCO is the principal international organization dealing with securities markets, and its relocation to Madrid enhances Spain's position as a financial market. This development means that the persons in charge of supervising the world's securities markets will be regular visitors to Madrid, which will raise the profile of our financial markets and put us more in touch with the latest trends in market structure and supervision.

Latin America is an area of particular interest to Spanish companies, investors and intermediaries. To foster greater knowledge of the Latin American markets and boost cooperation with their authorities in all areas, the CNMV and Spain's Ministry of Economy and Finance last year sponsored the creation of the Instituto Iberoamericano del Mercado de Valores, a not-for-profit foundation which has already performed major training and information activities in its short period of existence to date.

# 10

## INTERNATIONAL ACTIVITY

## Creation of the Instituto Iberoamericano del Mercado de Valores

The Latin American countries' regulatory and supervision systems have much in common with Spain's, and cooperation in this area is mutually enriching. In May 1999, significant progress was made towards closer cooperation between the securities market authorities and institutions in Spain and Latin America by the creation of the Instituto Iberoamericano del Mercado de Valores (Ibero-American Securities Market Institute), a not-for-profit foundation whose principal objectives are to promote the development of transparent securities markets in Latin America, improve knowledge of market structure and regulation, foster harmonization and encourage cooperation between supervisors in the region.

The Institute, whose headquarters are located in Madrid, is governed by a Board comprising members by virtue of their office and elected members; public authorities from both sides of the Atlantic occupy prominent positions in both categories. The Board receives advice on planning of the Institute's activities from a Council comprising two representatives from each member country: the president of the securities market supervisory body and a senior representative of the country's government. A total of 17 countries are currently represented on the Council.

The Institute has already been active in organizing training courses and seminars in Spain, Bolivia and Guatemala for employees of the supervisory bodies and other persons interested in the workings of the securities markets. It also organized a seminar in Madrid on the occasion of the inauguration of Latibex, the new market for trading in Latin American securities in euros. In the future, it will publish a journal of new legislative developments and will disseminate articles and information of interest relating to regulation in the member countries. The Institute has a web page where all the information on its organization and activities can be found . (\*)

(\*) The web site of the Instituto Iberoamericano del Mercado de Valores is at [www.iimv.org](http://www.iimv.org)

## European Union

### *Financial Services Action Plan*

The Financial Services Action Plan unveiled by the European Commission on 11 May 1999 is aimed basically at creating a single market in financial services within the European Union (EU) in the context of the single currency and in an environment of constant progress in technology and financial innovation.

The Plan adopts a broad approach, defines the areas requiring urgent legislative action, establishes priorities and sets a calendar for work in modifying the legislation that affects financial services in one way or another: regulations on banking, securities, insurance, companies and taxation.

The plan pursues four broad goals, whose impact on the securities markets are as follows:

- *A single wholesale market in the EU*: envisages modernizing the Directives governing prospectuses and periodic reporting by securities issuers, the Investment Services Directive, the

Directive governing undertakings for collective investment in transferable securities (UCITS) and the Directives governing company law, basically as regards accounting and governance. Additionally, there are plans to obtain accelerated approval for new Directives regulating price manipulation in securities markets, cross-border use of collateral in securities transactions, take-overs and pension funds.

- *Open, secure retail markets*: regulation will be issued on distance selling of securities and establishing Community-wide criteria on matters of such current importance as consumer information, extra-judicial channels for resolving disputes between consumers and providers of financial services, and electronic commerce.
- *Improved prudential supervision*: specific moves will be made to reform the Directive on money laundering and the Directives on capital adequacy of banks and investment services companies, and to improve the system of information exchange with third countries and to draft urgent regulations on financial conglomerates.
- *Broader conditions for an optimal single financial market*: initiatives will include a number of tax reforms (preparation of a Directive on taxation of savings and a review of the tax regime governing financial services).

Connected with the development of the Action Plan, a Financial Services Policy Group was set up at the initiative of the EU Council and presided by the European Commissioner for Financial Services; the Policy Group includes representatives of the Ministries of Economy and Finance of each of the Member States and its basic objective is to promote the reform measures contained in the Action Plan and define priorities and criteria for their implementation. Its most recent meetings have given priority to matters such as accounting harmonization and progress in the system of mutual recognition of prospectuses of securities issuers at European level.

At the same time, a number of supporting task forces on specific matters, called Forum Groups, were established, comprising representatives of the financial sector; their mission is to advise and support the European Commission in drafting proposals and recommendations.

The work of defining the guidelines and criteria upon which future European legislative reforms will be based is of great importance. The CNMV is participating actively in this process both directly, through the Committees and Working Parties created by the European Commission, and indirectly, through FESCO.

## **EU Directives**

During 1999, discussions continued among the Member States for the approval of a number of directives: to regulate distance selling of financial services and electronic commerce (which applies to the provision of on-line financial services), to harmonize the legal regime governing take-overs, and an amendment to the UCITS Directive.



## FESCO

The Forum of European Securities Commissions (FESCO) continued to work towards the goal of “second-level harmonization,” i.e. harmonization of national regulations not subject to Directives, with a view to attaining a single market in securities and placing special emphasis on investor protection and the integrity of Europe’s markets. The CNMV is one of the five securities commissions with a seat in FESCO’s permanent General Secretariat.

### *Support for the European Commission’s Financial Services Action Plan*

One of the fundamental aims of the work performed by FESCO is to support the European Commission in the development of the Financial Services Action Plan, which was approved in mid-1999. The Plan highlights the areas in the financial sector that are in need of urgent reform in order to adapt EU legislation to the new situation of financial globalization. One of the principal goals is that the legal framework in the EU Member States should contribute effectively to consolidating a single securities market, thereby avoiding country-based segmentation of markets.

### *Recommendations<sup>(35)</sup>*

During 1998, FESCO created a number of working parties to draft common standards applicable to market regulation. During 1999, some of these working parties presented their conclusions, which contained important recommendations, including those contained in the following documents:

- *Standards for participants in an offering:* defines rules of action to be observed by the participants in a public offering or issue of securities. The principles seek to prevent conflicts of interest, the use of inside information and certain behavior that might lead to errors or false perceptions of the components of an offering or issue by potential investors. Specific measures for avoiding these problems are also established.
- *Standards for regulated markets:* establishes general criteria for transparency, workings, governing bodies and powers of supervision, admission to listing, technical resources, etc. for a securities market to be considered a “regulated market” for the purposes of EU legislation.
- *Standards on fitness and propriety to provide investment services:* develops criteria of propriety and experience for persons involved in managing investment services firms, specifying the general requirement for authorization of new investment companies established in the Investment Services Directive<sup>(36)</sup>.

The debate on standards within FESCO is not confined merely to drafting recommendations; it also includes developing commitments by member countries to implementing them.

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(35) All FESCO documents can be obtained at the FESCO web site ([www.europefesco.org](http://www.europefesco.org)) and on the CNMV web site.

(36) Council Directive 93/22/EEC of 10 May 1993 on investment services in the securities field.

### Other significant activities

FESCO also performed other significant activities in 1999, including most notably the following:

- Request to the US supervisory authorities for urgent approval of non-discriminatory regulations in the US derivatives markets vis-à-vis non-resident investment companies.
- Approval of the Terms of Reference of FESCOPOL, the group within FESCO comprising the persons in charge of market supervision and interchange of information. This is a major step forward as it will make it possible to improve cooperation and the exchange of information among supervisory authorities within the European Union.
- Creation of new working parties in the following areas:
  - European public offerings: improved system for mutual recognition of prospectuses.
  - Alternative trading systems.
  - Techniques for stabilizing issues and public offerings: green shoe and gray market clauses.
  - Alliances between markets in Europe: consequences for regulation.
  - Market abuses.

### IOSCO

As a member of IOSCO's Technical Committee, the CNMV participated actively during 1999 in five working parties within this worldwide organization. The activities performed by IOSCO's working parties during 1999 included most notably the following<sup>(37)</sup>:

#### *Multinational securities offerings and accounting*

The work to adopt the international accounting criteria drawn up by the International Accounting Standards Committee continued during 1999. The scope of application of these criteria will be confined to international offerings or issues, with no attempt being made to amend or derogate established internal legislation. The harmonization of accounting standards worldwide will provide a significant reduction in costs for transnational issuers.

Subject to completion of the aforementioned work, the IOSCO plans to evaluate the international auditing criteria published by the International Accounting Practices Committee (IAPC) and they will subsequently be adopted by the IOSCO members if it is considered appropriate.

#### *Secondary markets*

Two important documents were published in 1999:

- *"Securities lending: market development and implications"*: This detailed treatise on securities lending defines the fundamental characteristics in the current financial situation and the practical and regulatory implications of the widespread use of securities lending. The document was drafted jointly with the Basel Committee on Banking Supervision.

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(37) All the IOSCO documents can be found on its web site ([www.iosco.org](http://www.iosco.org)) and some are available on the CNMV web site (DEL-FOS section).

- *“Supervisory framework for markets”*: contains a number of recommendations on securities market supervision and oversight.

During 1999, IOSCO devoted considerable efforts to coordination with a view to avoiding the negative consequences of the “Y2K effect” on securities markets. Work also commenced on two matters of current importance: electronic trading systems in derivatives markets, and improving the transparency, effectiveness and efficacy of securities clearing and settlement systems, with special emphasis on reducing the systemic risk.

### **Intermediaries**

This group published two important documents in 1999:

- *“Recognizing a firm’s internal market risk model for the purposes of calculating required regulatory capital: guidance to supervisors”*: This document made practical recommendations for guiding the prudential supervision of all firms adopting internal models for evaluating their market risk.
- *“Disclosure guidance for trading and derivatives activities of banks and securities firms”*: This document established disclosure guidelines enabling supervisors to monitor the risks borne by intermediaries as a result of the latest developments in financial engineering. It was drafted in coordination with the Basel Committee.

### **Supervision and exchange of information**

An important document, entitled “Cooperation between securities and futures regulators and law enforcement authorities,” was published in 1999; it defines the criteria for cooperation between securities supervisors and law enforcement authorities. The group continued to work on the area of price manipulation and commenced work on two new areas: investigations to be conducted jointly by authorities from two or more countries, and supervision of international activities performed on the Internet.

### **Collective investment institutions**

The document entitled “Regulatory approaches to the pricing and valuation of CIS<sup>(38)</sup> established basic principles to apply in determining the price of shares or units in collective investment institutions.

Work continued in areas of particular interest: principles of good governance for collective investment institutions, conflicts of interest between collective investment institution managers and investors; delegation of powers by collective investment institution managers, and investor education.

### **Other matters addressed by IOSCO**

The working party on highly leveraged funds (“hedge funds”) published a report in 1999 on possible regulatory approaches to the problems that institutions of this type can create internationally at times of crisis.

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(38) Collective Investment Schemes.

IOSCO also proceeded with the widespread application of the “Objectives and principles of securities regulation.” This will include a process of self-assessment by each of the IOSCO members and stepped-up cooperation with other international financial agencies. IOSCO also created a multi-disciplinary committee on the dissemination of information by financial intermediaries; the group commenced work last year.

## Other activities

The CNMV also participated, as a member, in the activities of the Joint Forum, which comprises some representatives of IOSCO, the Basel Committee and the International Association of Insurance Supervisors. In what was a particularly prolific year, the Forum published a number of documents on principles of capital adequacy and supervision of financial conglomerates, intra-group transactions and concentration of risk.

In the area of international cooperation, the CNMV signed two new bilateral agreements: a Memorandum of Understanding with the Australian Securities and Investments Commission, on 24 May 1999, and a cooperation agreement with LIFFE, on 23 September 1999, the latter to facilitate supervision of remote members. The CNMV also welcomed a major delegation from China and responded to numerous requests for technical assistance from an increasingly broad range of countries (including Ukraine, Macedonia, Slovenia and Thailand).

In the framework of the excellent cooperation with the Latin American countries, the securities supervisors of Peru and Bolivia visited the CNMV, and technical assistance was provided to and received from countries in that region.

## Annex 1

### COMPOSITION OF THE CNMV BOARD

President: Juan Fernández-Armesto

Vice-president: Luis Ramallo García

Commissioners: José Manuel Barberán López  
Gloria Hernández García <sup>(39)</sup>  
Miguel Martín Fernández <sup>(40)</sup>  
José M<sup>a</sup> Roldán Alegre  
Pilar Valiente Calvo

Secretary: Antonio J. Alonso Ureba

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(39) Director General of the Treasury and Finance Policy. Replaced Jaime Caruana Lacrote on 26 June 1999.

(40) Deputy Governor of the Bank of Spain.

## Annex 2

### COMPOSITION OF THE CNMV ADVISORY COMMITTEE

President: D. Luis Ramallo García

Secretary: D. Antonio J. Alonso Ureba

#### REPRESENTATIVES

Issuers: D. Agustín Ramos Varillas  
D. Luis Menéndez Onrubia  
D. Manuel Vecino Riera

Investors: D. Mariano Rabadán Fornies  
D. Jesús Barreiro Sanz

#### Stock Exchange Members:

D. José Antonio de Bonilla y Moreno  
D. Enrique Piñel López  
D. Jaime Aguilar Fernández-Hontoria  
D. Gregorio Arranz Pumar

#### Consumers and Users Council:

D. Manuel Pardos Vicente

#### Autonomous Regions:

##### Valencian Government:

D. José Manuel Uncio Lacasa

##### Catalan Government:

D. Francesc Xavier Ruiz del Portal i Bravo

##### Basque Government:

D. Juan Miguel Bilbao Garai

#### ALTERNATIVE REPRESENTATIVES

Issuers: D. Pablo Lamberto Urrutia  
D. José Antonio Guzmán González  
D. José Luis Martinavarro Ferrer

Investors: D. Antonio Malpica Muñoz  
D. Francisco Javier Palomar

#### Stock Exchange Members:

D. Fernando de Roda Lamsfus  
D. Ignacio García Barrero  
D. Carlos Morales Martinol  
D. Pablo Prada Hernández

Consumers and Users Council:

D. Enrique García López

Autonomous Regions:

Valencian Government:

D. Julián Fernando Talens Escartí

Catalan Government:

D. Jaume Pera i Lloveras

Basque Government:

D. Miguel Bengoechea Romero